

Legal Protection for Small Businesses in the Free Market Era in Indonesia Review of Law Number 20 of 2008 concerning Micro Small and Medium Enterprises

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Abstract

Implementing the free market in the ASEAN region is one way to grow an advanced economy. Entrepreneurs must be able to compete in this free market era, including small businesses in Indonesia. Small businesses in Indonesia have an essential role in social welfare and economic development in Indonesia. Therefore, the presence of small businesses must be protected because small businesses are absorption of labor. For this reason, a problem must be answered: how to provide legal protection for small businesses in Indonesia's free market era. Meanwhile, the research method used in this study is a normative legal research method, namely library law research conducted by examining library materials or mere secondary data. This research resulted in a conclusion that legal protection is essential to be provided by the government for MSMEs in Indonesia so that there is legal certainty in guaranteeing the activities of small business actors; several Laws and Invitations have been issued which regulate them among others, the MSME Law, and Law No. 7 of 1994 concerning the Agreement Establishing the World Trade Organization.

Keywords

Legal protection, Small Business, Free Market Era.

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1. INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs) are one of the cogs of the economy in Indonesia, namely small-scale people's economic activities, and meet the criteria for net worth and annual sales and ownership as stipulated in the Micro, Small, and Medium Enterprises Law. Article 1 point 2 of Law Number 20 of 2008 concerning MSMEs states that what is meant by small business is "productive economic business that stands alone which is carried out by individuals or business entities that are not subsidiaries or not branches of companies that are owned, controlled or become a part either directly or indirectly of a medium or large business that meets the criteria for a small business"

That includes informal small businesses and traditional small businesses. What is meant by informal small businesses are registered small businesses and those that are not yet legal entities, including farmers, cultivators, home industries, and so on. Meanwhile, what is meant by traditional small businesses are businesses that use simple means of production that have been used for generations and/are cultural arts.

Article 6 paragraph (2) of Law no. 20 of 2008 describes the criteria for small businesses as follows: "1. Have a net worth of at most Rp. 50,000,000- (Fifty Million Rupiah), excluding land and buildings for business premises or; 2. In the form of a person or individual business, a business entity that



does not include land and buildings for business premises or; 3. Have annual sales of more than Rp. 300,000,000,- (three hundred million rupiah) or up to a maximum of Rp. 2,500,000,000.00 (Two billion five hundred million rupiah)“.

In countries of the world, it is recognized that small businesses play a vital role in the development and economic growth, not only in developed countries but also in developing and underdeveloped countries. Small businesses are significant because they have main characteristics that distinguish them from big companies, mainly because they are labor-intensive businesses, exist in all locations, especially in rural areas, depend more on local materials, and are the primary providers of goods and services. Services for the basic needs of low-income or poor communities. Realizing how critical small businesses are, it's no wonder why governments in almost all developing countries, including ASEAN, have various programs, with subsidized credit schemes as the essential component, to support the development and growth of MSMEs for the welfare of ASEAN. Especially.

The ASEAN Economic Community (AEC), in 2015, required all ASEAN countries to liberalize trade in goods, services, investment, free skilled labor, and a more comprehensive flow of capital, as agreed in the AEC Blueprint AEC is a broad measure. To realize this, ASEAN member countries have agreed on the ASEAN Trade in Goods Agreement (ATIGA) at the 4th ASEAN Summit meeting in Chaam, Thailand. Therefore, the role of small businesses is a priority in every stage of development planning managed by the Ministry of Industry and Trade and the Ministry of Cooperatives and SMEs. However, the results of the development efforts could have been more satisfactory because the progress of MSMEs is minimal compared to the progress achieved by big businesses.

Indonesia's economic growth currently reaches 99% of all business units. Even though the current contribution of MSMEs to GDP reaches 60.5 % and to the workforce is 96.9% of the total absorption of the national force. Based on the Institute for Management Development (IMD) World Competitive Year Book 2022 report, Indonesia's global competitiveness ranking will decline in 2022.

Hearing the report, there are concerns that global Competition will crush small businesses. Indeed, the openness of the ASEAN economy will open up markets for Indonesian products and a more significant business scale. From a marketing and investor point of view, Indonesia's existence must be addressed. At least Indonesia is a potential demand or a large consumer. The proof is that the Indonesian people actively used and sold goods from China when the China-ASEAN free trade was enforced. Consumers buy products from China because the price is lower, the shape is more attractive, the quality is better, and the goods are easy to obtain. Facing only one country like China, the Indonesian people are weak, even though later in the free trade era in 2015, they will have to compete with ten other countries.

Many are not aware that the spirit of the free market is neocolonialism or new colonialism through economic liberalism. Many also do not believe that the free market is a refinement and that Business is War (business is war). The franchise, for example, requires a Free Fight against the Competition's wild face. With a franchise, all parties are in a win-win position. Even though many local companies have gone out of business, the capitalists are free to control local companies trapped in debt. At the same time, a thriving market is a market that produces prices that can allocate resources optimally and can compete well without dropping fellow actors' economies.

The tendency of economic liberalism, on the one hand, wants to create high economic growth. On the other hand, it also leads to a tendency to increase income inequality. This inequality occurs because of the different abilities of groups of people to take advantage of the opportunities created by market mechanisms. For solid economic groups, economic liberalization means the opportunity to proliferate. At the same time, for weak economies, various obstacles to capital, human resources, skills, and institutions (management) do not allow them to get the same opportunity.

The more fundamental problem is what will happen to the people in the whole process that is taking place. This problem needs special and severe attention because, from here, we are talking about the most significant part of the Indonesian people. In such a market economy system, where Competition is very competitive, it is easier for the people's economy to emerge victorious over the

Competition if the people's economy has creations, innovations, high levels of productivity, and the ability to read better opportunities. This is one of the characteristics of a people's economy based on competitive advantage. If the typology of small businesses or our people's economy is like that, it is possible to compete in the free market era. Good.

However, let's look at Indonesia's existing economic development. Indonesia needs more readiness to face the free market. MSME actors, if this needs to be addressed, Indonesia may need help to develop from the economic sector. The role of government protection in protecting small businesses is urgently required so that they can compete with other countries in the era of globalization of free markets and international trade so that people's welfare in the economic field can be guaranteed.

The MSME base itself and the people's economy, in general, turned out to be very weak in terms of vision, entrepreneurial attitude, and the most basic business management. However, they often claim to be quite resilient in the face of an economic crisis that has just been resolved. It is recognized that the existence of small businesses cannot be separated from the various classic problems that accompany them. Especially the problem of access to capital and opportunities to get business opportunities, problems of production, marketing, network, and technology.

The role of MSMEs in the domestic economy has increased, especially after the 1997 crisis. When banks faced difficulty finding debtors who were not in trouble, small businesses and cooperatives became an alternative for bank lending. Judging from their credit reputation, small companies and cooperatives also have quite encouraging achievements with a relatively small level of credit default.

From this, small businesses and cooperatives are enormous assets to support the economy. Therefore the government's role in protecting small businesses must also be maximized, considering that small businesses have the potential to overcome the economic problems of small communities so they don't go out of business because they cannot compete in the market resulting in a decline in the community's economy. Even though small businesses have good potential for economic development, their existence still needs to be addressed. This can be seen from government legal products or laws that are less supportive And give protection to business small like UU No. 07 of 1992 Jo Law no. 10 of 1998 concerning banking in the form of a holding company which is more pro-friendly and more profitable for conglomerate businesses than micro/small entrepreneurs.

The free market, which will be implemented in 2015, will make people with MSMEs inevitably have to compete in the market. This is where the role of the government is in protecting MSMEs so that they can survive and compete in this era of globalization of free markets and international trade. The competitiveness problem in an increasingly open world market is a formidable challenge for micro and small businesses. Because, without exception, almost all economies are involved in trade internationally.

"How is the legal protection for small businesses in the face of the free market era in Indonesia?"

The theory is quite significant in the preparation of scientific work. To solve the problem or answer the main issues that the authors put forward, it is necessary to have a theoretical basis so that research can be directed clearly.

Talking about protection, we cannot be separated from the law. The creation of the law aims to realize justice. When talking about law, we will also talk about the substance of the law, namely justice. According to Thomas Aquinas, the essence of law is justice; therefore, the law must contain justice. An unjust law is not the law itself. Justice is one of the goals of any legal system; in fact, it is the most important goal. Justice can also be seen as a value for a beautiful human life.

Many countries have taken the middle way in the current economic system by adopting a mixed economy where the market's role is essential. However, the state needs to enter the market to redistribute income. The part of state is required to supplement the market and correct its imperfection of the market. Specifically in Indonesia, the state's role in regulating the economy is still needed to eliminate sharp inequality between community groups and the government.

2. METHODS

In this study, it is necessary to use a method that explains how to solve the problem to resolve the research quickly. Therefore, in compiling utilizing this type of normative legal research method, namely a process to find the rule of law, legal principles, or legal doctrines to answer the legal issues at hand which are related to Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises. To see and understand government policies toward protecting small businesses in Indonesia.

This research method is commonly used in the field of law to understand the legal framework and regulatory requirements that apply to a particular area of law.

In this research, which is focused on government policies to protect small businesses in Indonesia, the normative legal research method is an appropriate methodology to use. The goal of this research method is to find the relevant legal rules, principles, and doctrines that apply to small businesses in Indonesia and to analyze how these rules and principles can be used to support or improve government policies.

Overall, the normative legal research method is a valuable tool for conducting research on legal issues related to small businesses in Indonesia. By analyzing the relevant legal rules and principles, you can gain a deeper understanding of the regulatory framework that applies to small businesses and make informed recommendations to improve government policies.

3. FINDINGS AND DISCUSSION

Legal Protection for Small Businesses Facing the Free Market Era in Indonesia

In the free market era, Competition is so tight that it requires companies to be ready to excel and be able to compete healthily. This requires a technological base as its strength; moreover, to compete with imported products that are highly competitive, business actors are needed to change their mindset to increase creativity, innovation, independence, and proactiveness in doing business. Teguh Sulistia, in his research entitled "Legal Protection and Empowerment of Small Entrepreneurs in a Free Market Economy," explained that empowering small businesses as strengthening the people's economy can be carried out through increasing aspects of capital, market freedom, and mastery of technology.

This is in line with the thoughts of Putri Apriliani Sinaga in her research stating that this free market era puts pressure on producers in Micro, Small, and Medium Enterprises to face increasingly fierce Competition, where inevitably, producers have to add value to their effectiveness and efficiency in producing MSME results that meet standards so that they can maintain their existence and consistency in the world of SMEs and can win the Competition in the face of the free era market and the international level market.

In response to the above, forcing MSME actors as pillars of the people's economy to face the enormous challenge of making products that must comply with National and International Standards, bearing in mind that this standardization is the primary tool to increase the competitiveness of MSMEs in the free market era, but it can also the opposite is shutting down businesses because they have not been able to implement product standardization in competing in the free market era. It differs from the results of Rahmanisa Anggraeni's research, which focuses on the world of MSME competition starting with a business license. As we all know, a business license is a first and foremost process that sometimes people need to pay more attention to, even though a business license is an official document from an authorized agency that can give permission or allow such business activities. By having a business permit for business actors in MSMEs, protection for their MSMEs can be obtained; besides that, there is certainty in business activities and a sense of comfort and security. They can also make a real contribution to increasing the added value of production in the availability of goods and services needed by society.

Rahmanisa also added that MSMEs that already have business licenses could absorb workers both locally and nationally and increase the dissemination of growth in the world of entrepreneurship,

considering that in this era, many graduates are still known to be unemployed. So that with the presence of MSMEs, at least they can overcome and help provide solutions to problems in this country.

The benefits that can be taken if MSMEs already have a business license are that in addition to getting protection, they can also quickly develop their business, it is easier in terms of access to financing, makes it easier in the field of marketing or business marketing, and can also quickly get business assistance from the government as it is MSME workshops, entrepreneurship seminars, special seminars for MSME assistance. You can also get counseling assistance directly at the place of business activity. This has also been stated in Article 12 of Law No.20/2008 concerning MSMEs, that business licensing is intended to: 1) simplify procedures and types of business licensing with a one-stop integrated service system; 2) waiver of licensing fees for Micro Enterprises and provide relief from licensing fees for Small Enterprises The development of globalization has brought many changes in various fields of life, especially in international trade traffic, so this is where the challenge for MSME business actors must have various strategies, tips, and tricks to conquer it.

International trade is an aspect that can be said to be very important for each country, so trade or market relations are needed, which are, of course, following public order and justice. From this discourse, rules are required to safeguard and maintain the rights and obligations of business actors in the international market to create demand. International legal instruments governing international trade relations are summarized in the GATT (General Agreement on Tariff and Trade) document since 1947. Many countries have signed them, and their implementation was from 1948.

During its journey, GATT was also negotiated and continued to be refined to form a world trade organization called the WTO, namely the World Trade Organization. This world organization will carry out and provide oversight of the international trade rules pioneered by the GATT since 1947. Trade crosses the boundaries of a country's territory. It is essential if the world economy is expected to return to a faster growth path. The field currently one of the fastest growing is free trade or free trade.

Other legal rules in international law that regulate trade relations between Indonesian countries have Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization (Agreement to Establish the World Trade Organization). In Indonesia, Small and Medium Enterprises before the rolling reforms were regulated in the Civil Code. Micro, Small, and Medium Enterprises are business activities that absorb much labor and provide additional economic income to the community. Therefore, to have legal certainty, the government guarantees business activities and protects MSME actors to increase the position, role, and potential of Micro, Small, and Medium Enterprises in realizing economic growth and equity, improving people's income, and creating jobs. Work, poverty alleviation, then with this background and analysis, the government issued Law Number 20 of 2008 concerning MSMEs. In this law, if traced, there are already actions in the context of trying to provide proper legal protection for domestic businesses, including (1) Trade security, known as Safeguard, which is a protection for domestic industries that suffer losses or are still under threat of beatings, due to an increase in imported goods with restrictions on imported goods which incidentally has increased.

Provisions related to this Safeguard are contained in Presidential Decree No. 84/2022 concerning Industrial (domestic) Security Measures due to Surges in Imports. This rescue will be more towards tracing the increase in imports periodically and under certain conditions. If the results of the investigation show strong evidence that a surge in imports of the investigated goods has resulted in severe losses or threats of serious losses for domestic businesses, temporary safeguard measures may be imposed; (2) Anti Dumping before that we have to know what Dumping is Dumping is a trade practice carried out by exporters by selling goods at a lower price or an unfair/non-standard price in their own country in the free/international market, so that this practice is deemed unfair which will later damage the market, besides that it will also cause losses to producers who compete in the importing country.

In Indonesia, anti-dumping regulations are contained in Law Number 10 of 1995 concerning Customs. It's in Chapter IV, Articles 18- Article 20, and Articles 21-23 related to reimbursement of import

duties. This provision is the basis for making implementing regulations on anti-dumping in Indonesia. In addition, there is an institution formed to carry out the implementation of anti-dumping instruments, which is called KADI (Indonesian Anti-Dumping Committee). Finally, the protection efforts, namely (3) Standardization, meaning that this activity is carried out to provide protection for consumers, business actors, workers, and also the community, both for safety, security, health, and preservation of environmental functions, as well as to help smooth trade and realize fair business competition in trade. To increase the effectiveness of regulations in the field of standardization, it is necessary to have a synergistic role and cooperation between consumers, business actors, scientists, and government agencies.

Standardization is formulating, establishing, implementing, and revising standards carried out orderly and with cooperation with all parties. The rules governing standardization are contained in the Legal Protection Regulation for the Continuity of Micro, Small, and Medium Enterprises, namely the Government of the Republic of Indonesia Number 102 of 2000 concerning National Standardization. The Indonesian National Standard (SNI) is a standard the National Standardization Agency sets and applies nationally.

From the three legal protection efforts explained in the legislation, it can be concluded that the government has made every effort to provide legal protection, starting from safety and security and policies against unfair price fraud. Therefore efforts were also made to standardize goods so that all goods produced by SMEs could compete in the free market or international trade market. This economic policy should favor the people's economy, be beneficial, and increase the smoothness of doing business, especially for MSME actors, to catch up in business competition.

4. CONCLUSION

Related to the subject matter which has been formulated, it can be concluded that legal protection is provided by the government for Micro, Small, and Medium Enterprises in Indonesia so that there is legal certainty in guaranteeing the activities of small business actors, several laws and regulations are issued which regulate it, among others: Law No. 7 of 1994 concerning the Agreement Establishing the World Trade Organization and Law No. 20 of 2008 concerning MSMEs in which there are legal protection efforts both in terms of safety, anti-dumping and the existence of national standardization to increase business fluency, especially MSME actors to catch up in business competition.

REFERENCES

- Abdullah, Burhanuddin. *Menanti Kemakmuran Negeri: Kumpulan Esai Tentang Pembangunan Sosial Ekonomi Indonesia*. Gramedia Pustaka Utama, 2006.
- Amnawaty, Amnawaty, and Mevitama Shindi Baringbing. "Perlindungan Hukum Terhadap Usaha Mikro Kecil Dan Menengah Pada Masa Pandemi Covid-19 Di Kota Bandar Lampung." *Crepido* 4, No. 1 (2022): 12–22.
- Anggraeni, Rahmanisa. "Pentingnya Legalitas Usaha Bagi Usaha Mikro Kecil Dan Menengah." *Eksaminasi: Jurnal Hukum* 1, no. 1 (2021): 77–83.
- DPR, RI, and Dewan Perwakilan Rakyat Republik Indonesia. "Undang-Undang Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil, Dan Menengah." Jakarta (ID): DPR RI, 2008.
- Heilbroner, Robert L. "Tokoh-Tokoh Besar Pemikir Ekonomi, Terjemah." Boentaran, Jakarta: Ui Press, 1986.
- Ina, Primiana. "Menggerakkan Sektor Riil UKM & Industri." Penerbit Alvabeta. Bandung, 2009.
- Indonesia, Republik, and Undang-Undang Dasar Negara Republik Indonesia. "Undang-Undang Nomor 7 Tahun 1994 Tentang Pengesahan." Agreement Establishing The World Trade Organization, n.d.
- Indonesia, Tim Bank. *Kerjasama Perdagangan Internasional*. Elex Media Komputindo, 2007.

- Koesters, Paul-Heinz. *Tokoh Tokoh Ekonomi Mengubah Dunia*. Gramedia, 1987.
- Marzuki, Peter Mahmud. "Penelitian Hukum, Cet. Ke-12." Jakarta: Kencana Prenada Media Group, 2016.
- Nasution, Sorimuda. "Metode Research (Penelitian Ilmiah)," 2009.
- Nurliana, Nana. *Sejarah SMP/MTs Kls VII (KTSP)*. Grasindo, n.d.
- Purba, Bonaraja, Muhammad Fitri Rahmadana, Edwin Basmar, Diana Purnama Sari, Antonia Klara, Darwin Damanik, Annisa Ilmi Faried, Darwin Lie, Nadia Fazira, and Noni Rozaini. *Ekonomi Pembangunan*. Yayasan Kita Menulis, 2021.
- Sinaga, Putri Apriliani. "Aspek Hukum Standardisasi Barang Bagi Usaha Mikro, Kecil, Dan Menengah Ditinjau Dari Undang-Undang Nomor 7 Tahun 2014 Tentang Perdagangan," 2018.
- Sunaryo, T., and Nurcahyo Muhanani. "Ekonomi Manajerial: Aplikasi Teori Ekonomi Mikro," 2001.
- Susanty, Ade Pratiwi. "Perlindungan Hukum Terhadap Kelangsungan Usaha Mikro, Kecil, Dan Menengah Atas Pemberlakuan Masyarakat Ekonomi Asean." *Jurnal Hukum Respublica* 16, no. 2 (2017): 313–32.
- Widiarty, Wiwik Sri. "Perlindungan Hukum Usaha Kecil Dan Menengah Dalam Perdagangan Garmen." UKI Press, 2019.

