



The Legal Framework for the Establishment of Social Enterprises as New Legal Entities in Indonesia

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Abstract

Social enterprises have emerged in Indonesia at various scales, from micro to macro. However, their existence remains elusive due to the lack of specific legislation governing the legal form of social enterprises, creating a legal vacuum. The creation of Social Enterprises as a new legal entity in Indonesia is covered in this paper. This research employs both a legislative and a philosophical approach as a normative legal study. According to the study's findings, Indonesia need legislation that expressly governs social enterprises in order to protect social entrepreneurs' admirable objectives from abuse and provide legal stability. Making Social Enterprises a new legal entity and drafting laws specifically for them are two ways that the legal construction pertaining to Social Enterprises is carried out. Regulations pertaining to Asset Lock, Profit Lock, and Mission Lock are included in the statute.

Keywords: *Social Enterprise; Legal Entity and Regulation*

Introduction

In Indonesia, a diverse array of social enterprises across micro, meso, and macro levels have developed, collaborating with one another to deliver direct benefits to the community. Furthermore, these social enterprises promote economic development in Indonesia and have a substantial influence on society. Social enterprises exemplify an innovative business model that concurrently integrates economic and social dimensions.

The existence of social enterprises in Indonesia seeks to facilitate the attainment of the Sustainable Development Goals (SDGs). Indonesia is a member of the United Nations (UN) and actively participates in establishing objectives for the Sustainable Development Goals (SDGs), as articulated in the document "Transforming Our World: The 2030 Agenda for Sustainable Development." To execute this, Presidential Regulation of the Republic of Indonesia Number 59 of 2017 concerning the Implementation of the Achievement of the Sustainable Development Goals (Presidential Regulation No. 59 of 2017) and Presidential Regulation of the Republic of Indonesia Number 111 of 2022 concerning the Implementation of the Achievement of the Sustainable Development Goals (Presidential Regulation No. 111 of 2022) have been enacted.

Both Presidential Regulations stipulate that the attainment of the Sustainable Development Goals is achieved through the establishment of national Sustainable Development Goal targets, which are developed in alignment with the global objectives and targets of the 2030 Sustainable Development Goals as well as the national targets outlined in the current medium-term development plan. According to these Presidential Regulations, Social Enterprises can serve as a supportive mechanism for the attainment of the Sustainable Development Goals (SDGs).

Social enterprise, or social entrepreneurship, is a type of business that emphasises not only financial gain but also dedicates efforts to address social and environmental challenges. By contributing to the SDGs, these entities are anticipated to deliver tangible solutions in vital sectors such as poverty reduction, healthcare, education, gender equality, and energy and environmental sustainability (Eni Susilowati, Andi Basuki, and Choiru Umatin 2024).

Before the establishment of Social Enterprises in Indonesia, legal entities were categorised into profit-driven and non-profit organisations. When a legal entity aiming to establish a profit-oriented organisation may be a Limited Liability Company (PT) or Cooperative, whereas a non-profit entity could be a Foundation or Association. This classification of legal entities according to their purpose, as outlined above, has impeded the progress of Social Enterprises in Indonesia. As a commercial entity engaged in profit-making activities while also pursuing a social mission, social enterprises necessitate a distinct legal framework to guarantee legal clarity. The absence of a comprehensive legal framework for the operation of Social Enterprises has generated uncertainty among these entities, resulting in the establishment of two legal forms: a Company and a Foundation (Jatmikowati et al. 2022).

In 2024, regulations regarding the Registration of Social Enterprises (Social Entrepreneurship) within Capital Partnership Companies were issued by the Directorate General of Legal Administration System (SE Menkumham No. M.HH-1.AH.01.01 of 2024). Furthermore, in accordance with this Circular Letter, the Directorate General of General Legal Administration (Ditjen AHU) officially inaugurated a registration service for Social Enterprises within the AHU Online system on December 4, 2024. This service is intended to offer a platform for organisations to allocate a substantial share of their profits towards advancing diverse social objectives, in accordance with the Sustainable Development Goals (SDGs). In this service, Social Enterprise is offered as an option when forming a Limited Liability Company. A Limited Liability Company may opt to become either a Conventional a Limited Liability Company or a Social Enterprise a Limited Liability Company.

The availability of registration services for Social Enterprises within the AHU Online system through a legal entity in the form of a PT offers convenience for the establishment of Social Enterprises in Indonesia. However, it also raises legal concerns, as to date, the registration service for Social Enterprises in the AHU Online system lacks a formal legal foundation. Overall, regarding the existence of Social Enterprises, there remains no designated framework due to the absence of laws and regulations specifically governing the legal form of Social Enterprises.

Method

In this research, a normative juridical research type is used, meaning that this research is based on a literature review of a set of existing norms (Isnaini and Wanda 2017). This research uses an approach through statutory regulations (Statute Approach) (Utomo 2025) and a research approach through concepts, principles, doctrine and opinions of scholars (Conceptual Approach) (Bukit, Warka, and Nasution 2018).

Discussion

The increasing prominence of social enterprises in Indonesia corresponds with the 2020-2024 National Medium-Term Development Plan, which emphasises that enhancing the quality of economic growth, fostering a conducive business environment, increasing competitiveness, and expanding employment opportunities require efforts to accelerate the growth rate and entrepreneurship ratio through the promotion of entrepreneurial development. This document provides the context for the enactment of Presidential Regulation No. 2 of 2022 regarding the Development of National Entrepreneurship for 2021-2024 (hereinafter referred to as Presidential Regulation No. 2 of 2022).

Article 2 of Presidential Regulation No. 2 of 2022 defines entrepreneurship as the activity of establishing and/or advancing an innovative and sustainable enterprise. Furthermore, Attachment I of Presidential Regulation No. 2 of 2022 specifies that a social entrepreneur is an individual possessing a strong social commitment and exemplary business acumen. They possess the ability to recognise social issues, regard them as opportunities, and subsequently offer effective solutions. They function within communities and prioritise assisting others above the pursuit of material wealth (Suhartono and Huda 2019). The main objective of Social Entrepreneurs is to support the government in addressing social issues. To fulfil their social mission, social entrepreneurs provide innovative products, services, or approaches that are embraced by the community in alignment with the Sustainable Development Goals (SDGs). Specifically, a Social Entrepreneur is an individual who satisfies the following criteria: a) is an Entrepreneur; b) attains at least one objective outlined within the Sustainable Development Goals (SDGs); and c) allocates a minimum of 51% of its nett profits to at least one social mission articulated in the SDGs.

Social enterprises mainly aim to generate social impact rather than profit, utilising their earnings predominantly to advance their social mission. In a social entrepreneurship initiative, the company's clientele completely endorse its endeavours. In this instance, a social entrepreneur possesses a more comprehensive perspective than merely engaging in business activities conducted by a non-profit organisation. The revenue generated by the organisation can be allocated to support activities aligned with its mission. Participants in the Social Enterprise will serve concurrently as both consumers and donors. (Sabeti 2009)

Robert Katz and Antony Page contend that profit is not the exclusive objective of for-profit social enterprises. Although they pursue profit similar to business enterprises, social enterprises are occasionally compelled to make decisions that do not prioritise profit maximisation. For-profit social enterprises also pursue multiple social objectives, akin to nonprofit organisations that deliver public benefits. Social enterprises are required to have at least one well-defined objective, specifically aimed at delivering social advantages. (Katz and Page 2010)

Social enterprises are typically regarded as hybrid organisations that integrate features of both commercial and social sector entities, aiming to optimise the dual objectives of their operational activities. To implement this hybrid model, various institutional logics are integrated in innovative manners. Hybrid, in this context, refers to an organisational structure that integrates both commercial and social goals and is characterised as a company that develops its business model with the aim of addressing a particular social or environmental issue. They generate revenue and attract capital through methods that may align with either for-profit models, nonprofit models, or a combination of both. (Saraç 2021)

The increasing prevalence of the social enterprise movement and the integration of hybrid approaches within business objectives have revitalised longstanding discussions regarding the fundamental nature and purpose of corporations and other profit-oriented entities. The development of novel hybrid entities, along with increasing recognition of the risks associated with climate change and

the significance of sustainability in business, has prompted an evolution in corporate and financial law towards a broader adoption of environmental and philanthropic considerations (Utomo 2022).

Social enterprises exemplify a reality characterised by altruistic, prosocial conduct. This behaviour is so widespread within human society that it necessitates a reevaluation of the homo economicus paradigm, which insufficiently accounts for altruism and cooperation as fundamental and universal characteristics. Ultimately, this serves as the foundation for incorporating altruistic or philanthropic goals into the corporate objectives of a business. The establishment of these hybrid enterprises imposes certain restrictions on participants' freedom to exercise their economic rights owing to the legal structure of these organisations. (Ventura 2022)

The high demand for explicit altruism from civil society has led to the emergence of novel hybrid organisational structures tailored for social enterprises, featuring suitable governance frameworks. Hybrid organisations integrate two components: generating profit and creating social impact, blending features of both social enterprises and commercial businesses. The development of the concept of Social Enterprise is inherently linked to the intricacy of the challenges encountered by the three primary sectors in state governance. Social Enterprise originated from the intersection of three fundamental sectors: Firstly, the increasing innovation within the public sector, in accordance with the evolution of the public sector paradigm. This motivates public administrators and public sector employees to explore innovative approaches for delivering welfare services to the community. Secondly, the increasing engagement of the private sector in supporting social initiatives. This promotes the transfer of entrepreneurial methods from the private sector to the welfare sector. Third, the voluntary sector is establishing an innovative form of support that serves as the most prolific source of social entrepreneurship. Social entrepreneurs frequently originate from modest organisations, utilising business acumen to oversee social initiatives. It is from these three forces that social innovation will originate (Asmorowati and Reindrawati 2017).

As a hybrid organisation, a social enterprise is required to uphold its social or environmental mission, adopt an economic approach to achieve its commercial objectives, and lead teams with hybrid competencies, engage stakeholders through hybrid strategies, and generate profits in a hybrid manner to fulfil the triple bottom line. Charles Leadbeater highlighted that social enterprises represent innovative institutions characterised by novel concepts. This innovation resides in the emergence of social enterprises, which originate from the interactions among three pre-existing institutional sectors. First, the dynamics within the public sector, which necessitate advancements in delivering welfare services to the populace. Second, the private sector, which exhibits a growing commitment to social issues. Third, the voluntary sector is progressively acknowledging the importance of business skills to effectively address social issues and ensure its sustainability (Leadbeater 1997)

David Billis indicated that organisations overlapping with others in the diagram are situated within the hybrid zone, exhibiting distinctive management characteristics. Because social enterprises operate at the confluence of these various sectors, they are regarded as hybrid organisations. In the context of social enterprises as hybrid organisations, their distinctive nature resides in the operational level of the organisation, which emphasises welfare, promotes public awareness and engagement in the movement, while simultaneously highlighting economic considerations through the pursuit of profit (Billis 2010).

The positioning of social enterprises at the nexus of various sectors enables these organisations to investigate these overlapping domains in order to optimise their objectives. This is especially applicable to their economic missions. Dennis R. Young characterises social enterprises, with their dual economic and social objectives, as a landscape. This composite nature enables them to shift towards either economic or social priorities, resulting in an unbalanced stance. This topography seeks to depict the difficulties social enterprises encounter in preserving their identity. Social enterprises occupy a position at the intersection between the commercial and social sectors. This position demonstrates the capacity of

social enterprises to shift towards either end of the spectrum. Meanwhile, commercial entities generally exhibit greater stability, consistently remaining at the lower end. Thus, the valley floors constitute stable long-term states for these two. However, certain social enterprises, including social purpose businesses, are designed as genuine hybrids that adhere to both spheres (Young 2012).

Social enterprises, as hybrid entities, exhibit distinctive features that set them apart from other types of organisations. The primary characteristic of social enterprises is their emphasis on a social mission, specifically the generation of public and social value. This attribute excludes commercial enterprises that function based on the principle of maximising profit. The second characteristic pertains to company ownership, indicating that social enterprises adopt private ownership, thereby excluding charities, community groups, voluntary organisations, and other entities that are unable to freely allocate their profits. The third characteristic specifies that social enterprises secure their funding through commercial activities, government grants, and private sources such as venture capital, investors, and loans (Margiono, Zolin, and Chang 2018).

Numerous nations worldwide have also recognised particular features that differentiate social enterprises from other organisations, namely:

1) Asset Lock

An asset lock is a protective measure that guarantees an organisation's assets—such as funds, buildings, intellectual property, or equipment—are dedicated solely to fulfilling its mission. These safeguards prohibit assets from being allocated to individuals or utilised for personal benefit, even in instances where the organisation is dissolved or ceases operations.

2) Profit Lock:

Maintaining Resource Concentration; A profit lock guarantees that the profits generated by the organisation are predominantly reinvested into its mission rather than being entirely distributed to shareholders or proprietors. This mechanism frequently incorporates a dividend quota that restricts the proportion of profits available for distribution as dividends.

3) Mission Lock:

Protecting Purpose; A mission lock guarantees that an organisation's fundamental purpose remains at the core, regardless of changes in leadership or ownership. It is a method to formally integrate your mission into your core principles, ensuring it remains unaltered for financial or other advantages (DiNN 2018).

The term "Asset Lock" was initially introduced to refer to the more straightforward restrictions governing the assets of a Community Interest Company (CIC) under English law. CICs are governed by the community interest test, and the Asset Lock is implemented to guarantee that the entity remains committed to its community objectives. In this context, Robert Katz and Antony Page assert: "Asset locks guarantee that assets are preserved for: (a) their overall charitable objectives, and (b) the specific charitable purposes favoured by the founder and donors." (Katz and Page 2010).

Through an Asset Lock agreement, assets from a Social Enterprise may only be transferred to organisations with comparable objectives. The implementation of this arrangement is typically delineated within the organization's articles of association. Asset lock provisions are essential, as their absence poses a risk that assets may be allocated to purposes unrelated to the social enterprise's mission. For instance, in the event of the social enterprise's dissolution, the remaining funds could be allocated to the individual proprietors or shareholders of the social enterprise. Through an asset lock agreement, assets may only be transferred to charities with aligned objectives in the event of dissolution.

Profit locks are established by restricting dividend distributions on shares and predominantly reinvesting profits back into the business. Social enterprises are required to reinvest all proceeds into their

social objectives. Profit locks guarantee that the profits generated by the organisation are predominantly reinvested into its mission rather than being wholly distributed to shareholders or proprietors. This mechanism frequently incorporates a dividend quota that restricts the proportion of profits available for distribution as dividends. Through a profit lock arrangement, earnings are allocated to support programme development, enhance impact, or sustain operations. Dividend caps establish restrictions on the maximum quantity that may be distributed to investors. This is essential because the disproportionate allocation of profits may hinder the achievement of the mission. Profit lock-in reconciles the requirement for financial sustainability with social or environmental objectives. For instance, a social enterprise may allocate 70% of its profits to the expansion of its programmes, while distributing the remaining 30% to investors in accordance with dividend restrictions.

Mission Lock is secured through the inclusion of the social enterprise's mission in its articles of association, thereby ensuring compliance with its articulated purpose. A mission statement articulates the organization's fundamental purpose and the objectives it aims to accomplish. The mission articulates the purpose of the organisation, clarifying why it exists, what it accomplishes, and the methods by which it operates. The mission represents the essential objectives that the organisation must fulfil to attain its purpose and ensure success.

Social enterprises are characterised by a social purpose integrated into their framework, necessitating the publication of public reports that illustrate their contributions to society. Mission Lock guarantees that the organization's fundamental purpose remains at the core, irrespective of shifts in leadership or ownership. This represents a legally compliant method of integrating your mission into the very core of the social enterprise, ensuring it remains unaltered for financial or other benefits. To guarantee the implementation of Mission Lock, the social enterprise's mission is incorporated into governance documents such as the deed of incorporation or articles of association. Furthermore, a regulatory authority or certification body must oversee adherence to this objective. Mission Lock is essential as it safeguards an organisation against "mission drift," which may arise from external pressures or leadership transitions that jeopardise its original purpose.

In essence, a social enterprise retains the attributes of a legal entity, which were formerly categorised into profit-oriented and social-oriented entities. Within the same legal entity, the pursuit of both profit-oriented and social objectives occurs concurrently. This emerging concept has yet to be comprehensively addressed from both a theoretical and legal perspective, leading to an absence of legal clarity. This situation corresponds with the legal aphorism "het recht hinkt achter de feiten aan," which signifies that the law consistently lags behind evolving circumstances.

The emergence of social enterprises in Indonesia is expanding and garnering increasing interest. In recent years, social entrepreneurship in Indonesia has achieved considerable advancement. This is supported by surveys and research carried out by the British Council, which determined that approximately 340,000 social enterprises have been founded in Indonesia, encompassing both corporate and non-corporate entities (British Council 2020)

The growth of social enterprise is not exclusive to Indonesia but has now emerged as a worldwide concern. According to Juergen Nagler, social entrepreneurs as a collective are transitioning their emphasis from the nonprofit sector, which has traditionally centred on charity and philanthropy, to business ventures oriented towards the private sector. As interest in for-profit social enterprises grows, so does the focus on legal and regulatory strategies to promote their development and expansion (Nagler 2007).

According to Brewster Boyd et al., the social missions adopted by these corporations are not simply slogans or marketing embellishments. Their business models not only exemplify these missions but also serve as their embodiment. These companies exemplify perseverance and patience, clearly indicating that

their focus is not on immediate gains but rather on sustained long-term success. These organisations are dedicated to a long-term objective that will require one or more generations to achieve, and they are determined to accomplish it (Boyd et al. 2017).

The modifications suggested by Juergen Nagler and Brewster Boyd et al. should be reinforced through an appropriate legal framework. In this context, Thomas Kelley contends that current laws are antiquated. The obsolete legal framework is unsuitable and obstructs their efforts towards social transformation. Numerous social entrepreneurs are advocating for the enactment of new legislation, especially the establishment of new legal entities, to offer a more appropriate framework for enterprises pursuing environmental and social advancement (Kelley 2009).

Florian Moslein discusses the necessity of establishing a new legal entity for social enterprises: "The new legal structures seek to balance entrepreneurial activity with the achievement of social goals. While these hybrid forms permit and even encourage profit generation at the corporate level, restrictions on profit distribution to shareholders are designed to prevent the erosion of the social mission by ensuring that such entities are not solely used as tools for maximising shareholder returns." (Moslein 2017)

The necessity of establishing a Social Enterprise as a new legal entity is justified. Attaining sustainable outcomes necessitates a clear understanding of the current status of the Social Enterprise entity. This corresponds with the legal entity philosophy articulated by Nindyo Pramono. The underlying principle of establishing a legal entity is that, upon the demise of the founder, the assets of the entity are intended to persist in providing benefits to others. Therefore, the law establishes a "something" that is subsequently regarded or acknowledged by the law as an autonomous entity, akin to a natural person (*natuurlijk persoon*). This "something" is subsequently designated by legal science as a legal entity (*rechtspersoon* or legal person). In order for a legal entity to operate as a natural person, it must have an organ through which it can establish legal relations with third parties (Pramono 2006).

From a theoretical standpoint, existing theories concerning legal entities have not accounted for the simultaneous pursuit of two objectives within a single legal entity. When considering the arguments presented by Utrecht and Riduan Syahrani, it becomes evident that a legal entity cannot concurrently pursue profit and advance a social mission. According to Asser-Van der Grinten, legal theory pertains to the study of legal phenomena that manifest within society and are present in the consciousness of individuals. Therefore, legal theory possesses the capacity to influence and will indeed influence legal regulations. Positive law, whether intentionally or unintentionally, is governed by legal theory. Although legal theory has its own domain, the advent of new phenomena can compel legal review or reform. Legal theory formulates and enshrines it within positive law. In summary, theory pertains to questions of truth; it constitutes a form of teaching and knowledge, but does not impose commands or obligations upon legislators. In other words, legislators are not inherently bound by legal theory (C.Asser Van der Grinten 1976). According to the perspective of Asser-Van der Grinten outlined above, considering the current circumstances in which the prevalence of Social Enterprises has increased in practice, a legal review or reform is warranted, especially concerning legal entities. Similarly, the differentiation between legal entities suggested by Utrecht and Riduan Syahrani is not an obligatory requirement imposed by legislators.

The absence of explicit regulations concerning Social Enterprises poses a considerable challenge for a nation as vast as Indonesia, where informal social enterprise activities are already in progress. To effectively promote social enterprise practices and realise favourable outcomes, there is an imperative need for legal reform concerning the regulation of legal entities. Theoretically, a third category of legal entity must be established: a legal entity that concurrently engages in commercial and social initiatives (social enterprise). Legislation establishing a formal legal framework for social enterprise entities is

legally necessary. Establishing a distinct legal entity status for social enterprises would represent a significant legal reform, especially concerning legal entities in Indonesia.

Conclusion

Indonesia requires legislation specifically governing Social Enterprises to safeguard the admirable objectives of Social Entrepreneurs and to prevent the misuse of social enterprise organisations. A comprehensive legal framework for the regulation of Social Enterprises is essential to establish legal clarity regarding the existence of Social Enterprises in Indonesia. This legal foundation is enacted through the creation of Social Enterprises as a distinct legal entity and the enactment of a dedicated law governing Social Enterprises. This legislation establishes Asset Lock, Profit Lock, and Mission Lock, which are defined as follows: a) Asset Lock, which mandates that any merger, combination, or acquisition involving a Social Enterprise must be conducted exclusively with another Social Enterprise. In the event of dissolution, the assets of the dissolved Social Enterprise shall be transferred to another Social Enterprise; b) Profit Lock, which mandates that more than 51% of a Social Enterprise's nett profits be reinvested in at least one social mission aligned with the Sustainable Development Goals (SDGs); and c) Mission Lock, which requires that the aims, objectives, and business activities of Social Enterprises include at least one social mission as outlined in the Sustainable Development Goals (SDGs).

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