

LEGAL PROTECTION FOR MSMEs IN WEST SERAM REGENCY DURING THE PANDEMIC PERIOD

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ABSTRACT

The study aims to examine legal protection for MSMEs during the Covid-19 Pandemic in West Seram Regency. The type of this research is socio-legal research, a combination method between doctrinal and empirical legal research. The results of the study found that the form of legal protection that the West Seram Regency Government could provide to MSMEs, one of which was by issuing a policy of aiding MSMEs who are affected by the pandemic, whether MSMEs were unable to pay instalments or were losing money during the pandemic or for MSME actors even though they did not have debt. In the form of Business Assistance, it is worth Rp. 1,200,000, which was provided for twice a year to assist the business. However, there are challenges in the policy implementations because not all MSME owners can receive this assistance.

Keywords: MSME; Legal Protection; Pandemic

INTRODUCTION

Every country has specific goals. The state's goal or direction is an important issue due to the state's structure and controls and how the populace's lives are interlinked with the goal. The state purpose also could be interpreted as the state's vision, which aimed to create prosperity, prosperity, and happiness for its people (*bonum publicum*, common good, commonwealth)¹.

1945 Indonesian Constitution proposed the purpose of the Indonesian state (UUD 1945) as mentioned under paragraph IV (fourth) of the Preamble to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out a world order based on independence, eternal peace, and social justice.² Thus, the policies and regulations that are born must pay attention to the country's goals.

The community's economy is empowered and advanced to create people's welfare. One of the instruments that the government can utilize to empower and advance the community's economy is by empowering small and medium enterprises. Micro, Small and Medium Enterprises (MSMEs) are an essential part of the economy of a country or region, and Indonesia is no exception. Based on Article 1, paragraphs 1, 2 and 3, as well as Article 6, paragraphs (1), (2)

and (3) of Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises, illustrates that micro, small and medium enterprises (MSMEs) play an essential role for the national economy. This is because MSMEs provide access to job opportunities from various business sectors. The MSME business sectors are very varied, ranging from industry, services, informal, and agricultural and plantation business sectors. Among these business sectors, the agricultural sector absorbs the most labor.

In the development of the national economy in Indonesia, the priority is Micro, Small and Medium Enterprises. MSMEs are the backbone of the populist economic system to reduce poverty problems, and their development can expand the economic base. It can make a significant contribution to improving the regional economy and national economic resilience.

Micro, Small, and Medium Enterprises are abundant business opportunities owned by individuals or groups and meet all the criteria for micro-enterprises as regulated by law. Micro, Small and Medium Enterprises in Indonesia are the main factors contributing to economic growth. Micro-enterprises are business activities that can expand employment opportunities and provide economical services to the broader community and can play a role in the process of equity and increase people's income, stimulate economic growth, and play a role in realizing national stability. Thus, it is not surprising that MSMEs are the focus of the government's attention in developing the country's economy.

In December 2019, the first case of mysterious pneumonia was reported in Wuhan, Hubei Province. The source of the transmission of this case is still unknown, but the first case was linked to a fish market in Wuhan. From December 18 to December 29 2019, five patients were treated with Acute Respiratory Distress Syndrome (ARDS).³

From December 31, 2019, to January 3, 2020, this case increased rapidly, marked by the reported 44 cases. In less than a month, the disease has spread to other provinces in China, Thailand, Japan, and South Korea. The sample under study shows the aetiology of the new coronavirus. Initially, this disease was temporarily named as 2019 novel coronavirus (2019-nCoV), then WHO announced a new name on February 11, 2020, namely Coronavirus Disease (covid-19) caused by the Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2).⁴

Indonesia is also affected by this virus. As of May 2020, there were 4,218,212 cases and 290,242 deaths worldwide. Meanwhile, there have been 16,006 positive cases of COVID-19 and 3,518 recoveries in Indonesia. In comparison, 1,043 cases have died.⁵ This virus automatically also affects the social and economic life of the Indonesian people, including the people of West Seram Regency. One of the regencies in Maluku Province is also affected by the COVID-19 pandemic, especially for MSMEs in the region, which amount to 10,000 units are spread evenly in each district consisting of 11 sub-districts with a total of 92 villages and 112 hamlets as the results of the interview with Ibrahim Tuharea, Head of the Department of Cooperatives and SMEs of West Seram Regency. Based on the explanation above, the authors are interested in analyzing how the legal protection of the West Seram Regency Government against MSMEs during the covid-19 pandemic. This writing focuses on analyzing legal protection for MSMEs during the Covid-19 pandemic in West Seram Regency.

METHOD

Following the problems and objectives of this research, the type of research used is socio-legal research, which is a combination research method between doctrinal legal research

³Ibid.

⁴World Health Organization, "Naming the Coronavirus Disease (COVID-19) and the Virus That Causes It," *Geneva: World Health Organization*.

⁵Republik Indonesia, "Angka Penyebaran Covid-19," last modified 2020, <https://www.covid19.go.id/>.

methods and empirical legal research methods. Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem under study. Empirical research is intended to identify legal protection for MSMEs in West Seram Regency during the pandemic.

ANALYSIS AND DISCUSSION

The Effect of the Covid-19 Pandemic on MSMEs in West Seram Regency

MSMEs are productive business units that stand alone and are carried out by individuals or business entities in all economic sectors. In principle, the distinction between micro, small, medium and large enterprises is generally based on the initial asset value (excluding land and buildings), the average annual turnover, or the number of permanent workers. However, the definition of MSMEs based on these three measuring tools differs by country. Therefore, it isn't easy to compare the importance or role of MSMEs between countries.⁶

The definition of MSMEs regulated in the Law of the Republic of Indonesia Number 20 of 2008 concerning MSMEs. Chapter 1 (General Provisions), Article 1 of the Law states that micro-enterprises are productive businesses owned by individuals and individual business entities that fulfil micro-enterprises as stipulated in the Law. A small business is a productive economic business that stands alone, carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become part of either directly or indirectly from micro-enterprises or large businesses that meet the criteria. Small business as stipulated in the Law. Meanwhile, medium-sized businesses are productive economic businesses that stand alone and are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become part of either directly or indirectly from micro, small or large businesses. that meet the criteria for micro-enterprises as referred to in the Act. Based on Law Number 20 of 2008 concerning MSMEs, the definition of each business is as follows:

- a. Micro Business is a business with a net worth of less than 50 million rupiah or generating sales of less than 300 million rupiah for one year.
- b. A small business has a wealth of between 50 to 500 million rupiah or generates sales between 300 million to 2.5 billion rupiah for one year
- c. Medium-sized businesses are businesses with a wealth of between 500 million to 10 billion rupiah or generate sales of between 2.5 to 50 billion rupiah for one year.

The West Seram Regency cannot be separated from the impact of this virus so that it also affects all the lives of its people, including MSME actors. MSME actors were forced to close their businesses due to the implementation of Large-Scale Social Restrictions (PSBB) by the Central Government based on Government Regulation No. 21 of 2020 concerning Government Regulations (PP) concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19).

By not operating the business belonging to these MSME actors, they do not get profits and have difficulty financing operations and raw materials. It will certainly affect the ability of MSME actors to carry out their obligations as debtors for those who do have credit or debt, either to banks or to non-bank financial institutions such as cooperatives.

MrNokeHatumena, is one of the many MSME actors who take advantage of bank credit facilities to start their business by trading necessities in Eti Village, West Seram. He explained that initially, he borrowed Rp25,000,000 (Twenty-Five Million Rupiah) to start his business

⁶Tambunan Tulus. (2012). *Usaha Mikro Kecil Dan Menengah Di Indonesia*. Jakarta: LP3ES, p. 11.

in 2015, and the loan amount increased to Rp250,000,000 (Two Hundred and Fifty Million Rupiah), which was used to expand his business.

During the pandemic, MrNokeHatumena experienced a turnover decline, so he began to have difficulty paying his obligations to make instalment payments at the bank. He admitted that he did not know about credit restructuring, which aims to help and ease debtors in paying their monthly instalments due to the Covid-19 pandemic. Loss in running their business.

The Covid-19 pandemic is not only burdensome for MSME actors who have loans at banks or other financial institutions. Mrs. Tiwik, who sells necessities in the Gemba sub-district, also admitted that she experienced a significant decline in profits during the Covid-19 pandemic. Even though he did not start a business with personal capital and has no debt, he hopes to get help from the government because this business is the only business supporting his family. It is a pity that, according to him, he never received any assistance from the government during the pandemic. He only tried to maintain the price and quality of his merchandise so that he would not continue to lose money.

In contrast to MrNokeHatumena and Mrs. Tiwik, Mr. Ode Ali, a trader in Piru, the capital of West Seram Regency who sells necessities and refills bottled water, explained that despite experiencing a decline in turnover during the pandemic, he received assistance from the government. He said that the assistance was obtained from the Cooperatives and UMKM Office twice with a total amount of Rp.2,400,000 (Two Million Four Hundred Rupiah) so that it could help businesses that support the family's economy.

Legal Protection of the West Seram Regency Government for MSMEs

According to R. La Porta in the Journal of Financial Economics, the form of legal protection provided by a country has two properties, namely preventive and punishment.⁷ The most apparent form of legal protection is the existence of law enforcement institutions such as courts, prosecutors, police, and other non-litigation dispute resolution institutions. Thus, it is in line with SoedjonoDirdjosisworo's understanding of the law which states that law has various meanings in society, and one of the most obvious of the notions of law is the existence of law enforcement institutions.

Law enforcement in the form of legal protection in economic activities, especially investment, cannot be separated from the legal aspects of the company, especially regarding limited liability companies, because legal protection in investment involves several business actors, including investors, directors, commissioners, permit givers and power holders, and parties supporting the occurrence of investment activities such as notaries where the parties are dominated by legal subjects in the form of legal entities in the form of limited liability companies.⁸

There are two legal subjects in civil law, namely individual legal subjects, and legal subjects in the form of legal entities. According to the law, the legal subject of an individual or *natuurlijkpersoon* is a person or human who has been deemed competent. People as legal subjects are supporters or bearers of rights from they are born alive until they die. Although there are exceptions that babies who are still in their mother's womb are considered to have become legal subjects as long as their interests support it.⁹

It can be concluded that legal protection is an activity to maintain or maintain the community in order to achieve justice. Legal protection is constructed as a form of service, and the subject

⁷Rafael La Porta. (1999). *Investor Protection and Corporate Governance*, " *Journal of Financial Economics* 58, p.9.

⁸Sutantya R. Hadhikusuma dan Sumantoro. (1996). *Pengertian Pokok Hukum Perusahaan : Bentuk-Bentuk Perusahaan Yang Berlaku Di Indonesia*. Jakarta: PT Raja Grafindo Persada, p.5-8.

⁹H.R. Sardjono dan Frieda Husni Hasbullah,. (2003). *Bunga Rampai Perbandingan Hukum Perdata*. Jakarta: Indhill, p.143.

is protected.¹⁰The right itself is something we have to get while the obligation is something we have to do. A contract will give rise to a legal engagement relationship which results in the emergence of rights and obligations. The fulfilment of these rights and obligations is the legal consequence of the existence of a contract. In other words, the actual legal consequences of the contract are the implementation of the contents of the contract itself.

Article 1339 of the Civil Code states that a contract is not only binding on things that are expressly stated in the contract but also everything that, by its nature, the contract is required or required by custom and law.

Understanding of Law according to J.C.T Simorangkir, as quoted by C.S.T Kansil, "Laws are coercive regulations, which determine human behaviour in the community environment made by authorized official bodies, which violations of these regulations result in action being taken, namely with a certain punishment".¹¹According to the Legal Dictionary, the definition of law is "rules that are coercive that determine human behaviour in the community, made by authorized official bodies, violations of these regulations result in action being taken."¹²Sudikno Martokusumo also states the definition of law: "law is a collection of rules or rules that are general and normative, the law is general because it applies to everyone, and is normative because it determines what should be done, what should not be done or should be done and determine how to implement compliance with the rules."¹³

According to Satjipto Raharjo, the function of law is to protect a person's interests by allocating power to him to act in the context of that interest. The allocation of this power is carried out measurably, in the sense that its breadth and depth are determined.¹⁴Protection is providing guarantees of peace, security, welfare and peace from protection to those who are protected against all dangers or risks that threaten them. According to Soedjono Dirdjosisworo that the meaning of law can be seen from eight meanings, namely law in the sense of rulers, the law in the sense of officers, law in the sense of the attitude of action, law in the sense of a system of rules, law in the sense of values, law in the sense of legal order, law in the sense of the meaning of legal science, the law in the sense of legal discipline. Soedjono Dirdjosisworo illustrates that the law is not merely written legislation and law enforcement officers as understood by the public who do not know about the law. But the law also includes things that live in the community.¹⁵

Linguistically, the word protection in English is called protection. The term protection, according to the KBBI can be equated with the term protection, which means the process or act of protecting, while according to Black's Law Dictionary, protection is the act of protecting.¹⁶Protection, in general, means protecting something from harmful things, which can be in the form of interests, objects, or goods. In addition, protection also contains the meaning of protection given by someone to someone weaker. Thus, legal protection means that with all the government's efforts to ensure legal certainty to protect citizens so that their rights as citizens are not violated, and those who violate will be subject to sanctions according to existing regulations.

The definition of *legal protection* is protection given to legal subjects in the form of legal instruments, both preventive and repressive, written, or unwritten. In other words, legal

¹⁰Salim HS dan Erlies Septiana Nurbaini, (2013). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, cet. 1*. Jakarta: PT. Rajagrafindo Persada, p. 261.

¹¹C.S.T. Kansil. (1989). *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, 8th ed. Jakarta: Balai Pustaka, p.38.

¹²R.Subekti dan Tjitrosoedibio, (1999). *Kamus Hukum*. Jakarta: Pradnya Paramita, p.49.

¹³Sudikno Martokusumo. (2005). *Mengenal Hukum Satu Pengantar*. Yogyakarta: Liberty, p.4.

¹⁴Satjipto Raharjo. (2006). *Ilmu Hukum*. Bandung: Citra Aditya Bakti, p.18.

¹⁵Soedjono Dirdjosisworo. (2008). *Pengantar Ilmu Hukum*. Jakarta: PT Raja Grafindo Persada, p.25-43.

¹⁶Garner Bryan A. (2009). *Black's Law Dictionary, Ninth Edition*, ed. West. St. Paul, p.1343.

protection is a description of the function of the law itself, namely the concept that the law can provide justice, order, certainty, benefit, and peace.

The opinions quoted from several experts regarding legal protection are as follows:

1. According to Philipus Hadjon there are two legal protections for the people, namely:¹⁷
 - a) Preventive legal protection means that people are given the opportunity to submit their opinions before the government's decision gets a definitive form which aims to prevent disputes from occurring.
 - b) Referential legal protection aimed at resolving disputes. *Legal protection* is a guarantee given by the State to all parties to exercise their legal rights and interests in their capacity as legal subjects.
2. According to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating a Human Rights power to him to act in the context of his interests.¹⁸

Protection, in general, means protecting something from harmful things, which can be in the form of interests, objects, or goods. In addition, protection also contains the meaning of protection given by someone to someone weaker. Thus, legal protection means that with all the government's efforts to ensure legal certainty to protect citizens so that their rights as citizens are not violated, those who violate will be subject to sanctions according to existing regulations.

The definition of *legal protection* is protection given to legal subjects in the form of legal instruments, both preventive and repressive, written or unwritten. In other words, legal protection is a description of the function of the law itself, namely the concept that the law can provide justice, order, certainty, benefit, and peace.

One of the forms of legal protection that the West Seram Regency Government can provide to MSMEs is by issuing a policy of assisting MSMEs affected by the pandemic, whether MSMEs are unable to pay instalments or are losing money during the pandemic or for MSME actors even though they do not have debt in the form of Business Assistance in the form of cash worth Rp. 1,200,000 twice in the hope that it will help their business.

In addition to financial assistance for MSMEs during the pandemic, the West Seram Regency Government, through the Cooperatives and MSMEs Service, has run several programs before the pandemic to encourage the development of MSMEs. The training program includes marketing management training, understanding intellectual property rights and policies that facilitate business licenses for the legality of business for MSME actors.

In the author's opinion, this policy has not been maximized because, based on the results of interviews with traders from 3 different locations in the West Seram Regency area, not all of them received financial assistance. It indicates that the execution of the policy has not met the expectations of the local government. It is necessary to conduct an evaluation, especially for the Cooperatives and MSMEs Office of West Seram Regency, starting from data collection on MSME actors in all districts and clear and transparent mechanisms so that the assistance can be right on target to realize legal protection for MSME actors throughout the West Seram Regency. It is affected by the Covid-19 pandemic.

CONCLUSION

The Covid-19 pandemic has also affected MSMEs in West Seram Regency. MSME Business Actors in West Seram Regency totalling 10,000 units are spread evenly in each district consisting of 11 sub-districts with a total of 92 villages and 112 hamlets experiencing a significant decline in turnover so that it has an impact on their business both for MSME actors who should pay

¹⁷ Philipus.M. Hadjon. (1988). *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, p.5.

¹⁸ Satjipro Rahardjo. (2003). *Sisi-Sisi Lain Dari Hukum Di Indonesia*. Jakarta: Kompas, p.121.

their business loan instalments at a bank or financial institution or who do not have a loan. The efforts of the West Seram Regency Government through the Cooperatives and MSMEs Service to provide legal protection for MSMEs in their area through the distribution of assistance in the form of funds is a positive step considering the decline in turnover experienced by MSMEs in this region. However, the execution of the policy still has shortcomings because not all MSME actors have been able to enjoy this assistance. Thus, legal protection for MSMEs in West Seram Regency has not been carried out optimally and has the potential to endanger the existence of MSMEs in the area if there are no evaluation and concrete steps by the local government.

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