



Protection for Micro, Small and Medium Enterprises Based on Indonesian Law

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Abstract

Legal protection for Micro, Small and Medium Enterprises (MSMEs) is important in the context of Indonesia's economic development. MSMEs have a strategic role in economic growth, job creation and equal distribution of the economy. However, MSMEs are often vulnerable to various challenges and risks, including intense market competition, access to capital and technology, and legal issues.

Keywords: *Protection; MSMEs; Indonesia*

Introduction

Micro, Small and Medium Enterprises or can be abbreviated as MSMEs are productive economic business industries that are developed and managed by the community with the aim of meeting the community's living needs. Currently, Law Number 20 of 2008 has specifically regulated what types of businesses can be classified as MSMEs.¹ Currently, the MSME industry is one of the pillars of driving the Indonesian economy. This can be proven by the fact that a study by the Ministry of Industry stated that the Micro, Small and Medium Enterprises (MSME) industry was able to contribute 60% (sixty percent) to Indonesia's economic development. This shows that the contribution and role of MSMEs to the Indonesian economy is very large. Supported by the fact that MSMEs were able to absorb 97.22% of Indonesia's workforce in the last 8 years from 2016 until now.²

Micro, Small and Medium Enterprises (MSMEs) play an important role in economic development and growth, not only in developing countries, but also in developed countries. Exceptions for small businesses as regulated in Article 50 letter (h) of Law Number 5 of 1999 are possible because MSMEs do not have strong capabilities to compete with large business actors. This is caused, among other things, by the weak capital of MSMEs and their very limited human resource (HR) capabilities. The exclusion of small business actors from the Anti-Monopoly Law also means that small entrepreneurs still

¹ Nabilah Apriani dan Ridwan Wijayanto Said, "Upaya Perlindungan Hukum Terhadap Industri Usaha Mikro Kecil dan Menengah (UMKM) di Indonesia," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 3, no. 1 (2022): 443234.

² Septi Indrawati dan Amalia Fadhila Rachmawati, "Edukasi Legalitas Usaha sebagai Upaya Perlindungan Hukum bagi Pemilik UMKM," *Jurnal Dedikasi Hukum* 1, no. 3 (2021): 231-41.

need protection in order to develop, and for social reasons that the position of small entrepreneurs is weak so that it is deemed impossible to carry out monopoly activities.³

MSMEs must have the ability to compete at the global level to continue to encourage the creation of integrated markets so that they can develop not only at the national level but also at the international level. This means that MSMEs must have opportunities, support, opportunity and legal protection from the government. Because having firm support for each MSME unit is the same as giving support to the economic business built by the people.⁴

Therefore, protection for MSMEs in Indonesia is urgently needed. In this discussion, it will be discussed in the following discussion.

Discussion

Likewise with MSMEs themselves, even though the scale of business run by MSMEs is not a large-scale business, generally an MSME must have a brand, either what is called a trademark or a brand used in service products. So far, MSME players often think that intellectual property is not an important aspect in running their business. This can be supported by the fact that there is still a lack of registration of MSME Marks registered with the Directorate General of Intellectual Property.⁵

In Law Number 15 of 2001, the definition of a trademark is stated. That is, a sign includes images, names, words, letters, numbers, color arrangements, or a combination of these elements which have distinguishing power and are used in trading activities for goods or services.

Brands function to differentiate goods and services from products produced by a company from other companies. A brand exists as an element that is sufficient to differentiate (Capable of Distinguishing) and is valid in the eyes of the law. This means that a brand is used as a legally binding force to differentiate production results, both goods and services, between one company and another. Trademarks can be registered with the Directorate General of Intellectual Property Rights as the agency that has the capacity to register trademarks requested by the trademark owner.⁶

In Indonesia itself, the protection of trademark rights adheres to a constitutive principle with the first-to-file principle. This means that the brand can obtain protection if the brand is first registered with the government through the Ministry of Law and Human Rights and in this case with the Directorate of Intellectual Property. So if an MSME has a product in the form of goods or services but does not register it, then the MSME business actor will lose legal protection for the brand they produce.⁷

Judging from legal philosophy, an effort to protect small businesses is an effort to realize economic justice. This can be done by seeking equality in business opportunities. In this context, justice is an essential legal goal. In essence, law is a rule for realizing justice in social life. This meaning is achieved according to Theo Huijber by including the principles of justice in the regulations for living together.

³ Belardo Prasetya Mega Jaya, Mohamad Fasyehudin, dan Wardatun Naddifah, "Kebijakan Pemerintah Tentang Merek Dalam Memberikan Perlindungan Hukum Terhadap UMKM," *Jurnal Ilmiah Advokasi* 10, no. 2 (2022): 98–105.

⁴ Indrawati dan Rachmawati, "Edukasi Legalitas Usaha sebagai Upaya Perlindungan Hukum bagi Pemilik UMKM."

⁵ Tifania Ayunda Prameswari, "Hak Merek sebagai Upaya Perlindungan terhadap Industri UMKM," *Amnesti: Jurnal Hukum* 3, no. 2 (2021): 97–104.

⁶ Wuri Sumampouw, Kana Kurnia, dan Imam Ridho Arrobi, "Perlindungan hukum terhadap usaha mikro kecil dan menengah pasca pemberlakuan undang-undang nomor 11 tahun 2020 tentang cipta kerja," *Jurnal de jure* 13, no. 1 (2021).

⁷ Taufik Hidayat, Muskibah Muskibah, dan Indriya Fathni, "Pendaftaran Merek Sebagai Bentuk Perlindungan Hukum Pada UMKM," *Zaaken: Journal of Civil and Business Law* 3, no. 3 (2022): 431–47.

In running a business, the goal is to make a profit. So to achieve this, business actors must compete with other business actors. So this has the potential to cause disharmony in competition. This can lead to a condition of injustice. All of these things are nothing but the impact of unhealthy business competition. So to overcome this, it is felt that the government needs to step in to regulate competition. So according to Erman Rajagukguk, a basic moral in business must be realized in strict rules that have sanctions.

So this is where the role of the state is needed in regulating a free competition mechanism, namely to protect the weak. Therefore, the law stated must also contain moral values. So it becomes urgent to seriously implement the Law on the Prohibition of Monopoly and Fraudulent Competition.

Especially in Indonesia itself, there are laws and regulations that regulate business competition, namely Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. It is hoped that this law can run according to its aim, namely to provide equal opportunities for all citizens to participate in the production and distribution process of goods/services.⁸

Business competition carried out in a healthy manner will create business effectiveness and efficiency which will later benefit the consumer community and the companies that implement it. Healthy business competition also affects the small business sector or what is often called MSMEs. Currently, there are many partnerships between MSMEs and large businesses. However, healthy business competition between the two business actors is difficult to achieve. This is because the higher bargaining position of large businesses dominates the market so that it often disadvantages MSMEs with lower bargaining positions. For this reason, supervision by the government is needed in overcoming the problems that MSMEs are vulnerable to, especially in terms of implementing partnerships with large businesses.⁹

The criteria for a company being said to be abusing an irregular bargaining position are implicit in Law no. 5 of 1999. However, the substance of Article 2 of Law no. 5 of 1999 regulates the principles and objectives of business competition law by prioritizing the principles of economic democracy by paying attention to the balance between the interests of business actors and the public interest. The principle of balance of interests is the second principle explicitly stated in Article 2 of Law no. 5 of 1999. The principle of balance of interests according to language is defined as the basis of legal rules that provide equal portions between individual interests and the interests of society so that the interests of individuals and society can be balanced. This means that both large businesses and small and medium businesses get the same business opportunities from the perspective of Law no. 5 of 1999.

Protection of MSMEs is regulated in Article 50 letter h of Law no. 5 of 1999 states that small business actors are exempt from the provisions of this law. This exception is given because with the relatively small capital and assets of MSMEs, MSMEs have limited ability to monopolize the market and to clarify the criteria for MSMEs that are granted exceptions in accordance with Law no. 20 of 2008. Regarding the definition of small business actors, in the explanation of Article 50 letter h, it is explained that business actors who are classified as small businesses are as intended in Law no. 9 of 1995. However, because of Law no. 9 of 1995 has been revoked and replaced with Law no. 20 of 2008, the criteria for small businesses that need to be protected refer to Article 6 paragraph (2) of Law no. 20 of 2008, namely:

- a. Have a net worth of more than IDR 50 million up to a maximum of IDR 500 million, excluding land and buildings where the business is located.
- b. Has annual sales of more than IDR 300 million up to a maximum of IDR 2.5 billion.

⁸ R Juli Moertiono, "PERLINDUNGAN HUKUM TERHADAP IZIN USAHA UMKM PASCA LAHIRNYA UU NO. 11 TAHUN 2020 TENTANG CIPTA KERJA," *Jurnal Ilmiah METADATA* 5, no. 1 (2023): 169–80.

⁹ Fernanda Oktavia Larasati, Salma Nur Khalisa, dan Diah Pudjiastuti, "Upaya Perlindungan Hukum Untuk Mengembangkan UMKM Berdasarkan Undang Undang Cipta Kerja," *Diktum: Jurnal Ilmu Hukum* 10, no. 1 (2022): 132–46.

The form of protection for MSMEs in implementing partnerships is not implicitly regulated in Law no. 5 of 1999, but based on the principle of balance of interests in article 2 of Law no. 5 of 1999, which means that in implementing partnerships, MSMEs and large businesses have the same business opportunities so that the bargaining position of large businesses which is higher than that of MSMEs should not result in unhealthy business competition. Exceptions for MSMEs with limited capital and assets are also regulated in Law no. 5 of 1999. Article 31 paragraph (1) Government Regulation no. 17 of 2013 concerning Implementation of Law no. 8 of 2008 concerning Micro, Small and Medium Enterprises, hereinafter referred to as PP No. 17 of 2013 clearly states that the KPPU is the institution that has the authority to supervise the implementation of partnerships. Furthermore, in Article 31 paragraph 3 PP no. 17 of 2013 gives the KPPU the authority to issue regulations to regulate procedures for monitoring partnerships. In 2015, KPPU issued KPPU Regulation no. 1 of 2015 concerning Procedures for Handling Partnership Implementation Cases. Supervision of the implementation of partnerships aims to prevent abuse of bargaining position which causes a decline in the ability of MSMEs to compete and prevent exploitation of MSMEs which is used to reduce the level of competition in the product market.

To maximize the duties of the Business Competition Supervisory Commission in supervising the implementation of partnerships, the Business Competition Supervisory Commission has formed a new unit tasked with supervising business partnership activities, namely the partnership supervisory directorate, where previously only had two work units, namely the Directorate of Assessment, Policy and Advocacy and the Directorate of Mergers. Business Competition Supervisory Commission Regulation no. 5 of 2016 concerning Amendments to Business Competition Commission Regulation no. 1 of 2014 concerning the Organization and Work Procedures of the Business Competition Supervisory Commission, hereinafter referred to as Perkom No. 5 of 2016 in Article 68A states that the partnership supervision directorate has the function of coordinating activities to supervise partnership implementation. Currently, in accordance with the provisions of Article 68C Perkom no. 5 of 2016, the Business Competition Supervisory Commission has formed task forces in the regions to supervise the implementation of partnerships between MSMEs and large businesses.¹⁰

In the preamble section of the Job Creation Law, it is stated that providing convenience, protection and empowerment for MSEs is placed at the forefront together with cooperatives, including increasing worker protection and welfare. There is a special chapter which describes a number of conveniences for MSMEs, namely Chapter V, for example, from Article 87 to Article 104. If you look at Article 97 and Article 104, MSMEs and cooperatives are given a portion of at least 40 percent of domestic product output for procurement of goods/ government services. As an illustration, the government procurement budget for goods and/or services in 2020 is IDR. 725 trillion so there is great potential for MSMEs to take advantage of this opportunity. Apart from that, the Job Creation Bill also regulates convenience for MSME business actors. Article 13 of the Job Creation Law regulates that the central government provides convenience, empowerment and protection for MSME and cooperative actors in carrying out capital investment.

This form of protection takes the form of fostering and developing MSMEs and cooperatives through partnership programs, training, increasing competitiveness, innovation and market expansion, access to financing, and the widest possible dissemination of information. Also, the ease of doing business for MSMEs can be seen through the exception of minimum wage provisions for micro and small businesses. Article 90 B of the Job Creation Law regulates that the minimum wage for micro and small companies is determined based on an agreement between employers and workers in the company without the need to follow minimum wage standards from the government. Then, in the Job Creation Law, MSMEs do not have to fulfill the obligation to provide reward money or bonuses as intended in Article 92.

¹⁰ Michelle Lucky Madelene dan Jinner Sidauruk, "Implementasi undang-undang cipta kerja dalam perizinan usaha bagi UMKM," *Nommensen Journal of Business Law* 1, no. 1 (2022): 32–46.

Regarding licensing, in the Job Creation Law, licensing provisions are regulated in Article 91, where the article explains that registration of MSMEs can be carried out online or offline, simply by attaching a Resident Identity Card (KTP) and a business certificate from the RT, then MSME business actors can get a Business Identification Number (NIB) through an electronic business permit, while the business identification number is a single permit that applies to all business activities. Furthermore, related to Article 92, Micro and Small Businesses are given convenience or simplification of tax administration in order to apply for financing facilities from the central government in accordance with the provisions of laws and regulations in the field of taxation, in paragraph (2) Micro and Small Businesses that apply for business permits can given incentives in the form of no fees or reduced fees.

Apart from that, the Job Creation Law was also followed up by the government with the issuance of implementing regulations in the form of Government Regulation Number 7 of 2021 concerning Facilitation, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises. In the PP, in particular article 48 paragraphs (1), (2), and (3) which regulate legal protection for MSMEs which reads "(1) The central government and regional governments are obliged to provide legal assistance and assistance services to micro and business actors. Small, (2) Legal assistance and assistance services to micro and small business actors as referred to in paragraph (1) are free of charge, (3) Legal assistance and assistance services include, legal counseling, legal consultation, mediation and assistance in outside the court."¹¹

Then other forms of legal protection regulated in the PP are also listed in Article 51 which essentially provides legal assistance and assistance services to Micro and Small Enterprises, the central government and regional governments at least identify the legal problems faced by MSME actors, provide information to MSME actors regarding forms and methods of accessing legal assistance and assistance services, as well as allocate a budget for program implementation of legal assistance and assistance service activities. Based on the information above, legal protection for MSMEs is well regulated through Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 7 of 2021 concerning Facilitation, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises. Where the central government and regional governments have paid more attention in terms of financing to MSMEs who request legal aid and assistance services such as legal counseling, legal consultation, mediation, and assistance outside of court. where Law Number 20 of 2008 concerning MSMEs previously did not comprehensively regulate legal protection for MSMEs.

Conclusion

Legal protection for Micro, Small and Medium Enterprises (MSMEs) in Indonesia has an important role in supporting the growth and sustainability of MSMEs and their contribution to the country's economy. Several concrete steps have been taken by the Indonesian government to provide legal protection for MSMEs, including regulations for the protection of intellectual property rights, facilitating access to funding, establishing special business entities, and increasing market access.

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¹¹ Halida Zia, "Pengaturan Pengembangan UMKM di Indonesia," *Rio Law Jurnal* 1, no. 1 (2020).

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