



Juridic Aspects of Startup Company in the Era of the Industrial Revolution and the Trend of Digitalization of Trade

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Abstract

Looking at the times and society's need for a modern form of technology-based business, it is interesting to discuss the topic of startup companies. Moreover, this form of business is now considered part of the trend of digitizing trade. In addition, e-commerce is a form of trend in the digital sector and today's economic sector. This research aims to examine the role of big data and the protection of personal data in startup companies and the legal relationship in it, and to examine the regulations regarding consumer protection for startup company users in Indonesia. This research was conducted using a normative research method, with a statutory approach and a case approach with descriptive and evaluative techniques. The results of this research revealed that the role of big data in the startup company business, among others, is to support business competition by using big data through innovation. Not only for startup companies, but for all current and future business ventures as well as for the government in relation to public services. The parties in the startup business other than the company itself, including consumers and the government as legal authorities. All of them have their respective important roles. Consumer protection is now the responsibility of OJK, in addition to the legal umbrella in the form of regulations issued by the OJK, regulations set by Bank Indonesia can also be used as the only central bank that has the capacity to determine monetary policy. In addition, it is also regulated in the ITE Law, which even though it is not sufficient to protect consumers, it can at least provide legitimacy for the protection of consumer data.

Keywords: e-commerce; consumer protection; startups

INTRODUCTION

The presence of startup companies is not new, this is evidenced by the emergence of many companies that use the internet as their business base. Startup is an absorption word that comes from English which means the act or process of starting a new organization or business (Kriswinanto, 2020). There are also those who interpret it as a newly established company and is in the development and research stages to find the right market. This is what distinguishes start-up companies from ordinary companies that have been eyeing profits from the start.

This form is a combination of financial services with technology which is ultimately able to change the conventional model to a system that is more moderate in nature. This is a form of digital financial innovation, which is able to change transactions that used to require the meeting of parties, can now be done from anywhere without a physical presence in a matter of seconds. Third, are game or game companies that are developing

because they feel they have a wider target market. In fact, being a gamer has now become a job because it can make money like a livelihood.

Basically, startups can cover all business sectors or businesses as long as they are carried out on a digital platform. In 2020 there was an increase in the number of 64% of the 272 million Indonesians who access the internet. This can be indicated as one of the factors that increase the number of business businesses that are turning to the digital market. During the Covid-19 pandemic, many startup companies in Indonesia experienced bad conditions, including in the ecosystem sector supporting digitalization, maritime and tourism. Meanwhile, startups engaged in payment systems, logistics, and the health sector can actually be in a stable condition (Karina et al., 2021).

Regarding the regulations that are the legal basis for startups, it actually depends on the type of business. For businesses engaged in the fintech sector, of course, they will be subject to Bank Indonesia Regulation Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing, BI Circular Letter Number 18/22/DKSP concerning the Implementation of Digital Financial Services, BI Regulation Number 18/17/PBI/2016 concerning Electronic Money. However, all types of transactions in internet-based digital markets will always deal with e-commerce and fintech. For a start-up company or its own start-up company, it can be established in the form of a Limited Liability Company. This legal entity business has become the choice of entrepreneurs because of its characteristics, namely the separation of personal assets from company assets, a clear flow of capital through the form of shares, and the advantages of other PT that are not owned by other forms of business (Harahap, 2009). In addition, the form of PT provides a sense of security for investors so that they are able to attract their attention and interest to invest.

The juridical problem is that there is no regulation specifically regulating this startup, because the existing Company Law has not been able to reach and describe the risks that potentially exist in digital-based businesses. Law Number 5 of 1999 concerning Monopolistic Practices and Unfair Business Competition is only designed for conventional industries. This rule does not optimally reach the legal needs of startup companies with digital platforms. In fact, this also applies to other positive laws such as regulations related to insurance of goods and services. This is because sellers and buyers in the startup company system only meet virtually. The description above then creates a view of the challenges in the process of developing a startup company, considering that this internet-based business will certainly be very vulnerable to violations by irresponsible people. So, not only should it be seen as a drawback, but it should also be considered a startup challenge in the 5.0 industrial revolution era with the launch of a flexible mass production technology. Technological sophistication will come in the form of tools that can operate independently with human control with functions as digitalization and economic interaction with simple techniques to economic networks with complex technicalities, as digitizing products and services and forming new market models that are practical and cross-border access. It is important for the most suitable legal settlement solution for business activities in a practical digital platform. Non-litigation settlement is prioritized in business cases (Saravistha et al., 2021). Whatever internet-based activity is particularly vulnerable to crime, the activity in question is not a business. In business activities sometimes competitors will make illegal efforts to appear superior to their competitors. In startup this is quite possible. Attempts to steal a company's big data can certainly be seen as a crime because it is done in an illegal way. The UK Law Commission has designated internet-based crime as "computer fraud", as the act of malicious computer manipulation to obtain money, goods or other benefits to intentionally harm another person (Suhariyanto, 2012).

Mandell classifies digital crime by means of the internet on two things, First, the use of computers to commit acts of fraud, theft or concealment intended to obtain financial gain, business advantage, wealth or service. Second, in the form of threats to the computer software itself such as sabotage, extortion and including data theft (Suhariyanto, 2012). Therefore, cybercrime actually includes all criminal acts related to information systems on computer software with internet facilities as connecting access. Survey data illustrates that the percentage of the population of victims of crime during the 2019 to 2020 period tends to

decrease by 1.01 percent in 2019 to 0.78 percent in 2020 with the reporting rate at the police force is still relatively low. These are the numbers for conventional crimes. Meanwhile, according to data from the Indonesian National Police, from April 2020 to July 2021 there were at least 973 reports from victims. Of these, the number of online fraud crimes is 259 cases (FISIP, UI) and 1.6 billion traffic anomalies or cyber-attacks by BSSN. Preventive measures are carried out technically through monitoring information technology security assessment (ITSA) and also improving electronic systems through the application of cryptography (Kompas). The legal challenges that are then born from the potential for crimes that may and often occur in the digital world, such as hacking and its ability to cross national borders, are first, aspects of protection and management of personal data and Second, legal aspects in the context of artificial intelligence.

Previously, some related studies that examined the regulations regarding consumer protection for startup company users have been conducted. The result study conducted by Atikah (2020) that examined *'Consumer Protection and Fintech Companies in Indonesia: Innovations and Challenges of the Financial Services Authority'* showed that the fintech companies must be registered in the financial services authority by obeying and implementing OJK regulations. Innovation that OJK did enact Supervisory Technology (Suptech) to develop the financial technology (fintech) corporate ecosystem that is included in the realm of Digital Financial Innovation (IKD) on the OJK portal with the name *Gerbang Elektronik Sistem Informasi Keuangan Digital*. OJK also established the Innovation Center or Fintech Center in 2018. Challenges OJK must face: fintech lending is to create a balance between increasing financial inclusion and risk management, improving people's understanding of fintech services, infrastructure, cybersecurity and data protection for consumers and fintech must collect more consumer data so that the lending and borrowing process becomes more efficient and effective. In addition, Sihombing (2021) in her study that examined legal protection for consumers by conducting a fintech-based corporate supervision system, revealed that legal protection for consumers by conducting a fintech-based corporate supervision system is closely related to consumer protection law issues that are generally regulated in Law No. 8 of 1999 on Consumer Protection. Because one of the keys so that consumers can be protected by their rights is to come from the extent of regulations related to supervision and supervision systems carried out by the government (in this case OJK) related to fintech companies themselves the step that must be done by the government is the implementation must be guided by Financial Services Authority Regulation No. 77 / POJK.01 / 2016 on Information Technology Lending Services.

Based on the background and the previous studies above, this research aims to examine the role of big data and the protection of personal data in startup companies and the legal relationship in it, and to examine the regulations regarding consumer protection for startup company users in Indonesia.

METHOD

This study uses a normative research method, namely research that seeks to provide a juridical argument due to emptiness, ambiguity and conflict between norms with one another. This study uses a normative analysis knife, namely prescriptive legal theory or critical legal theory as opposed to empirical theory. So, what is used as theories in this study are those from normative legal science. The legal materials used are primary legal materials, namely all positive laws, jurisprudence, laws set by the legislature and the government, including executive and administrative decisions (Diantha, 2016). The analysis technique of the legal materials that are inventoried and identified in accordance with the legal issues raised in this study are then analyzed in a descriptive way, namely explaining what is happening about an event and legal condition. After that, an evaluation is carried out based on evaluative techniques for the event and finally it is analyzed by providing legal arguments as well as the use of argumentation techniques in normative legal research. The types of approaches used include a statutory approach, a conceptual approach, and a case approach (Diantha, 2016).

DISCUSSION

The Role of Big Data and Personal Data Protection in Startup Companies

When it comes to big data, it is clear that the correlation with *startup companies* will be discussed. This correlation includes the importance of playing an important role in the world of economy or business, especially in the digital economy. Data, both commercially and commercially, is exploited by both large companies and startups. It is this data that becomes an asset that determines the strategy of a startup company. This strategy will undeniably have a broad impact on the digital-based business climate. Furthermore, the use of collection, as well as the use of personal data is carried out with high intensity for commercial purposes or interests. This fact is when a *startup company* chooses to conduct a merger or acquisition in the context of a business that aims to increase results through market expansion in the digital market, an example of a startup company merger is a *startup* called "Go To" which came from the merger or merger between Gojek and Tokopedia. Big data is a data collection with a large volume of data, has a very high diversity of data sources, so it is deemed necessary to manage it with appropriate methods and tools. In the Gartner IT Glossary as quoted by (Maryanto, 2017), "Bigdata is high volume, high velocity and/or high variety information assets that demand cost-effective, innovative forms of many information processing that enable enhanced insight, decision making, and process automation" (Maryanto, 2017). Access to big data ownership plays a very important role for startup companies because this is the key for this type of company to be able to have broad market power (Sirait, 2019). When this happens, the use of big data is one of the most influential aspects, for startups or startups to improve strategies to get more accurate data. So, it can be said that big data is one of the valuable assets of startup companies.

This situation then gave birth to two models of business competition for startups, namely on the side that can be said to be the positive side that competes with business competition by using big data through innovation. On the other hand, business competition suggests that this will cause two things, namely market forces will emerge or there will be a long-lasting competitive advantage that will cause new entrants such as startups to have difficulty penetrating the market.

The problem is the potential presence of cybercriminals such as hacking, skimming, cracking, and fraudulent modes that take advantage of this big data. In big data, a startup company also stores consumer data. This is what is often used as a means for cybercriminals to carry out their actions. There were recorded around 196.7 million people or 73.7% until the second quarter of 2020 and this number increased by 64.8% when compared to 2018 data related to internet use in Indonesia (Christianingrum & Aida, 2015). From the records of the National Cyber and Crypto Agency (BSSN) there have been recorded as many as 1.6 billion cyber-attacks throughout 2021.

According to Hilbert and Lopez, there are three main things that are the main triggers for the development of big data technology, including (Maryanto, 2017):

The rapid increase in data storage capabilities;

The rapid increase in the capacity of machines into data, which also causes computations on machines or computer equipment to also increase;

Availability of abundant data, for example companies in the United States data up to 100 terabytes, even up to 1 petabyte;

Furthermore, the benefits or benefits of big data are not only for startup companies, but for all these business ventures and in the future also for the government in applications with public services. The various benefits referred to include feedback and community responses as the basis for drafting legal policies and evaluating for the formation of the *ius constituendum*. Big data can produce digital innovations such as integrated services, transaction services with special segments so that the public or consumers can feel efficiency. Furthermore, through big data efforts to find solutions to all existing problems more swiftly. Utilization of valuable information generated by big data can be used for business decision making, for example so that the target market is in accordance with the

product so as to optimize it (Narendra, 2015).

Legal Relations of Stakeholders in Startup Companies

Start-ups in market expansion often carry out mergers or acquisitions. Traditionally, mergers are regulated in Article 28 and Article 29 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition and in Government Regulation Number 57 of 2010 (Parluhutan, 2021). The Business Competition Supervisory Commission (KPPU) has also regulated this merger activity through KPPU's Regulation Number 3 of 2019 concerning the Assessment of Merger or Consolidation of Business Entities, or Acquisition of Company Shares Which May Result in Monopolistic Practices and/or Unfair Business Competition. Unfortunately, KPPU does not yet have a regulation that can be reached more optimally for the valuation method or merger appraisal in the digital market. In Startup, the parties in it other than the company itself, including consumers and the government as the holder of the legal authority. There are so many and the rapid growth and development of this business model, which is not only limited to e-commerce and fintech, now startups in the health and education fields are also no less competitive. One of the incentives is the encouragement to survive and the needs of the community during the COVID-19 pandemic, which is limited due to the limited space due to efforts to handle the spread of the virus, instead giving birth to innovations to utilize digital platforms (Assyifa et al., 2021). Forbes provides a classification of the challenges in startup companies, namely in the context of employment relations, company form, company naming, licensing, intellectual property rights, contracts, and others. Challenges in the legal sector cannot be ignored, because they can have an impact on the failure of these startups to thrive. There has been a case of failure of a startup company in the fashion sector, which was founded by Aditya Herlambang. Mainly because mainly because pioneers in Indonesia at that time did not develop product quality, develop in giving discounts, free shipping and the like. Another cause is allegedly due to the high acquisition costs charged to sellers who utilize certain marketplace services (Assyifa et al., 2021).

Consumer Protection Regulations in Startup Companies

Legal protection in business activities by this startup is actually not only intended for consumers. The legal protection that could be needed for technology developed by a local startup that gets capital from foreign investment. The startup business in the context of transactions in it has received protection and supervision by the Financial Services Authority and also remains subject to the policies of the central bank, namely Bank Indonesia.

Talking about transactions, it will of course deal with e-commerce and fintech regulations. Several regulations that can be used as legal umbrellas include POJK Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services (Sihombing, 2021). This fintech and e-commerce manager is not a bank but is a new business model that is already rife in the community. In addition to POJK, regulations from BI as the central bank in charge of policies related to this business are BI Regulation Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing, BI Circular Letter Number 18/22/DKSP for the Implementation of Digital Financial Services, and BI Regulation Number 18/17/PBI/2016 concerning Electronic Money Consumer protection is now the responsibility of OJK. Article 4 of the OJK Law stipulates that "OJK was established with the aim that all activities in the financial services sector are organized, fair, transparent and accountable, are able to realize a financial system that grows sustainably and stably, and is able to protect the interests of consumers and the public". So, in order to achieve this goal, OJK is obliged to take steps to prevent consumer and public losses as regulated in Article 28 of the OJK Law (Sihombing, 2021).

For the protection of consumers' personal data, apart from strong regulations, literacy is also needed for consumers to be responsive and alert. Consumer personal data is often used as a means to commit crimes, for example, it is used for crimes of fund transfer, falsification of call center numbers, credit card fraud, and so on (Sirait, 2019). Article 26 Paragraph (1) of the ITE Law stipulates that any transfer of a person's personal data must

obtain the relevant permission. If it is violated, a report can be submitted as a complaint offense. Paragraph (3) of Law Number 19 of 2016 concerning Amendments to the 2008 ITE Law also stipulates that every electronic provider system has an obligation to delete irrelevant consumer data that is under its control based on a court order.

Misuse of big data is not impossible by people within the company itself. In the banking world, it is regulated in Law Number 7 of 1992 concerning Juncto Banking, Law Number 10 of 1998 concerning Amendments to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992, that insider involvement is considered as a crimes that are classified as white-collar crimes. However, there are two things that must be considered in determining a crime corporation, namely First, regarding the actions of the management which must be constructed as corporate actions or Second, the fault of the corporation (Sirait, 2019).

Another form of crime is the rise of illegal online credit. The form of an internet-based credit company is one form of startup. However, it is instead used as an opportunity for crime by irresponsible persons with various modes. The basis of the agreement in this loan is an agreement, but because it is carried out without meeting the parties directly, what is called a digital contract is developed. So far, for illegal lending, of course, there is no standard contract in accordance with positive law, so it often happens that consumers are treated as if they were in a default situation between the debtor and creditor of this loan. Such behavior certainly violates the ITE Law, so it is necessary to emphasize the rules regarding this matter because the Criminal Code is too general and distortions often occur due to its general nature. The digital contract form in question can be done by fulfilling several contract requirements including a clickwrap agreement, browse wrap agreement, and digital signature (Saravistha et al., 2022).

The current Law Number 8 of 1999 concerning Consumer Protection is unable to reach the consumer activities of startup companies optimally. So, it is very necessary to make special rules for consumer protection on digital platforms. This will certainly attract more consumers to transact and even attract investors to invest their capital to develop the start-up business. So, while contracting activities in the digital world both between sellers and buyers, debtors and creditors, between companies, and so on are still guided by Articles 17 and 18 of the ITE Law (Saravistha et al., 2022).

CONCLUSION

The role of big data in the startup company business, among others, is to support business competition by using big data through innovation. Not only for startup companies, but for all current and future business ventures as well as for the government in relation to public services. As a state of law, of course, all business activities and all activities in various lines of life will be faced with the law. So, trimming the convoluted legal bureaucracy such as business licensing will be very easy with the use of digital space. The parties in the startup business other than the company itself, including consumers and the government as legal authorities. All of them have their respective important roles. However, considering that Indonesia is a country based on law, once again it is very important to establish regulations as a juridical basis for the parties. Consumer protection is now the responsibility of OJK, in addition to the legal umbrella in the form of regulations issued by the OJK, regulations set by Bank Indonesia can also be used as the only central bank that has the capacity to determine monetary policy. Especially for business activities in the digital space, which cannot be separated from fintech and e-commerce. Finally, it is also regulated in the ITE Law, which even though it is not sufficient to protect consumers, it can at least provide legitimacy for the protection of consumer data. So, the government should immediately establish special rules regarding consumer protection on digital platforms.

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