



Protection of Business Activities for Micro Enterprises by the Government Ternate City Area

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Abstract

This study aims to describe the regulation of the protection of business activities for Micro Business actors according to the provisions of the legislation. As well as to examine the role of the Regional Government of Ternate City in carrying out protection of business activities for Micro Business actors in Ternate City. The research method used in this research is empirical legal research. As for the location of the research was carried out in Ternate City, as one of the former cities compared to other regencies/cities in the North Maluku Province, so it is hoped that the Ternate City Government will have more experience in administering local government affairs, including experience in carrying out government affairs in the field of Micro Enterprises. The study aims to ascertain whether the results of the application of the concrete legal events in concreto are in accordance with the provisions of the law or contract. The reason for using qualitative analysis methods is because this research is a legal research that uses qualitative data (not quantitative data). The results of this study indicate that protection of business activities for Micro Business Actors is only strictly regulated in Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises. However, the regulation does not determine the limits of the authority of each level of government and the classification of the business fields under their authority. Business activities for Micro Business actors by the Ternate City Government have been regulated in Ternate City Regional Regulation Number 13 of 2018 concerning Micro Enterprises. However, the implementation of protection has not been maximized because it turns out that currently many large business actors carry out business activities in various regions so that Micro Business actors suffered a loss due to a decrease in buyers.

Keywords: *Legal Protection; Micro Business Actors; City of Ternate*

Introduction

Economic development in the context of eradicating poverty and increasing people's welfare is not solely the responsibility of the Government and Regional Governments, but a shared responsibility in the sense that there is broad community participation in economic development in order to improve people's welfare. The form of community participation in economic development is by opening businesses in almost all business fields by business actors ranging from micro business actors, small

business actors, and medium business actors which are then often known as Micro, Small and Medium Enterprises (MSMEs).¹

In the general explanation of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, it is stated that national development which covers all aspects of the nation's life is jointly carried out by the community and the government. The community is the main actor in development, and the government is obliged to direct, guide, protect, and foster a supportive atmosphere and climate. This means that Micro Enterprises are part of one of the main actors of development (economic development) in the community so that it is the obligation of the government and local governments to direct, guide, protect and foster a business climate that supports business activities for these Micro Business actors.

Micro-enterprises as part of business actors are business activities that are able to expand employment opportunities and provide broad economic services to the community, and can play a role in the process of equity and increase people's income, encourage economic growth, and play a role in realizing national stability.

Micro-enterprises are also one of the main pillars of the national economy, which must have the main opportunity to support the widest possible protection and development as a manifestation of the partiality of the government and local governments to the people's economic business groups. However, by not ignoring the role of big business actors. Between large actors and Micro and Small and Medium Enterprises can need each other in business activities.

Lathifa Hanim, stated that the important role of MSMEs is not only meaningful for economic growth in big cities but also for economic growth in rural areas. The following are some of the important roles of MSMEs.

- a) MSMEs play a role in providing broad economic services to the community, in the process of equity and increasing people's income, encouraging economic growth, and realizing national stability.
- b) 1998 monetary crisis -> 2008-2009 crisis -> 96% of MSMEs survived the crisis.
- c) MSMEs are also very helpful for the state/government in terms of creating new jobs and through MSMEs, many new work units have been created that use new workers who can support household income.
- d) MSMEs have high flexibility when compared to businesses with larger capacities, so MSMEs need special attention that is supported by accurate information, so that there is a directed business link between small and medium-sized businesses with elements of business competitiveness, namely market networks.

MSMEs in Indonesia are often associated with domestic economic and social problems such as high levels of poverty, inequality in income distribution, uneven development processes between urban and rural areas, and urbanization problems. The development of MSMEs is expected to make a significant positive contribution to efforts to overcome the problems mentioned above.²

Although Micro Enterprises have shown their role in building the people's economy, Micro Enterprises still often face various internal and external obstacles and constraints in various matters, including those related to production and processing, marketing, human resources, technology design, capital, and the business climate.

¹Selain pelaku usaha yang dikelompokkan ke dalam pelaku usaha mikro, pelaku usaha kecil, dan pelaku usaha menengah, juga ada pelaku usaha kriterianya telah melebihi kriteria yang ditetapkan bagi UMKM, yaitu pelaku usaha besar. Pasal 1 angka 4 UU No. 20 Tahun 2008 menyatakan, Usaha Besar adalah usaha ekonomi produktif yang dilakukan oleh badan usaha dengan jumlah kekayaan bersih atau hasil penjualan tahunan lebih besar dari usaha menengah, yang meliputi usaha nasional milik negara atau swasta, usaha patungan, dan usaha asing yang melakukan kegiatan ekonomi di Indonesia.

² Lathifa Hanim, UMKM (Usaha Mikro, Kecil dan Menengah), Unissula Press, Semarang-Jawa tengah, 2018, hlm.43-44.

Internal problems faced by Micro Business actors include low professionalism of Micro Business actors, limited capital, lack of access for Micro Business actors to Banks, lack of market access, limited/low ability to master technology, and others. Meanwhile, external problems include: an unfavorable business climate for business development, government policies that have not worked properly, lack of support, lack of management guidance and improvement of the quality of human resources.

Several previous research results state that the factors causing the failure of the small business sector to develop include: weak ability to make decisions, inability in management, lack of experience, and weak financial supervision.

In order to increase the opportunities, capabilities, and protection of Micro Enterprises together with Small and Medium Enterprises, the Government has established various policies regarding business reserves, funding, and development. Therefore, the government's policy must be tested so that it can be described regarding the optimization of the government's policy. Government policy in the field of regulation that specifically regulates Micro, Small and Medium Enterprises is Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises. (Law No. 20 of 2008 or the MSME Law) Then as an implementing regulation, Government Regulation No. 17 of 2013 was issued concerning the Implementation of Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises (PP No. 17 of 2013). Finally, Government Regulation Number 7 of 2021 concerning Ease, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises was issued (PP No. 7 of 2021). With the enactment of PP No. 7 of 2021 then PP No. 17 of 2013 was declared revoked and no longer valid. Thus the study on the protection of Micro Enterprises will be based on Law no. 20 of 2008 and PP No. 7 Year 2021.

In addition, there is also Law Number 23 of 2014 concerning Regional Government (UU No. 23 of 2014/Law on Regional Government). In the law there are arrangements regarding the division of government affairs which consist of absolute government affairs, congruent government affairs, and general government affairs. Absolute government affairs are government affairs that fall under the authority of the Central Government, while congruent government affairs are government affairs that are shared between the Central Government and the Provincial Government and District/City Governments. General government affairs are government affairs which are under the authority of the President as Head of State.³

Related to government affairs regarding Micro Enterprises in the sense of whether Micro Enterprises are regulated in Law no. 23 of 2014 and which level of government is authorized to carry out government affairs regarding Micro Enterprises? In this case, Law no. 23 of 2014 does not explicitly stipulate in the formulation of the article. Article 12 paragraph (2) letter k of Law no. 23 of 2014 only mentions cooperatives, small and medium enterprises which are grouped into mandatory government affairs but not related to basic services.

The authority of each level of government regarding Micro, Small, and Medium Enterprises, is explained in the Attachment of Law no. 23 of 2014 letter Q. In number 7 it is stated that the empowerment of Micro Enterprises is under the authority of the Regency/City Government which is carried out through data collection, partnerships, licensing facilities, institutional strengthening, and coordination with stakeholders. In addition, the Regency/City Government also has the authority to develop Micro Enterprises with the orientation of increasing business scale to become small businesses.

The city of Ternate is one of the oldest cities in the province of North Maluku with better facilities and infrastructure compared to other districts/cities in the province of North Maluku. This is one

³Pasal 9 UU No. 23 Tahun 2014.

of the reasons for business actors to open and run their business activities in Ternate City. Among these business actors are Micro Business actors.⁴

Based on information obtained from the Office of Cooperatives and Small and Medium Enterprises of Ternate City that until 2020 the number of Micro Enterprises scattered in the Ternate City area is 9,424.⁵ Thus it can be said that the growth of Micro Business actors in Ternate City is quite a lot. One of the reasons, of course, is that Ternate is the only city area that is quite developed with the support of adequate advice and infrastructure.

By looking at the significant number of Micro Business actors in the Ternate City area, it must be a serious concern for the Ternate City Regional Government in an effort to protect the business activities of Micro Business Actors in accordance with the mandate of the legislation.

In the general explanation of Law no. 20 of 2008 emphasized that the Government and Regional Governments have the responsibility to foster a business climate by establishing laws and regulations and policies. In addition to the government and local governments, the business world and the community also actively participate in helping to grow the business climate, including the micro business climate.⁶

Micro Business Actors in carrying out their business activities will of course often experience various problems such as legal issues and problems related to their business activities caused by factors beyond their capabilities that cause Micro Business actors to experience obstacles in growing their business again.

Of course, the problems faced by Micro Business actors need to receive protection from the Ternate City Government as a manifestation that the Indonesian state is a welfare state where the government needs to intervene in various aspects of people's lives, including aspects of business activities carried out by citizens.

Starting from the background and identification of the problems described above, several problems are formulated as follows, namely How are the arrangements for the protection of business activities for Micro Business entrepreneurs according to the provisions of laws and regulations? And Has the Ternate City Government carried out business protection for Micro Business actors in accordance with the provisions of the legislation?

Research Methods

A. Research Sites

The research entitled "Protection of Business Activities for Micro Business Actors by the Ternate City Government" was carried out in the city of Ternate, North Maluku Province. The reason for choosing Ternate City as the research location is that Ternate City is one of the former cities compared to other regencies/cities within the North Maluku Province so that it is hoped that the Ternate City Government will have more experience in administering local government affairs, including experience in carrying out government affairs in the field of Micro Enterprises.

Another reason is that because the City of Ternate is a city area that first existed in North Maluku Province, so that the facilities and infrastructure that support the administration of government affairs in the form of public services (public services) have been properly provided and utilized optimally. Furthermore, for this reason, it becomes an attraction for business actors including Micro Business actors to carry out business activities in the Ternate City Region.

⁴ Selain Usaha Mikro, pelaku usaha lainnya adalah Koperasi, Usaha Kecil, dan Usaha Menengah serta usaha besar.

⁵ Wawancara langsung dengan Kepala Seksi Fasilitasi Usaha Mikro Dinas Koperasi dan Usaha Kecil menengah Kota Ternate ibu Mniawati, SE, tanggal 12 Oktober 2021.

⁶ Pasal 7 ayat (1) dan ayat (2) UU UMKM.

B. Research Types and Approach

The type of research selected and used in this research is normative-empirical legal research. According to Abdulkadir Muhammad, empirical (applied) normative legal research examines the factual implementation or implementation of positive legal provisions (laws) and contracts in every particular legal event that occurs in society in order to achieve predetermined goals. The study aims to ascertain whether the results of the application of the concrete legal events in concreto are in accordance with the provisions of the law or contract. In other words, whether the provisions of the law or contract have been implemented properly or not, so that the interested parties achieve their goals or not.⁷

Based on Abdulkadir Muhammad's opinion, this research was conducted to ensure that the implementation of protection against business activities for Micro Business Actors by the Ternate City Government was in accordance with Law no. 20 of 2008 (UU UMKM) and other implementing regulations. The goal is to ascertain whether the Micro Business Actors in the City of Ternate have received protection from the local government of the City of Ternate, especially from the relevant agencies, namely the Office of Cooperatives and Small and Medium Enterprises.

C. Data Collection Technique

The field study was carried out by collecting documents related to the Ternate city government program in the protection of Micro Enterprises. In addition, it will conduct interviews with Ternate city government agencies whose authority is in the MSME sector, as well as direct interviews with several Micro Business actors to obtain information related to the presence or absence of the Ternate City Government program regarding protection of business activities for Micro Business actors as mandated in laws and regulations.

D. Data Analysis Techniques

Data and all information that has been collected either through literature studies or field studies will then be analyzed and analyzed to answer the problems studied. Furthermore, the data and information that have been obtained and processed will be analyzed using qualitative analysis methods by describing the arrangements for the protection of business activities for Micro Business actors and the implementation of protection by the Ternate City Government. The reason for using qualitative analysis methods is because this research is a legal research that uses qualitative data (not quantitative data).

Research Results and Discussion

A. Overview of Research Sites

1. Formation of the City of Ternate as an Autonomous Region and Its Geographical Location.

Ternate City is an autonomous region which was formed based on Law No. 11 of 1999 concerning the Establishment of Ternate Level II Municipal Municipalities where at the time of its formation the City of Ternate was still within the Maluku Province in Ambon.⁸ With the formation of North Maluku Province, Ternate City is included in the territory of North Maluku Province.

Geographically the Ternate Level II Municipality Area has the following boundaries:

- a. To the north it is bordered by the Maluku Sea.
- b. In the east it is bordered by the Halmahera Strait.
- c. To the south, it is bordered by the Maluku Sea.

⁷Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, PT. Citra Aditya Bakti, Bandung, 2004, hlm. 53.

⁸Pasal 2 UU No. 11 Tahun 1999 menyatakan, Dengan Undang-undang ini dibentuk Kotamadya Daerah Tingkat II Ternate dalam wilayah Provinsi Daerah Tingkat I Maluku.

- d. To the west it is bordered by the Maluku Sea.

2. Regional Government and Regional Apparatus

At the first time or at the time of its formation, a Mayor was appointed as the Head of the Level II Region, now known as the Mayor of Ternate. In addition, the Regional People's Representative Council for the Ternate Level II Municipality was also formed, now called the Ternate City Regional People's Representative Council. To support the implementation of regional government, a Level II Regional/Regional Secretariat is also formed, the Secretariat of the Regional People's Representative Council of the Second Level Regional Municipality, Regional Offices and other agencies based on statutory regulations.

In this latest development, the Ternate City Regional Apparatus was established with the Ternate City Regional Regulation Number 11 of 2016 concerning the Establishment and Composition of the Ternate City Regional Apparatus, as amended by the Ternate City Regional Regulation Number 19 of 2018 concerning Amendments to Ternate City Regional Regulation Number 11 of 2016 concerning Formation and Structure of Ternate City Regional Apparatus.

Based on Article 2 of the Ternate City Regulation Number 19 of 2018, the composition of the Ternate City Regional Apparatus consists of:

- a. Ternate City Regional Secretariat
- b. Secretariat of the Ternate City Regional People's Representative Council.
- c. Inspectorate.
- d. Regional Office and
- e. Regional Agency.

In relation to this research, one of the authorized regional apparatus in the field of Micro Enterprises is the Office of Cooperatives and Small and Medium Enterprises. Article 2 point 4 letter p of the Ternate City Regulation Number 19 of 2018 states, the Office of Cooperatives and Small and Medium Enterprises Type A, carries out government affairs in the field of Cooperatives, Small and Medium Enterprises.

1. Ternate City Regional Household Affairs

As an autonomous region, the Ternate Level II Municipal Government which is now called the Ternate City Regional Government has the right to carry out regional autonomy in accordance with statutory provisions. According to Article 1 point 6 of Law no. 23 of 2014 states that Regional Autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in the system of the Unitary State of the Republic of Indonesia. As for Autonomous Regions according to Article 1 number 12 of Law no. 23 of 2014 is a legal community unit that has territorial boundaries that are authorized to regulate and manage Government Affairs and the interests of the local community according to their own initiatives based on the aspirations of the people in the system of the Unitary State of the Republic of Indonesia.

Ternate City as an autonomous region at the time of its formation had regional household affairs. Article 11 paragraph (1) of Law no. 11 of 1999 states that at the time the Ternate Level II Municipal Municipality was formed, some government affairs were handed over as the basic authority in the following two areas:

- a. General Administration;
- b. Health;
- c. Education and culture;
- d. Public Works;

- e. Sea Traffic and Transportation;
- f. Social;
- g. Regional Finance;
- h. Environment;
- i. Population and civil registration;
- j. Food Crops Agriculture;
- k. Plantation;
- l. Forestry;
- m. Fishery;
- n. Farm;
- o. Trade Industry;
- p. Mining;
- q. Tourist;
- r. Labor.

From this authority, it seems that Cooperatives and Micro Enterprises have not yet been determined, including as the authority or regional house affairs. But according to Article 11 (2) of Law no. 11 of 1999 stipulates that the implementation of addition or reduction of affairs as referred to in paragraph (1) shall be regulated by a Government Regulation. Furthermore, based on Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Governments and Regency/City Governments, Cooperatives and Small and Medium Enterprises are part of the authority of Regency/Municipal Governments. Thus, the authority of the Ternate City Government to carry out government affairs in the field of cooperatives, and Small and Medium Enterprises obtains a juridical basis from PP No. 38 of 2007 is.

The authority of the Regional Government in the field of Cooperatives, and Small and Medium Enterprises then gets a juridical basis in the Regional Government Law as stipulated in Law no. 23 of 2014 Article 11 paragraph (2) letter k where Cooperatives and Small and Medium Enterprises are part of mandatory government affairs that are not related to basic services.

B. Regulations on the Protection of Business Activities for Micro Business Actors according to Legislative Regulations

Micro Enterprises have an important role equal to Small and Medium Enterprises in supporting the regional economic growth rate and national economic growth. In addition, Micro Enterprises are also expected to be able to absorb labor in the region and reduce unemployment in the region. According to the laws and regulations, Micro Business is a productive business owned by an individual or an individual business entity that meets the criteria for Micro Business.

Micro Business as a business activity for Micro Business actors in carrying out business activities always faces various problems both related to law (legal issues) and problems related to their own business activities. In this case, the state must be present through the government, which is very important in order to regulate the protection of the activities of the Micro Business itself. This is also in accordance with the goals of the state as mandated in the Preamble to the 1945 Constitution.⁹

The presence of the state or government including local governments to regulate the lives of citizens is also very in line with the idea of a modern legal state which is often called a welfare state (welfare staat). The concept of a welfare state law requires state intervention to regulate all aspects of people's lives.

⁹ Tujuan Negara Republik Indonesia tercantun dalam Alinea keempat Pembukaan Undang-Undang Negara Republik Indonesia Tahun 1945, antara lain melindungi segenap bangsa Indonesia dan seluruh tumpah dara Indonesia, memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa,.....dan seterusnya.

Micro-enterprises as one of the community's business activities need to get protection from the state through the government, especially local governments. Efforts for that are the Government to make regulations that become the legal umbrella. The government has issued Law no. 20 of 2008 and its implementing regulations, namely PP No. 17 of 2013 but both regulations have not regulated the protection of business activities for Micro Business actors. The existence of protection for Micro Enterprises is only regulated in PP No. 7 of 2021 where with the enactment of this Government Regulation, PP No. 17 of 2013 was revoked and declared invalid.

Government Regulation No. 7 of 2021 regulates the Protection of Micro and Small Businesses, which includes legal assistance and assistance services for Micro and Small Businesses, and the Recovery of Micro and Small Businesses.

Observing the regulation of business protection for Micro Enterprises according to PP No. 7 of 2021 as described above actually a problem occurs when it comes to the authority of each level of government as stated in the attachment letter Q of Law no. 23 of 2014. The problems are as follows:

First, that in the implementation of protection in the form of legal assistance and assistance services as well as recovery of Micro-enterprises, both the Central and Regional Governments are involved jointly, while if it is related to their respective authorities as stated in the attachment letter Q of Law no. 23 of 2014, then the Central Government is not authorized in the field of Micro Business.

Second, in the context of the Regional Government, it is also unclear because the formulation of the article does not mention the authority of the Provincial Government and the authority of the Regency/Municipal Government. Whereas in the attachment letter Q of Law no. 23 of 2014 it is clear that the authority of the provincial government is small businesses and the authority of the district/city government is micro enterprises. It must be formulated clearly so that it can be understood and does not cause multiple interpretations.

Third, that the Central Government and regional governments can provide financial assistance to Micro-Enterprises requesting legal assistance and assistance services provided by other parties. The problem is whether Micro and Small Business actors can ask for assistance in case financing at all levels of government, for example, apart from asking the Regency/Municipal Government, they can also ask for financial assistance from the Provincial Government and the Central Government.

Fourth, whether the person submitting the request for financing is the provider of legal assistance and assistance, or the business actor, namely Micro or Small Business.

From some of these issues, the regulation on the protection of Micro, Small and Medium Enterprises must be formulated according to their respective authorities in order to avoid overlapping arrangements and avoid multiple interpretations from the community.

C. Protection of Business Activities for Micro Business Actors by the Ternate City Government

1. Arrangements for the Protection of Business Activities for Micro Business Actors in Ternate City

Indonesia is a state of law. This is emphasized in the 1945 Constitution of the Republic of Indonesia. This shows that every action or act of all components of the nation from the government to ordinary people must always comply with the applicable legal provisions.¹⁰

In relation to business activities for Micro Business actors, on the one hand there are community members who carry out business activities and on the other hand there are the government and local governments who play a role in making and making policies to regulate the business activities of Micro

¹⁰ Pasal 1 ayat (3) UUD 1945.

Business actors so that they always run according to the applicable legal provisions as the mandate of Article 1 paragraph (3) of the 1945 Constitution. Viewed from the point of view of the state of welfare law, the government and local governments must intervene in regulating all aspects of the lives of citizens. For this reason, law is present as a means or instrument as a way of state intervention through the government and local governments in regulating people's lives.

Article 18 paragraph (6) of the 1945 Constitution states that regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks.¹¹ So this provision becomes the juridical basis for regional governments to form laws and regulations at the regional or local level, namely regional regulations and regulations for regions to carry out autonomy or regional government affairs that are the authority or regional household affairs as well as assistance tasks.

Government affairs regarding business activities for Micro Business actors according to Law no. 23 of 2014 is a government affair that is under the authority of the Regency/City Government.¹² However, it should be emphasized that in Law no. 20 of 2008, PP No. 17 of 2013 and PP No. 7 of 2021 does not explicitly determine the authority of each level of government that carries out government affairs for the three types or types of business activities.

Ternate City is one of the former or leading cities in the North Maluku Province with adequate facilities and infrastructure compared to other regencies/cities in the North Maluku Province. Even Ternate City was once the center of the North Maluku provincial government before moving to Sofifi and the capital of North Maluku Regency before moving to Jailolo. In addition, Ternate City is also a trade center for regencies/cities within the province of North Maluku. These factors have led many business actors to run their business in the city of Ternate, especially on the island of Ternate. One of the business activities carried out by business actors is Micro Business. According to Law no. 20 of 2008,¹³

- a. Have a net worth of at most Rp. 50,000,000.00 (fifty million rupiahs) excluding land and buildings for business premises; or
- b. Have annual sales of at most Rp. 300,000,000.00 (three hundred million rupiah).

Furthermore, with the enactment of PP No. 7 of 2021, the criteria for Micro Enterprises will change, namely that Micro Enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises, namely:¹⁴

- a. Micro Enterprises have a business capital of up to a maximum of Rp. 1,000,000,000.00 (one billion rupiah), excluding land and business buildings.
- b. Micro Enterprises have annual sales of up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah).

According to PP No. 7 of 2021 the criteria for Micro Business in the form of business capital up to a maximum of Rp. 1,000,000,000.00 (one billion rupiah), excluding land and building for business premises, is used for establishment or registration of business activities. While the criteria for Micro Enterprises in the form of annual sales of up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah) is used for the provision of facilities, protection, and empowerment of Micro Enterprises.

In order to provide business protection for Micro Business actors, the Regional Government has established regulations in the form of Regional regulations, namely Ternate City Regional Regulation

¹¹ Yang dimaksud dengan peraturan-peraturan lain adalah misalnya peraturan kepada daerah atau peraturan bersama kepala daerah, yang kaidah hukumnya bersifat umum atau berlaku umum.

¹² Menurut Lampiran UU No. 23 Tahun 2014 huruf Q maka kegiatan usaha bagi pelaku Usaha Kecil merupakan kewenangan Pemerintah Daerah Provisi, sedangkan kegiatan usaha bagi pelaku Usaha Menengah menjadi kewenangan Pemerintah Pusat (Pemerintah).

¹³ Pasal 1 angka 1 dan Pasal 6 ayat (1) UU No. 20 Tahun 2008.

¹⁴ Pasal 1 angka 2, Pasal 35 ayat (3) huruf a dan ayat (5) huruf a PP No. 7 Tahun 2021.

Number 13 of 2018 concerning Micro Enterprises. The philosophical basis for the formation of Regional Regulation No. 13 of 2018 is as formulated in the considering section as follows:

- a. that micro-enterprises need to be empowered as an integral part of the people's economy that has a position, role, and strategic potential to realize a more balanced, developing and just national and regional economic structure.
- b. that micro-enterprises have an important role in supporting the rate of regional economic growth by absorbing a lot of labor so as to reduce unemployment.
- c. that in order to provide direction, basis and legal certainty to all parties involved in micro-enterprises, it is necessary to regulate micro-enterprises.
- d. that based on the considerations as referred to in letter a, letter b, and letter c, it is necessary to stipulate a City Regional Regulation concerning Micro Enterprises.

Ideally the weighing part of a generally accepted statutory regulation should contain a philosophical basis, a sociological basis and a juridical basis. However, Ternate City Regulation No. 13 of 2018 can be said to not contain and reflect sociological issues or the sociological basis as well as the juridical basis for the formation of the Regional Regulation. Meanwhile, the philosophical basis is also less clear because it is formulated repeatedly.

Despite the weaknesses in formulating the basis for its formation, it turns out that in the Ternate City Regulation No. 13 of 2018, the Ternate City Government has tried to create juridical instruments for Micro Enterprises, including the Protection of Micro Enterprises conducting business activities in the Ternate City area.

Article 1 number 12 Ternate City Regulation No. 13 of 2018 provides the understanding that protection is an effort made by local governments to maintain business continuity. According to the Ternate City Regulation No. 13 of 2018 protection of business activities for Micro Business actors is regulated in Chapter III with the title PROTECTION chapter. The scope of the regulation includes: protection of Micro Enterprises, marketing infrastructure, and Leading Product Marketing Institutions;

a. Micro Business Protection

The Regional Government and the business world are obliged to provide business protection to Micro Enterprises in the form of:¹⁵

1. Prevention of market domination and concentration of business by certain individuals or groups that are detrimental to Micro Enterprises;
2. Protection of certain strategic businesses for Micro Enterprises from monopolistic efforts and other unfair competition.
3. Providing legal consultation assistance and defense for Micro Business actors; and
4. Protection of intellectual property rights.

In the elucidation of Article 23 letter d (written letter e) it is explained that what is meant by Intellectual Property Rights are property rights arising from human intellectual abilities which can be in the form of works in the fields of technology, science, art and literature, including: copyright, trademark rights, patent rights, industrial design rights, trade secret rights and others owned by Micro Enterprises.

b. Marketing Infrastructure

Regional Governments can provide facilities and infrastructure that support the marketing of Micro Business products.¹⁶

¹⁵Pasal 23 Perda Kota Ternate No. 13 Tahun 2018.

¹⁶Pasal 24 Perda Kota Ternate No. 13 Tahun 2018.

c. Featured Product Marketing Agency

The Regional Government together with the business world form a regional superior product marketing agency, in the form of a Regional Superior Product Marketing Committee, which consists of elements of the Regional Government, the business world and academia. The Regional Superior Product Marketing Committee is in charge of:¹⁷

- a) carry out research and marketing assessments;
- b) disseminate marketing information;
- c) improve management capabilities and marketing techniques for Micro Enterprises;
- d) provide marketing facilities which include the implementation of market trials, marketing institutions, provision of trading houses, and promotion of Micro Enterprises;
- e) provide product promotion, marketing and distribution network support; and
- f) provide professional consultants in the field of marketing.

If we base on the formulation of the definition of protection as referred to in Article 1 number 12 of the Ternate City Regulation in relation to the provisions of Article 23 paragraph (1) of the Regional Regulation, it can be said that there is a lack of clarity in the regulation where Article 1 number 12 states that protection is an effort made by the regional government to maintain business continuity. but in Article 23 (paragraph (1) it is stated that the Regional Government and the business world are obligated to provide business protection to. That means Article 1 point 12 imposes the protection on the Regional Government but Article 23 paragraph (1) imposes the burden on the Regional Government and the business world of Micro Enterprises. While the definition of the business world according to Article 1 point 15 of the Regional Regulation is not clear because it is defined:

The business world and the community to empower businesses through the provision of facilities, guidance, assistance and reinforcement assistance to grow and improve business competitiveness.

This understanding is actually very much different from the understanding of the business world according to Law no. 20 of 2008, namely:

The Business World is Micro, Small, Medium and Large Enterprises that carry out economic activities in Indonesia and are domiciled in Indonesia.

Based on this, the protection of business activities for Micro Business actors and other business actors is the responsibility of the government which in this context is the Ternate City Government while other business actors have an obligation to comply with the Micro Business protection efforts carried out by the Regional Government.

Law on Micro, Small and Medium Enterprises and its implementing regulations, namely PP no. 17 of 2013 does not regulate the protection of business activities for Micro Business actors (including small and medium enterprises). This is different from PP No. 7 of 2021 which regulates the protection of Micro and Small Businesses. Protection of Micro and Small Businesses includes two things, namely: the provision of legal assistance and assistance services for Micro and Small Businesses, and the Recovery of Micro and Small Businesses. Thus it can be said that the protection against business for Micro Business actors according to PP no. 7 of 2021 covers: (a) the provision of legal assistance and assistance services, and the recovery of Micro Enterprises.

1. Provision of Legal Aid and Assistance Services for Micro Enterprises

The Central Government and Regional Governments are required to provide legal assistance and assistance services to Micro and Small Business actors, at no charge. The legal assistance and assistance services include:

¹⁷Pasal 25 Perda Kota Ternate No. 13 Tahun 2018.

- a. legal counseling;
- b. legal consultation;
- c. mediation;
- d. preparation of legal documents; and/or
- e. assistance outside the court.

To obtain legal assistance and assistance services, Micro and Small Businesses must meet the following requirements:

- a. submit a written application to the Central Government or Regional Government;
- b. have a business registration number
- c. submit documents related to the case.

The Central Government and Regional Governments can provide financial assistance to Micro and Small Businesses that request legal assistance and assistance services provided by other parties. The other parties consist of:

- a. individual who has a license to practice as an advocate;
- b. legal aid agency; or
- c. College.

Legal assistance and assistance services provided by other parties include:

- a. legal consultation;
- b. mediation;
- c. preparation of legal documents;
- d. assistance outside the court; and/or
- e. assistance in court.

2. Implementation of the Protection of Business Activities for Micro Business Actors by the Ternate City Government

Micro Business which is a productive business owned by individuals and/or individual business entities that meet the criteria for Micro Business, namely having a business capital of up to Rp. 1,000,000,000.00 (one billion rupiah), excluding land and buildings for business premises. These business capital criteria are used for the establishment or registration of business activities. In addition, Micro Enterprises must have annual sales of up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah) wherein the proceeds of this annual sale are used for the provision of facilities, protection, and empowerment of Micro Enterprises.

Based on information from the Office of Cooperatives and Small and Medium Enterprises of Ternate City that until 2020 the number of Micro Business actors in Ternate City is 9,424 Micro Business actors.¹⁸ Thus, it can be said that the number of Micro Business actors in the Ternate City area is quite significant. The number of micro-enterprises is inseparable from the City of Ternate as one of the former cities and as a trading center in the province of North Maluku.

From the results of interviews with the respondents above, it is clear that Micro Business actors do not know about the protection of business activities for Micro Business actors if they face problems related to legal issues or related to their business activities due to circumstances beyond their capabilities.

¹⁸ Wawancara langsung dengan Kepala Bidang Pembedayaan Usaha kecil dan Menengah ibu Nur Fitriyanti Sangadji, SH.ME, tanggal 26 Oktober 2021.

The results of interviews with respondents highlight the issue of business licensing, where of the 21 respondents as Micro Business actors only 3 business actors have business permits (Micro Business permits), while 18 other respondents do not have business permits because they have not taken care of them. Based on the search for documents in the form of regional legal products, it turns out that the problem of protecting business activities for Micro Business actors has been regulated in the Ternate City Regional Regulation Number 13 of 2018 concerning Micro Enterprises. Article 23 states the following:

- (1) The Regional Government and the business world are obliged to provide business protection to Micro Enterprises.
- (2) The form of business protection as referred to in paragraph (1) includes:
 - a. prevention of market domination and concentration of business by certain individuals or groups that are detrimental to micro-enterprises;
 - b. protection of certain strategic businesses for Micro-enterprises from monopolistic efforts and other unfair competition;
 - c. protection from acts of discrimination in the provision of empowerment services for Micro Enterprises;
 - d. providing legal consultation assistance and defense for Micro Business actors; and
 - e. protection of intellectual property rights.

If examined further, the regulation of business protection for Micro Business actors as referred to in Article 23 of Regional Regulation No. 13 of 2018 raises problems at the level of practice or implementation.

First, in paragraph (1) it is emphasized that those who are obliged to provide business protection to Micro Enterprises are the Ternate City Government and the business world. The question is who is meant by the business world. In the Regional Regulation it is explained that what is meant by the business world and the community is to empower businesses through the provision of facilities, guidance, assistance and strengthening assistance to grow and improve business capabilities and competitiveness.¹⁹

This understanding is actually different from the understanding of the business world in Article 1 number 5 of Law no. 20 of 2008 which states, the Business World is Micro, Small, Medium Enterprises, and Large Enterprises that carry out economic activities in Indonesia and are domiciled in Indonesia. Thus, it is inappropriate if the business world is given the obligation to provide business protection to Micro Enterprises. So the one who has the obligation should be the Regional Government in terms of the Ternate City Regional Government.

Second, in Article 23 paragraph (2) related to forms of business protection for Micro Enterprises include:

- a. Prevention of market domination and concentration of business by certain individuals or groups that are detrimental to micro-enterprises.
This form of protection is very important, but at the implementation level in the field it turns out to be ineffective because the Ternate City Government actually gave permission to open large businesses such as Alvamidi, Indomart, two sekawan branches which were opened in almost every kelurahan to the detriment of Micro Enterprises.
- b. Protection of certain strategic businesses for Micro Enterprises from monopolistic efforts and other unfair competition;
In the Regional Regulation it is not clear what is meant by certain strategic businesses. This kind of thing then often gives rise to various interpretations making it difficult to implement.
- c. Protection from acts of discrimination in the provision of empowerment services for Micro Enterprises;
This provision is good enough to depend on the empowerment service provider.

¹⁹Pasal 1 angka 15 Perda Kota Ternate No. 13 Tahun 2018.

- d. Providing legal consultation assistance and defense for Micro Business actors;
This provision becomes difficult to implement because it is not clear how to provide legal aid, the terms and procedures for providing legal aid, what about the cost of legal aid, whether it is free of charge. What about legal documents, what is a defense, in what cases are Micro Enterprises given legal assistance, and so on.
- e. Protection of intellectual property rights.
The problem is whether the district/city government or even the provincial government has the authority to provide protection for the intellectual property rights of micro-enterprises. In other words, what aspects are under the authority of the Regional Government related to the protection of intellectual property rights of Micro Enterprises.

Based on the results of direct interviews with 21 respondents, it turns out that no one knows about the role of the Ternate City Government in providing business protection to Micro Enterprises. Respondents also stated that they had never known and had not participated in the socialization. For this reason, so that Micro Business actors know and understand the role of protection, the Ternate City Government should disseminate it to the community, especially the Micro Business community.

Closing

A. Conclusion

Based on the results of the research and discussion as described in the previous chapter, several conclusions can be drawn as follows:

1. Micro Enterprises are regulated together with Small and Medium Enterprises in Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises and its implementing regulations, namely PP. 17 of 2013. However, this statutory regulation has not regulated the existence of business protection by the Government and local governments against Micro Business actors (as well as Small and Medium Enterprises).

Protection of business activities for new Micro Business Actors is explicitly regulated in Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises. However, the regulation does not determine the limits of the authority of each level of government and the classification of the business fields under their authority.

2. The protection of business activities for Micro Business actors by the Ternate City Government has been regulated in Ternate City Regional Regulation Number 13 of 2018 concerning Micro Enterprises, where in this Regional Regulation it is stated that the Regional Government and the Business World are obliged to provide business protection to Micro Enterprises, including: (a) prevention of market domination and concentration of business by certain individuals or groups that are detrimental to micro-enterprises; (b) protection of certain strategic businesses for Micro-enterprises from monopolistic efforts and other unfair business competition; (c) protection from acts of discrimination in providing empowerment services for Micro Enterprises; (d) providing legal consultation assistance and defense for Micro Business actors; and (e) protection of intellectual property rights.

However, the implementation of protection has not been maximized because it turns out that currently many large business actors carry out business activities in various regions so that Micro Business actors experience losses due to the decline in buyers.

B. Recommendation

1. Regulatory makers both at the center and in the regions so that in forming a regulation, whether it is laws, government regulations, other central level regulations or regulations at the regional level, both regional regulations and regional head regulations, they should pay attention to the authority

- of each level of government and the classification of areas of affairs. which are their respective powers;
2. The Ternate City Government needs to reformulate the provisions governing business protection for Micro Business actors so that in addition to legal aid services, it also includes the recovery of Micro Enterprises. It is also recommended to socialize the Ternate City Government program dealing with business protection for micro-enterprises so that they are aware of the policies of the local government.

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