



The Rules of Start Ups in Indonesia from an Inclusive Legal Perspective: An Ius Constituendum

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Abstract

The development of start-up based businesses in Indonesia actually requires special arrangements because in their development start-up businesses have special characteristics that are different from businesses in general. This research aims to analyze future regulations regarding start-up business practices in Indonesia which are based on an inclusive legal perspective. This research is normative legal research with a conceptual and statutory approach. The research results confirm that the urgency of special regulations relating to start-up businesses is intended to optimally facilitate aspects of start-up businesses that are different from aspects of business in general. Future arrangements for the development of start-up businesses in Indonesia refer to the idea of inclusive law with an orientation towards ease of registration, provision of capital and protection for workers in the start-up business sector, as well as special incentives for start-up business actors if they are able to comply with legal provisions and able to provide employment opportunities. What is equally important is that in regulating start-up businesses in Indonesia, it needs to be oriented towards protecting and empowering those who are economically and socially weaker, especially to protect and empower online motorcycle taxi drivers in partnership with application service providers.

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Introduction

The development of start-up based businesses in Indonesia has experienced significant development. One of the factors that influences the development of start-up-based businesses in Indonesia is the era of increasingly massive technological development with the high number of gadget users (smartphones) accompanied by various features that make various human jobs easier.(Hartono, 2023). Data from the Start Up Ranking shows that the

development of the start-up business in Indonesia has experienced a significant increase, where in 2017 the number of start-ups in Indonesia reached 1,400 and in 2019 it reached 2,200 start-ups in Indonesia (Kompas, 2023). This data further confirms that Indonesia is ranked sixth as the country with the number of start-ups in the world (Siswanto et al., 2020).

The massive development of the number of start-ups in Indonesia is also increasing, where in 2023 the number of start-ups in Indonesia will reach 2,482 and on January 11 2024 the number of start-ups in Indonesia will reach 2,562. (Indonesia. Go.Id., 2024). This development emphasizes that Indonesia is the second Asian country that has the largest number of start-ups and is ranked sixth in the world. Data on the development of start-up businesses in Indonesia further emphasizes that start-up businesses in Indonesia, apart from increasing in number, are also becoming a business trend in the era of technological development in Indonesia.

The development of the number of start-ups in Indonesia also requires support in the form of appropriate and effective regulations to support the development of start-up businesses in Indonesia (Batu & Hasya, 2023). In Indonesia, the regulations governing start-up businesses in Indonesia are based on PP No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (PP Business Licensing) which regulates all aspects related to business licensing. This confirms that regulations related to start-up businesses in Indonesia are based on a general legal umbrella, namely those relating to business licensing. This creates problems because start-up businesses have special characteristics that are different from businesses in general, so to make it easier to regulate and empower start-up businesses in Indonesia, separate regulations should be needed that make start-up businesses in Indonesia more effective, efficient and oriented. on the benefit aspect (Wulandari & Assidiq, 2023).

Based on these problems, this research specifically analyzes future regulations (*ius constituendum*) regarding start-up business practices in Indonesia which are based on an inclusive legal perspective. The inclusive legal perspective is the main orientation in this research because the inclusive legal perspective is oriented towards empowerment and the optimal role of the state in relation to various developments in society, especially related to start-up business practices. The inclusive legal perspective in this research is the theoretical basis for formulating special regulations related to start-up businesses in Indonesia. This

research aims to answer two legal issues, namely: (i) the urgency of special regulations related to start-up businesses in Indonesia and (ii) future regulations (*ius constituendum*) related to start-up business practices in Indonesia based on inclusive law.

Research discussing start-up businesses in Indonesia has actually been carried out by three previous researchers, namely: first, Raharjaan and Yaurwarin (2022) who in their research specifically discussed the legal aspects of regulating start-up businesses in Indonesia (Anakletus Rahajaan & Yaurwarin, 2022). The novelty of research by Raharjaan and Yaurwarin (2022) shows that the flexible and efficient characteristics of start-up businesses mean that legal regulations related to start-up businesses must accommodate flexible and efficient aspects related to start-up businesses. Second, research conducted by Destyarini (2023) which analyzes the complexity of legal regulations relating to start-up businesses in Indonesia (Normalita Destyarini, 2023). The novelty of Destyarini's (2023) research is that start-up businesses also require regulatory guarantees related to taxation and related to intellectual property rights. Third, research conducted by Akbar and Rossieta (2023) focused on evaluating start-up business practices. The novelty of Akbar and Rossieta's (2023) research is that evaluation and innovation are keywords in running a start-up business so that it continues to exist and continues to gain significant profits. (Akbar & Rossieta, 2024).

From the three studies above, it can be concluded that research that specifically and specifically discusses future regulations (*ius constituendum*) related to start-up business practices in Indonesia which is based on an inclusive legal perspective has not been analyzed comprehensively by the three previous studies. Therefore, this research is original research because the focus of the discussion is future regulations (*ius constituendum*) regarding start-up business practices in Indonesia which are based on an inclusive legal perspective that has not been discussed by the three previous researchers..

Research Methods

This research focuses on aspects of future regulation (*ius constituendum*) related to start-up business practices in Indonesia which is based on an inclusive legal perspective, which is normative legal research. (Eka N.A.M. Sihombing, 2022). The primary legal material in this research is PP No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (PP Business Licensing). Secondary legal materials are journal articles,

books, and research results that discuss start-up businesses and inclusive law. Non-legal materials are language dictionaries. The approach used is a conceptual and statutory approach. Analysis of legal materials is carried out in a prescriptive-qualitative manner which carries out compilation and analysis relating to existing legal materials and then formulating a legal prescription in accordance with the legal issues discussed (Diantha, 2017).

Discussion

The Urgency of Special Regulations Regarding Start-Up Businesses in Indonesia

The development of start-up businesses is actually a global development where start-up businesses experience massive development in various countries in the world, both in developed and developing countries. (Luh et al., 2024). The development of start-up businesses as a global business trend is also developing in Indonesia, which is generally understood as a developing country. In Indonesia, the development of start-up businesses is becoming increasingly prominent with technological developments which are also fostering the development of start-up businesses in Indonesia (Sukardi et al., 2023).

The term start-up refers to the Cambridge Dictionary as being understood as a technology-based start-up company (Cambridge Dictionary, 2024). Technology-based start-up companies are companies that have just been started and have a business focus or orientation related to technological aspects (Lubis et al., 2023). Historically, the term start-up in the business world emerged in the 1990s, especially when technology began to develop with the .com domain, which became increasingly prominent from 1998 to 2000. (Laksmana & Permana, 2023). The development of the .com domain has helped foster the presence of start-up based business companies even though at first it was very simple. In the United States, the development of start-up based businesses is increasingly attracting investor interest, especially in companies with the "dot com bubble" (Hidayat et al., 2023). From the initial stage of start-up business development, it can be seen that technological development is an important aspect related to the development of start-up businesses in the world.

The development of start-up businesses in Indonesia also has relevance to technological developments, especially the internet. Although the development of the start-up business in Indonesia can be said to tend to be slower than in the United States, where from 1998 to 2000 it began to develop, in Indonesia the start-up business began to develop from

2013 to 2015 and so on.(Adhie et al., 2023). This is actually influenced by the role of internet connections and the increasingly massive use of smartphones in Indonesia, especially from 2015 onwards. The continued development of start-up businesses in Indonesia has also resulted in good developments where there are several Indonesian start-up businesses that are unicorns and even decacorns such as: J&T Express, GoTo, Traveloka, and Xendit whose valuation reaches US\$ 10 billion(Bernardus et al., 2024). The orientation of start-up business in Indonesia, apart from its high valuation value, also aims to reduce the unemployment rate in Indonesia because with the increasing number of start-up business activities in Indonesia it is hoped that it can absorb labor and minimize unemployment. This is similar to East Java, where in 2023 there are 2,000 registrants of the start-up movement which is expected to reduce the unemployment rate to 4.33%.(Widiarti, 2023).

The development of start-up businesses in Indonesia and in several neighboring countries such as Singapore and Vietnam in 2024 according to the Southeast Asia Startup Talent Trends Report 2024 can provide at least around 10,000 jobs.(Chaerunisa et al., 2022). This shows that start-up businesses have promising prospects, especially in efforts to provide employment opportunities. Referring to Rhenald Kasali's view, start-up business, especially in Indonesia, is a form of an era of disruption that emphasizes innovation and creativity.(Kasali, 2018). The era of disruption is an era where a business is implemented and carried out in a certain way and approach that is different from previous business practices. In the era of disruption, business practices tend to be revolutionary so that old business players may lose their market and even stop their business activities(Djajasinga, 2022). This is actually in line with the characteristics of start-up businesses which are oriented as business practices in the era of disruption because start-up business practices generally develop from existing businesses or even create a business breakthrough that is different from before.

Start-up business practices actually have three characteristics that differentiate them from business practices in general, namely: first, start-up businesses are oriented towards technological developments, especially the internet. This means that start-up businesses are always related to developments in technology and the internet(Borges et al., 2021). This aspect is what makes start-up businesses different from businesses in general because not all businesses in general always prioritize aspects of technology and internet development. Second, start-up businesses are synonymous with economic sharing characteristics, namely when business practices can be implemented in collaboration with various business actors to

formulate new business styles or models.(Wahyudi et al., 2023). This emphasizes that start-up businesses are not always carried out with the capital and facilities and infrastructure needed to carry out business processes. Capital along with facilities and infrastructure can even be provided by other parties with the principle of economic sharing which is based on collaboration(Wardhono et al., 2022). This can be exemplified by the Go-Jek start-up business where the Go-Jek application provider does not have the facilities and infrastructure in the form of operational motorbikes or cars but the Go-Jek start-up business continues to run by inviting people who own motorbikes or cars as partners. Go-Jek in running its start-up business. Third, because they have different characteristics, start-up businesses should be regulated through special regulations that substantively regulate and facilitate the development of start-up businesses in Indonesia.(Gusti et al., 2021). This is because in the start-up business there are various aspects that are different from general business practices, so special arrangements are needed to accommodate the development of start-up businesses in Indonesia.

Of the three characteristics related to start-up businesses above, start-up businesses actually have three positive impacts, namely: first, the positive impact of the proliferation of start-up businesses is that they increase healthy competition and innovation and creativity in society. The characteristics of start-up businesses which are synonymous with innovation and community creativity require every community to always be innovative as well as update and upgrade existing developments(Trequattrini et al., 2022). Second, the positive impact of the proliferation of start-up businesses is that job opportunities are increasingly open, thereby minimizing the number of unemployed in Indonesia. Problems related to unemployment in Indonesia are a national problem and it is hoped that with the increasingly massive development of start-up businesses, this can be one solution to reducing the unemployment rate.(Mahy, 2022). Third, the positive impact of the proliferation of other start-up businesses is the existence of a conducive investment climate. The greater number and quality of start-up businesses also has the potential to encourage the presence of investors who take part in long-term investments related to start-up businesses.(Adhie et al., 2023). The development of start-up businesses that can attract investment from investors actually also contributes to the success of the national economic orientation and paradigm, namely related to increasing and developing investment as formulated in the Job Creation Law and its derivative laws and regulations.(Nurhayati, 2022).

In connection with the three positive impacts of start-up businesses above, in practice start-up businesses have two main obstacles, namely: first, the development of start-up businesses actually makes innovation and creativity keywords for competing in a business context. Competition related to innovation and creativity is actually good to do, but if one of the parties is a party whose position has limitations such as limited access and costs which are generally experienced by micro, small and medium enterprises, then competition related to innovation and creativity is actually in On the one hand, it only benefits those parties who have freedom of access and costs. This has the potential to give rise to injustice in the development of start-up businesses in Indonesia because it tends to weaken parties who have limitations such as limited access and costs which are generally experienced by micro, small and medium enterprises.(Suarnatha & Putra, 2020). Second, the obstacles to the development of start-up businesses in Indonesia are related to the regulations governing start-up businesses which tend to equate business in general with start-up businesses. In fact, essentially, business in general and start-up business are two different things and actually start-up business requires special and certain arrangements. One example is in the start-up business sector, there are known partnership relationships such as those that occur between Go-Jek drivers and Go-Jek application service providers.(Izzati & Sesunan, 2022). The partnership relationship between Go-Jek drivers and Go-Jek application service providers is mutualistic, meaning that both are partners who need each other and are equal. (Haerani, 2021). This has the implication that there are no substantively guaranteed rights for Go-Jek drivers, such as workers' rights in general, such as rights related to holiday allowances or the right to take leave.(Nida, 2022).

Partnership relationships that commonly occur in legal relationships in start-up businesses also do not actually have comprehensive regulations so that in partnership relationships, Go-Jek drivers are often the inferior party compared to Go-Jek application service providers. Problems related to partnership relationships which commonly occur in legal relationships in start-up businesses are an example of problems when the development of start-up businesses does not receive proper and precise regulation so that it can have implications for reducing the rights of certain communities.

Referring to the applicable laws and regulations relating to start-up businesses is referring to the PP on Business Licensing. Business Licensing PP which is a further regulation of the Job Creation Law which stipulates risk-based business licensing. The aim of

risk-based business licensing is to create an orderly business licensing system that guarantees legal protection and convenience for entrepreneurs (Effendi et al., 2022). Even though the Business Licensing PP does not specifically regulate business licensing regarding start-up businesses, the Business Licensing PP accommodates start-up businesses in business licensing regulations like other forms of business. This is actually not appropriate and relevant because with certain characteristics of start-up businesses there should be special arrangements relating to licensing for companies with a start-up business basis..

Based on the description above, the urgency of special regulations relating to start-up businesses is intended to optimally facilitate aspects of start-up businesses that are different from aspects of business in general. Regulations specifically related to start-up businesses are also expected to provide incentives and convenience in forming start-up businesses while also orienting legal protection for start-up entrepreneurs and related parties in start-up businesses.

Ius Constituendum Regarding Regulation of Start-Up Business Practices in Indonesia Based on Inclusive Law

The development of start-up business practices in Indonesia actually requires regulation by law so that the development of start-up business practices can be accommodated and facilitated optimally. Satjipto Rahardjo is of the view that legal development on the one hand is experiencing a dilemma because no matter how fast the law tries to catch up with the development of society, the law is still lagging behind and limping in catching up. (Hartono, 2023). Sudek further believes that in the development of social reality, especially in business reality, the law must be accommodating and responsive (Suteki, 2013). The law is accommodative, meaning that the law must provide and ensure space so that the development of business realities can be reached by law (Setianingrum & Hawin, 2020). The law is responsive in relation to business realities, meaning that the law must be open to revision when a law is deemed irrelevant to existing business developments (Suarnatha & Putra, 2020). Legal responsiveness is oriented towards the creation of new legal rules if developments in business realities require updates to these rules (Rahayu et al., 2020).

Regarding the development of start-up business practices in Indonesia, special regulations should be required because start-up business practices have special characteristics and are different from business in general. Regulations related to start-up business practices in Indonesia are generally only regulated in the Business Licensing PP. Business Licensing

PP is generally related to legal aspects before establishing a business. The risk-based aspect is oriented towards various potentials and risks related to a business that is about to be established so that the government can supervise and formulate policies related to a fair and business ecosystem. In general, the PP on Business Licensing aims to simplify and make licensing more effective as well as systematically, transparently and structured monitor business activities.(Arya Agung, 2021). One of the focuses of the PP on Business Licensing with a risk-based scheme is related to businesses in the technology and information sector.

Start-up businesses can generally be said to be businesses in the technology and information sector which is one of the focuses of the PP on Business Licensing. Even so, the PP on Business Licensing substantively equates start-up businesses with businesses in general. However, in general, start-up businesses are different from businesses in general, which include a start-up business orientation that focuses on technology and a start-up business model that is pioneering in nature and therefore requires special empowerment efforts by the government. In relation to the PP on Business Licensing, there are three risk assessment categories, namely low, medium and medium risk. Referring to the PP on Business Licensing, in fact there are no satisfactory parameters in relation to determining a start-up business in relation to risk assessment, namely low, medium and medium risk. This happens because the PP on Business Licensing does not regulate and differentiate between start-up based businesses and businesses in general.

The orientation to formulate *ius constituendum* or future regulations regarding start-up businesses in Indonesia actually has relevance to the idea of inclusive law. Inclusive law is actually a theoretical idea in legal science as put forward by Jawahir Thontowi and is considered part of the *Madzab Tamsis* which on the one hand accepts creativity and innovation in law as well as empowering weak and powerless groups.(Khuzani, 2020). Inclusive law was actually born from criticism of legal positivism which later became the "new identity" of the modern legal state (Thontowi, 2017). Modern legal states tend to view positive law as the only law so that legal innovation and development tends to be reduced and not facilitated (Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, 2021). Another thing highlighted by the idea of inclusive law is a view that emphasizes the importance of empowering weak and powerless parties through affirmative action. Affirmative action is a special legal action to empower weak parties both socially and economically(Bleemer, 2023)(Ramli, K, 2024).

In connection with the development of start-up business practices referring to the idea of inclusive law, efforts are needed to see innovation and legal development related to the development of existing societal realities. The increasingly massive development of start-up businesses actually requires a separate arrangement as a form of innovation and legal development related to business realities. Legal innovation through *ius constituendum* or future regulation is actually intended so that start-up business regulations are specifically regulated so that various aspects and characteristics of start-up businesses can be facilitated optimally. Regulations on start-up businesses should accommodate three aspects, namely: ease of registration, provision of capital and protection for workers in the start-up business sector, as well as special incentives for start-up business actors if they are able to comply with legal provisions and are able to provide employment opportunities.

The aspect of ease of registration for start-up businesses is necessary because with certain characteristics start-up businesses need to be regulated in such a way that start-up businesses can carry out permits and business registration effectively and easily. The aspect of providing capital and protecting workers in the start-up business sector needs to be carried out by the government, especially to increase the creativity and innovation of start-up business players while also motivating the younger generation to be creative in the start-up business sector. A special incentive aspect for start-up business actors if they are able to comply with legal provisions and are able to provide employment opportunities is needed because this can motivate start-up businesses, apart from running the business, they are also able to guarantee employment opportunities while complying with applicable legal provisions.

An important aspect that needs to be considered in future regulations or *ius constituendum* regarding start-up businesses in Indonesia is the aspect of protection and empowerment of those who are economically and socially weaker. Things that need to be regulated regarding protection and empowerment for parties who are economically and socially weaker are for example legal protection in partnership relationships in online motorcycle taxis.(Nurfadilah et al., 2023). On the one hand, the partnership relationship between online motorcycle taxi drivers and application service providers does not guarantee fairness and proportionality for online motorcycle taxi drivers (Izzati, 2022). Therefore, referring to an inclusive legal orientation with the aim of protecting and empowering those who are economically and socially weaker, protective and empowering regulations for online motorcycle taxi drivers

and application service providers need to be implemented as one of the regulatory orientations related to the development of start-up businesses. up in Indonesia.

Based on the analysis above, it is necessary to regulate the future development of start-up businesses in Indonesia which refers to the idea of inclusive law with an orientation towards ease of registration, provision of capital and protection for workers in the start-up business sector, as well as special incentives for start-up business actors. up if they are able to comply with legal provisions and are able to provide employment opportunities. What is equally important is that in regulating start-up businesses in Indonesia, it needs to be oriented towards protecting and empowering those who are economically and socially weaker, especially to protect and empower online motorcycle taxi drivers in partnership with application service providers.

Conclusion

The urgency of special regulations relating to start-up businesses is intended to optimally facilitate aspects of start-up businesses that are different from aspects of business in general. Regulations specifically related to start-up businesses are also expected to provide incentives and convenience in forming start-up businesses while also orienting legal protection for start-up entrepreneurs and related parties in start-up businesses.

Future regulations or *ius constituendum* for the development of start-up businesses in Indonesia which refers to the idea of inclusive law with an orientation towards ease of registration, provision of capital and protection for workers in the start-up business sector, as well as special incentives for start-up business actors if they are able to comply. legal provisions and able to provide employment opportunities. What is equally important is that in regulating start-up businesses in Indonesia, it needs to be oriented towards protecting and empowering those who are economically and socially weaker, especially to protect and empower online motorcycle taxi drivers in partnership with application service providers..

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