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## **Implementation of legal protection for the existence of small and medium enterprises in the globalization Era**

**Adhi Putra Satria**

Doctor of Law Program, Universitas 17 Agustus 1945 Semarang, Indonesia

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### **Abstract**

This study aimed to enable readers to find out and analyze how the protection of Micro, Small, and Medium Enterprises in Indonesia and their implementation. This writing used a descriptive qualitative research method with a juridical-normative approach. The results showed that the protection of MSMEs had been accommodated in Law No. 20 of 2008. However, there were still obstacles in its implementation. These obstacles can be seen from the current problems of MSMEs. These problems include low access to information and technology, access to capital resources, and low human resource capacity. Therefore, the government is expected to provide intensive assistance to small enterprises, both for undeveloped and developing ones. In addition, the government also needs to supervise the development of existing small enterprises and conduct evaluations that can build and develop them into large businesses.

**Keywords:** MSMEs, Human Resources, Capital

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### **1. Introduction**

Based on Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, national economic development is intended to improve the welfare of the Indonesian people as a whole. Therefore, the national economy needs to be organized as a joint effort based on the principle of kinship to achieve general welfare and prosperity for society.

To realize the welfare of the Indonesian people, we need to go through various efforts. One effort is to improve the competitiveness of Micro, Small, and Medium Enterprises (MSMEs). MSMEs are divided into two, namely informal small enterprises and traditional small enterprises. Informal small-scale enterprises are small businesses that are registered and not yet incorporated, such as farmers, tenants, home industries, and so on. Whereas what is meant by traditional small enterprises is a business that in its activities uses simple production equipment and has been used for generations, so that it can be called hereditary.

Based on Article 1 number 1, 2 and 3 as well as Article 6 paragraph (1), (2) and (3) Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises, stated that MSMEs play a significant role for the Indonesian national economy. This is because MSMEs provide access to employment opportunities from various business sectors. The MSME sectors are very varied, ranging from industry, services, the informal sector, and the agricultural and plantation business sector. Among these business sectors, the agricultural sector absorbs most labour.

The current era of globalization and economic liberalization has impacted the existence of MSMEs in carrying out their business activities. Romli Atmasasmita stated that the negative excesses of capitalism were seen when there were various cases of fraudulent competition and monopoly in the business world without regard to small and medium local

enterprises, both at the domestic and international level <sup>[1]</sup>. Nowadays, it is difficult for MSMEs to get equal opportunities in market dominance and access to capital in financial institutions (banking). Conversely, large businesses can freely control public economic resources and consequently reduce the opportunities for small and medium enterprises <sup>[2]</sup>.

The government have recognized the existence and role of MSMEs as having strategic value in strengthening the national economy (people's economy) so that it is appropriate for the state to give more attention in the form of strategies and policies for MSMEs empowerment. By doing so, in the future MSMEs can be seen as a group of integrated business units in the national business world that is expected to be indeed able to increase their living costs and competitiveness in both the domestic and international markets.

Issues concerning MSMEs currently involve issues such as structural imbalances in the allocation and control of resources, the state's lack of emphasis on efforts to develop the people's economy in policies and the development of industrialization strategies, oligopolistic market structures, relatively limited performance in traditional area (human resources, capital and access to financial institutions, technology, management, marketing and information), as well as the practice of policy distortions and inconsistencies concerning development efforts <sup>[3]</sup>.

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<sup>1</sup>Romli Atmasasmita, *Teori Hukum Integratif: Rekonstruksi terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*, (Yogyakarta: Penerbit Genta Publishing, 2012).

<sup>2</sup>Didik J. Rachbini, "Ekonomi Pasar Sosial: Pilihan Ketiga (Pengalaman Ekonomi Jerman Barat)", in *Relevansi Pasar Sosial bagi Indonesia*, (Jakarta: Penerbit Cides, 1995)

<sup>3</sup>Musa Hubeis, *Prospek Usaha Kecil dalam Wadah Inkubator Bisnis*, (Bogor: Ghalia Indonesia, 2015), pg. 12.

Furthermore, opportunities for business for MSMEs are currently very limited. This is because the activities that can and are usually carried out by MSMEs have been taken over by large businesses. Large businesses that have the capital and strong business management as their main strengths have succeeded in mastering business networks from upstream to downstream. This, in turn, makes it very difficult for small enterprises to develop and often faces obstacles in running their businesses. Meanwhile, the presence of the Law on Monopolistic Practices Prohibition and Unfair Competition which is expected to maintain the business competition climate has not been effective enough in creating healthy competition between MSMEs and large businesses.

Basically, MSMEs are more independent in economic activities since they are able to run a business without the support of other parties. This can be proven by the fact that, to date, the capital and technology used by MSMEs are their own.

The independence of MSMEs, as mentioned above, is crucial for economic actors so that they can compete with other businesses in seizing markets. Given the importance of MSMEs in national economic activities, it is not directly proportional to the protection of the state against the existence of MSMEs. This is because MSMEs is exploited by the rules of those who want to benefit themselves.

Based on the description above, this paper aimed to enable readers to find out and analyze how the Government of Indonesia protects the existence of MSMEs and how they are implemented.

## 2. Problem formulation

1. What is the form of state protection against the existence of MSMEs in Indonesia?
2. How is the implementation of state protection against the existence of MSMEs in Indonesia?

## 3. Research Method

This writing used a descriptive qualitative research method with a juridical-normative approach, which is a study that is intended to examine the legal method itself (laws, jurisprudence, customary law, and other unwritten laws), as well as the principles relating to the problem being studied. Data obtained from secondary legal sources. The legal materials used in this paper are derived from primary, secondary and tertiary legal materials.

## 4. Literature Review

To facilitate the reader in understanding the meaning of this paper, the writer will provide a literature review related to material related to this research.

### 4.1 Legal protection

Legal protection is the protection of dignity and by giving recognition to the human rights possessed by legal subjects based on the provisions of arbitrariness. Legal protection can also be interpreted as a collection of rules or regulations that can protect one thing from another. With regard to consumers, the law means providing protection to the

customer's rights from something that results in the fulfilment of those rights<sup>[4]</sup>.

According to Setiono, legal protection is an act or effort to protect the public from arbitrary acts by the authorities that are not following the rule of law to create order to enable one to enjoy his/her dignity as a human being<sup>[5]</sup>.

### 4.2 Micro, Small and Medium Enterprises (MSMEs)

Micro, Small and Medium Enterprises (MSMEs) have various definitions. There are differences in each literature in defining MSMEs. Under the Law No. 20/2008 concerning Micro, Small and Medium Enterprises, MSMEs are defined as follows:

*“Micro enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises as stipulated in this Law<sup>[6]</sup>.”*

As a comparison, the definition of MSME in various countries will be explained below:

**Table 1**

Country	MSMEs Definition
USA	SMEs are industries that are not dominant in their sectors and have fewer than 500 workers.
Europe	SMEs are businesses with a workforce of 10-40 people and an annual income of 1-2 million Euros, or if less than 10 people are categorized as household businesses.
Japan	SMEs are industries engaged in manufacturing and retail/service with a workforce of 54-300 people and capital of 50 million-300 million yen.
South Korea	SMEs are businesses with a workforce of ≤ 300 people and assets of ≤ US \$ 60 million.

### 4.3 Free market

The free market in the view of Adam Smith is the application of the concept of a harmonious cosmic order in the economic field. The free market is the only socio-economic stage that allows justice to be realized. The free market is an embodiment of what Adam Smith called the system of natural freedom and justice.<sup>7</sup> It is well known that Smith's greatness as the father of economic politics lies in his theory of the free market system. The free market is an embodiment

<sup>4</sup><http://digilib.unila.ac.id/6225/13/BAB%20II.pdf>

<sup>5</sup> Setiono. Rule of Law (Supremasi Hukum), (Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2004), pg. 3

<sup>6</sup> MSMEs in the same Law are also defined as “productive economic enterprises that are independent, which are carried out by individuals or business entities that are not subsidiaries or branch companies that are owned, controlled, or become a part either directly or indirectly of Medium Enterprises or Large Business that meet the criteria.” Furthermore, Medium Business is defined as “a productive economic business that is independent, which is carried out by individuals or business entities that are not subsidiaries or branch companies that are owned, controlled, or become a part either directly or indirectly of Small Enterprises or Large Business with the amount of net assets or annual sales proceeds as regulated in this Law.”

<sup>7</sup>A. Sonny Keraf, Pasar Bebas Keadilan dan Peran Pemerintah: Telaah atas Etika Ekonomi Adam Smith, (Kanisius, Yogyakarta, 1996), pg. 17.

of natural freedom and justice or is an embodiment of natural law in the economic field.<sup>8</sup>

## 5. Discussion

### 5.1 Form of protection for small and medium enterprises in the free market era

The law has the purpose of, among others, protect people who are in an infirm position, whether it socially, politically, or economically. Legal protection in this paper is focused on economic aspects, especially concerning the existence of small enterprises in the face of free competition. From the aspect of legal philosophy, the purpose of protection for small enterprises is to realize economic justice, through equal distribution of business opportunities. Justice is the essential goal of the law. According to the general opinion, the purpose of the law is to realize justice in living together. This purpose was achieved, according to Theo Heijber by the inclusion of the principles of justice in the rules for shared living.<sup>9</sup>The rules that govern shared living are extensive in dimensions. There is a set of rules governing social, political and economic life, which are interrelated. Financial regulations at the time of formation were strongly influenced by various interests, which were not all based on the principle of justice. But in practice, they are more inclined to realize aspects of certainty, sometimes even sacrificing the principle of justice. To discuss the concepts and nature of justice in the economic field, several philosophers of legal thinking were studied, namely, economic justice based on the perspectives of Aristoteles, Adam Smith, and John Rawls.

The protection of MSMEs in Indonesia has been regulated in Article 7 of Law No. 20 of 2008, where MSMEs have been provided with protection, i.e. Government and Regional Governments are required to grow the business climate by stipulating laws and policies that include aspects of:

#### 1. Funding

MSMEs are given guarantees by countries where the state is responsible for expanding funding sources and facilitating Micro, Small, and Medium Enterprises to be able to access bank loans and non-bank financial institutions; increasing funding institutions and expanding its network so that it can be accessed by Micro, Small, and Medium Enterprises; provide convenience in obtaining funding quickly, precisely, cheaply, and non-discriminatory in services in accordance with statutory provisions; and assist Micro and Small Business actors to obtain financing and other financial services/products provided by banks and non-bank financial institutions, both using conventional and sharia systems with guarantees provided by the Government.

#### 2. Facilities and infrastructure

Protection of MSMEs in the area of facilities and infrastructure includes the responsibility of the state to procure public infrastructure that can encourage and

develop the growth of Micro and Small Enterprises, as well as provide specific infrastructure tariff relief for Micro and Small Enterprises.

#### 3. Business information

The business information aspect is the responsibility of the state to protect MSMEs in terms of forming and facilitating the utilization of data banks and business information networks; procure and disseminate information on markets, sources of financing, commodities, guarantees, design and technology, and quality; as well as guaranteeing transparency and equal access for all Micro, Small and, Medium Enterprises entrepreneurs to all business information.

#### 4. Partnership

This aspect requires the state to provide protection by realizing partnerships between Micro, Small, and Medium Enterprises; realize partnerships between Micro, Small, Medium Enterprises and Large Enterprises; encourage mutually beneficial relations in the conduct of business transactions between Micro, Small, and Medium Enterprises; encourage mutually beneficial relations in the conduct of business transactions between Micro, Small, and Medium Enterprises and Large Enterprises; develop cooperation to improve the bargaining position of Micro, Small and Medium Enterprises; encourage the formation of market structures that guarantee the growth of fair business competition and protect consumers; and to prevent market domination and centralization of business by specific individuals or groups that are detrimental to Micro, Small and Medium Enterprises.

#### 5. Business licensing

The aspect of business licensing in the form of state protection in terms of simplifying the procedures and types of business licensing with a one-stop integrated service system; and waive licensing fees for Micro Enterprises and provide licensing fee waivers for Small Enterprises.

#### 6. Business opportunities

This aspect is in the form of state protection to determine the allotment of place of business which includes the provision of location in the market, shopping area, location of industrial centre, location of people's agriculture, location of artisanal mining, reasonable location for street vendors, and other locations; determine business time allocation for Micro and Small Enterprises in the retail trade subsector; reserved types of business activities that have specificity of process, are labour intensive, and have distinctive and hereditary cultural heritage; determine the business fields that are reserved for Micro, Small, and Medium Enterprises as well as business areas that are open to Large Businesses on the condition that they must cooperate with Micro, Small, and Medium Enterprises; protect certain businesses that are strategic for Micro, Small, and Medium Enterprises; prioritizing the use of products produced by Micro and Small Enterprises through direct procurement; prioritize the procurement of goods or services and chartering the work of the Government and

<sup>8</sup>Ibid pg. 198

<sup>9</sup>Theo Heijber, *Filsafat Hukum dalam Lintasan Sejarah*, Vol. IV, (Kanisius, Yogyakarta, 1988), pg. 274.

Regional Governments; and provide legal consultation assistance and advocacy.

#### **7. Trade promotion**

In this aspect, the responsibility of the state is to increase the promotion of Micro, Small and Medium Enterprises products at home and abroad; expanding funding sources for the promotion of Micro, Small, and Medium Enterprises products at home and abroad; provide incentives and procedures for providing incentives for Micro, Small and Medium Enterprises that are able to provide funding independently in product promotion activities at home and abroad; and facilitating ownership of intellectual property rights over products and designs of Micro, Small, and Medium Enterprises in domestic and export business activities.

#### **8. Institutional support**

This aspect is aimed to develop and enhance the functions of incubators, business development service institutions, financial consultants of bank partners, and other similar professional institutions as supporting institutions for the development of Micro, Small, and Medium Enterprises.

### **6. Implementation of protection for MSMEs in Indonesia**

Based on the explanation of the protection of MSMEs as referred to in Law No. 20/2008 above, the discussion of this chapter will review the implementation of this regulation. Implementation of MSMEs protection in Indonesia as stipulated in Law No. 20/2008 has not been fully implemented. This can be seen where MSMEs in Indonesia currently are still experiencing problems. These problems include:

1. Low Access to Information and Technology in the face of increasingly open and competitive market mechanisms. Market share is a prerequisite for increasing the competitiveness of small enterprises. In order to dominate the market, small enterprises need to get information easily and quickly, both information about the production market and factor production market. Information about the production market is needed to expand the marketing network of products produced by small enterprises. Access to market information and technology is still relatively low, especially in the application of administrative and financial systems that are still far behind, making it difficult to compete with other entrepreneurs.
2. Low Access to Capital Resources. Capital is the main factor needed to develop a business unit. SMEs lack of capital because in general, small and medium enterprises are individual businesses or companies that are closed. It relies on capital from the owner, whose amount is very limited, while loan capital from banks or other financial institutions is difficult to obtain because administrative and technical requirements requested by banks cannot be met.

3. Low Capacity of Human Resources. Most small enterprises grow traditionally and are hereditary family businesses. The limited quality of small enterprises human resources both in terms of formal education as well as knowledge and skills is very influential on the business management. Thus the business is difficult to develop optimally. In addition, with the limited quality of its human resources, the business unit is relatively difficult to adopt new technological developments to improve the competitiveness of the products it produces. In developing a business, the community or SMEs are not interested in using funds provided by the government because according to them, the administrative process takes much time. Therefore, many people are not interested in using these services.

### **7. Conclusion**

#### **7.2 Conclusion**

This study concludes that the role of government in responsibility for MSMEs have been regulated in Law No. 20/2008. This law concerns MSMEs issues in the areas of funding, facilities and infrastructure, business information, partnerships, business licensing, business opportunities, trade promotion, and institutional support. However, in the implementation phase, protection is not yet perfect because there are still problems faced by MSMEs such as low access to information and technology, low access to capital resources, and low capacity of human resources.

#### **7.3 Suggestion**

The author suggests that the government enhance efforts further to protect and maintain the existence of small enterprises, given the free market has entered Indonesia. This is because small enterprises are the root of large businesses. The government should provide intensive assistance to small enterprises both for undeveloped and developing ones so that they are ready when they have to compete in the free-market era. The government should also supervise the developments of existing small enterprises and conduct evaluations that can build and develop them into large businesses. Some ways that can be done in facing the free-market era are: perfecting the role of government; creating economic, political, and social stability; effective and open legal system; and the economic balance between regional and global.

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