

Legal Protection for Small and Medium Enterprises (SMEs) in Facing Unfair Business Competition

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ABSTRACT: In the context of toxic business competition, this research investigates the legal protection of Micro, Small, and Medium Enterprises (MSMEs) in Indonesia, particularly in partnerships with large corporations. The primary emphasis is on the implementation of Law Number 5 of 1999, which prohibits monopolistic practices and unfair business competition, and Law Number 20 of 2008, which pertains to small and medium-sized enterprises. Data was collected from literature studies, pertinent regulations, and in-depth interviews with relevant stakeholders using a qualitative approach and a case study design. The research results show that although the legal framework already exists, effective implementation still requires improvement. MSMEs face various challenges in partnerships with large companies, including access to resources and greater risks in business transactions. Recommendations are prepared to strengthen legal protection through regulatory revisions, strengthening legal institutions, legal education, developing partnerships, and stricter law enforcement. The main aim is to increase fairness in business relations between MSMEs and large companies, as well as support inclusive and sustainable economic growth in Indonesia. It is hoped that the implications of this research can provide a positive contribution in renewing policies that support the development of MSMEs as the backbone of the national economy.

Keywords: MSMEs, unhealthy business competition, legal protection

INTRODUCTION

The provisions of Law Number 5 of 1999, which pertains to the prohibition of monopoly practices and unfair business competition in Indonesia, are the primary focus of business competition law (Faujura, Gultom, & Sudjana, 2021). (Azizah A, 2013) stated that the purpose of this law is to establish a market economy that is both effective and efficient, prevent monopolistic practices and unhealthy competition, and promote the welfare of the populace. This information is derived from Article 3 of Law Number 5 of 1999 (Bartels, 2001). The purpose of the establishment of Law Number 5 of 1999 is to protect public interests and enhance national economic efficiency in order to enhance the welfare of the populace, establish a business environment that is conducive to healthy competition, and guarantee that all business actors, regardless of their size, have equal opportunities (Juwana et al., 2003).

The objective of national economic development is to enhance the welfare of the entire Indonesian populace, rather than specific individuals or groups, in accordance with the 1945 Indonesian Constitution, particularly Article 33 paragraph (1) (Ruslina, 2012). Therefore, in order to realize the objectives of prosperity and prosperity, the national economy must be founded on the principle of affinity and cooperation To accomplish this objective, it is crucial

to ensure that Micro, Small, and Medium Enterprises (MSMEs) in Indonesia are afforded sufficient legal protection (Krisnawati & Hussein, 2016).

Micro, Small and Medium Enterprises (MSMEs) are a productive economic sector developed and run by the community to meet their living needs (Harsono, 2014). Law Number 20 of 2008 specifically regulates the types of businesses that fall into the MSME category (Indrawati, 2019). MSMEs are generally owned by both individuals and business entities, which produce various products such as handicrafts, food, processed plants, and others. Every MSME product has important material and immaterial value (Prihanta, Zainuri, Hartini, Syarifuddin, & Patma, 2020), so it is important to provide adequate legal protection for these products.

Currently, MSMEs are one of the main pillars in driving the Indonesian economy, which is proven by their contribution reaching 60% to national economic development (Ministry of Industry, data for unspecified year) (Saputra & Ali, 2022). Apart from that, MSMEs are also significant in creating jobs, absorbing around 97.22 % of Indonesia's workforce in the last five years (2016-2021). Overall, MSMEs not only play a role as contributors to state income and the local economy, but also in empowering communities and opening new markets (Kau, Podungge, Umar, Payu, & Supu, 2024).

Research conducted by (Artharini, 2023), states that legal protection for Micro, Small and Medium Enterprises (MSMEs) in the context of partnerships with large companies is based on Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Although this law establishes the principles of economic democracy and balance of interests, the specific legal protection for MSMEs in partnerships is still lacking in detail. Supervision by the Business Competition Supervisory Commission (KPPU) has developed through regulations such as Commission Regulation no. 1 of 2015 and No. 5 of 2016. This research aims to evaluate the effectiveness of current legal protection for MSMEs in partnerships, as well as to identify improvements needed to increase protection and fairness for MSMEs in business relationships with large companies.

(Arliman, 2017) conducted additional research that indicated that legal protection for Micro, Small, and Medium Enterprises (MSMEs) is particularly important in the context of partnerships with large companies, particularly in relation to the implementation of Law no. 5 of 1999, which prohibits monopolistic practices and unfair business competition. Even though the law emphasizes the principles of economic democracy and balance of interests, concrete legal protection for MSMEs in the context of partnerships still needs to be further detailed. This research will also highlight the problems faced by MSMEs such as marketing difficulties, financial limitations and technological constraints, as well as propose steps to improve policies and strategies for empowering MSMEs to increase protection and fairness in their business relationships with large companies.

Based on the discussion above, it is important to provide adequate protection for MSMEs in facing the challenges of unhealthy competition, such as monopolistic practices and unfair business competition. In this context, Law no. 5 of 1999 is the main legal basis that regulates the principles of economic democracy and balance of interests, but concrete protection for MSMEs in partnership with large companies still requires improvement. By identifying the obstacles faced by MSMEs such as marketing difficulties, financial limitations and technological challenges, it is hoped that this research can provide policy recommendations aimed at improving their legal protection.

This research aims to investigate legal protection for Micro, Small and Medium Enterprises (MSMEs) in the face of unhealthy business competition, especially in the context of partnerships with large companies as regulated in Law no. 5 of 1999 concerning Prohibition

of Monopolistic Practices and Unfair Business Competition. MSMEs have an important role in the Indonesian economy with a significant contribution to national development, including the creation of large job opportunities and employment which reached around 97.22 % of the total workforce in the last five years. The existence of MSMEs is not only a contributor to state income, but also in driving the local economy and empowering communities through opening new markets.

The benefits of this research include increasing fairness in business relations between MSMEs and large companies as well as strengthening a healthy business competition climate in Indonesia. By providing adequate legal protection, it is hoped that MSMEs can develop more sustainably and contribute more to inclusive national economic growth. The implication of this research is the potential to bring positive changes in regulations and legal protection practices for MSMEs, which will ultimately support the achievement of national welfare goals in accordance with the principles of the Indonesian Constitution, especially Article 33 paragraph (1) which emphasizes the aim of improving the welfare of all Indonesian people through equitable economic development.

RESEARCH METHODOLOGY

This research employs a qualitative approach with a case study design. This approach was chosen to thoroughly investigate legal protection for Micro, Small, and Medium Enterprises (MSMEs) in the context of partnerships with large corporations in Indonesia, focusing on the implementation of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Data for this study were obtained through extensive literature review of legal documents such as Law No. 5 of 1999 and its implementing regulations, as well as relevant literature studies. Additionally, data were collected through in-depth interviews with stakeholders including representatives from MSMEs, large corporations, and related institutions such as the Business Competition Supervisory Commission (KPPU). Data analysis was conducted qualitatively using a thematic approach, where data from interviews and literature were analyzed to identify common patterns, challenges, and potential improvements in legal protection for MSMEs engaged in partnerships with large corporations. Analytical steps included data coding, theme grouping, and interpretation of findings to uncover relevant patterns or conclusions regarding legal protection for MSMEs.

RESULT AND DISCUSSION

Implementation of Law no. 5 of 1999 regarding MSMEs

Everyone has the right to run a business to meet the daily needs of their family (Arsjad, Hunawa, Nuna, & Walahe, 2022). In the context of an increasingly advanced economy, business competition is increasingly competitive and can give rise to unhealthy business competition practices (Rahmadini, 2019). This occurs when business actors compete to obtain maximum profits without considering the detrimental impact on other parties. Many of them use practices such as abuse of bargaining position to eliminate competitors, which in the end can hinder income distribution and threaten the sustainability of small and medium enterprises (MSMEs).

MSMEs are the foundation of the Indonesian economy, providing substantial support to all business entities (Marlinah, 2020). Law Number 20 of 2008 differentiates MSMEs based on wealth and income criteria, thereby ensuring that this sector is adequately protected by legal measures. Nevertheless, Law no. 5 of 1999, which is dedicated to the prevention of

monopolistic practices and unfair business competition and prioritizes the principles of economic democracy and balance of interests, does not yet explicitly address the abuse of dominant bargaining positions, which frequently have a detrimental impact on SMEs (Sari, 2015).

The Business Competition Supervisory Commission (KPPU) has issued regulations such as KPPU Regulation no. 5 of 2011 which emphasizes the prohibition of practices such as Tying Agreements, which can strengthen protection for MSMEs in partnerships with large companies (Maulana, 2017). However, more effective protection is needed through revisions to laws that explicitly regulate abuse of dominant bargaining positions, thereby providing better legal certainty for MSMEs in running their businesses.

Stricter regulation of unfair business competition practices will support the creation of a fairer and healthier business climate, both for MSMEs and for the sustainability of the national economy as a whole.

Challenges Faced by MSMEs in Partnerships with Large Companies

The role of MSMEs has strategic value in strengthening the national economy, so it is important for the government to provide adequate attention in the form of strategies and policies that support their empowerment. MSMEs should be well integrated into the national business ecosystem to improve their standard of living and competitiveness. Since the transition from the old order to the new order to the reform era, economic development has been the main focus of the Indonesian government. The desire to overcome backwardness and poverty from the past encourages the government to build an economy that can lead to progress and prosperity of society, this principle continues to be adhered to in the reform era.

However, the dominant growth focus on large companies has resulted in MSMEs being marginalized, even though they are much larger in number and involve more people. This process takes place without sufficient consideration of its impact on MSMEs, which are the backbone of the people's economy. Policies that prioritize economic growth with the hope of a trickle-down effect are still the main strategy, even though the real challenges in integrating MSMEs in the national economic value chain have not yet been fully resolved.

Sustainable economic development requires changes in policies, regulations and implementation mechanisms that can accommodate the diversity and dynamics of the Indonesian economy. This effort must carefully consider the interests and contributions of MSMEs to achieve greater equality and prosperity for all levels of society.

MSMEs often face several challenges in establishing partnerships with large companies. One of them is access to sufficient resources and capital to be able to compete fairly in an increasingly competitive market. Large companies often have advantages in terms of financial resources, technology and wider networks, while MSMEs are often limited in this regard.

Apart from that, differences in operational and managerial capacities are also an obstacle. MSMEs may not have the ability to meet certain standards or requirements set by large companies, such as in terms of product quality, production volume, or required management systems.

Not only that, another challenge is the greater risk for MSMEs in this partnership. For example, depending on the terms of the contract that may be binding, an MSME may face greater financial or legal risks if the partnership does not work out as expected or problems arise with the large company.

In facing these challenges, it is important for the government and other stakeholders to develop specific supporting policies and programs to strengthen the capacity of MSMEs. This includes support in terms of financial access, skills training, product development, as well as

access to wider markets through a fair and sustainable partnership platform between MSMEs and large companies.

Law Number 20 of 2008, which is also known as the Partnership Law, is a reflection of the Indonesian government's efforts to overcome the economic challenges of the MSME sector. MSMEs play a central role in the national business structure by making a significant contribution to employment and economic diversity. Protecting and improving MSMEs is key to inclusive and sustainable economic growth in Indonesia, considering obstacles such as limited access to capital, markets, technology and necessary support.

This law provides a strong legal basis for regulating relations between large businesses and MSMEs, preventing domination that can harm MSMEs and promoting healthy and fair partnerships. This is important so that MSMEs can grow and develop in a competitive business environment.

In case Number 02/KPPU-K/2020, there is an alleged violation of Article 35 paragraph (1) of Law No. 20 of 2008. This article emphasizes the importance of a healthy partnership relationship between large businesses and MSMEs, which is an important instrument in maintaining balance and healthy business competition in a diverse business ecosystem.

To prove the occurrence or absence of a violation of Article 35 paragraph (1) of Law no. 20 of 2008, the Commission Council considers several key elements as a basis for determination. These elements form the framework for decision making by the Commission to assess whether there is a violation of these provisions.

In the analysis of the first element, the Commission Council concluded that the Reported Party was classified as a large business based on the business capital criteria that had been determined. This has implications for assessing whether the partnership relationship between large businesses and MSMEs is running in accordance with existing regulations. The second element considers the definition of MSMEs which are grouped based on business capital criteria or annual sales results, which provides an in-depth understanding of the status of the Reported Party in this case. The third element of analysis relates to the implementation of partnership relationships between core companies and plasma farmers, which must fulfill certain provisions in accordance with applicable regulations. Finally, the fourth element highlights the understanding of "owning and/or controlling" which is the main focus in this case. The Commission identified that the Reported Party did not comply with the corrective order regarding the addendum to the partnership agreement.

Through in-depth analysis of these elements, the Commission Council decided that the Reported Party violated Article 35 paragraph (1) of Law no. 20 of 2008. This decision underlines the commitment to maintain healthy business competition and provide appropriate sanctions for violations committed, in line with applicable business competition law principles.

Recommendations for Increasing Legal Protection

To improve legal protection for MSMEs in partnership with large companies, there are several recommendations that can be considered based on mapping the need for improvements in regulations and policies, as well as developing strategies to improve fairness in business relationships:

a. Revision of Legal Protection Regulations and Policies:

There is a need to revise and refine regulations that ensure equal legal protection for MSMEs in partnership with large companies. Regulations must take into account MSMEs' needs for protection against the dominant position of large companies, fair dispute resolution, and easy access to legal enforcement mechanisms.

b. Strengthening Legal Institutions:

Strengthen legal institutions tasked with handling business disputes between MSMEs and large companies. This includes increasing the capacity of judicial institutions, continuing alternative dispute resolution (ADR) mechanisms, and better understanding the legal rights of MSMEs.

c. Legal Education and Public Awareness:

Encourage public awareness, especially MSMEs, of their legal rights and available dispute resolution procedures. This can be done through legal education programs, training, and providing easily accessible information about legal rights and available protections.

d. Partnership and Network Development:

Encourage the formation of partnerships between MSMEs, large companies, and legal institutions to increase MSMEs' access to the resources and knowledge needed to navigate complex business environments.

e. Strict Supervision and Law Enforcement:

Ensure strict supervision of unfair business practices or abuse of dominant positions by large companies against MSMEs. This includes law enforcement against monopolistic practices, cartels, or other forms of anti-competitive behavior.

f. Increased Access to Capital and Technology:

Helping MSMEs to access the capital and technology needed to compete more fairly with large companies. This can be done through financial support programs, managerial training and access to relevant technology platforms.

The implementation of these recommendations is expected to reduce the fairness gap in business relations between MSMEs and large companies, as well as encourage inclusive and sustainable economic growth in Indonesia.

CONCLUSION

This research underscores the significance of providing Micro, Small, and Medium Enterprises (MSMEs) with sufficient legal protection in order to confront the obstacles of unjust business competition, particularly in the context of partnerships with large corporations. The principles of economic democracy and balance of interests are primarily regulated by Law Number 5 of 1999, which pertains to the prohibition of monopolistic practices and unfair business competition. However, concrete protection for MSMEs in partnerships still requires further improvement to ensure fairness and sustainability of their businesses.

This research identifies several challenges faced by MSMEs, such as limited access to capital, technology and markets, as well as higher risks in partnerships with large companies. Research recommendations include revising regulations to strengthen legal protection, strengthening legal institutions that handle business disputes, legal education to increase public awareness, and developing partnerships and networks between MSMEs and large companies.

By implementing these recommendations, it is hoped that MSMEs can compete better and contribute more to inclusive national economic growth. Effective legal protection for MSMEs is not only important to maintain a healthy economic balance, but also to ensure that all parties can enjoy the benefits of sustainable economic development, in accordance with the principles of the Indonesian constitution.

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