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# Legal Effectiveness of Guaranteeing Ease of Practicing Business for Micro, Small, and Medium Enterprises (MSMEs) in Capital and Licensing in Indonesia

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**Abstract**

MSMEs are important for economic growth, where MSMEs are directly related to people's welfare following Article 33 of the 1945 Constitution. Generally, MSME actors are simple or medium-sized people, or small communities, which is why MSMEs, since the occurrence of Covid-19, have had a great impact on business, with the social restriction policy implemented by the government hitting many MSMEs because many businesses have closed causing bad credit and many other problems. The main problem of this research is how effective the law is in providing ease of doing business for MSMEs. Even though there is Job Creation Law No. 11 of 2020, MSMEs are still experiencing difficulties. This research study aims to see the effectiveness of the law in facilitating MSMEs in Indonesia; even though Law Number 11 of 2020 concerns Job Creation, ease of doing business for MSMEs still needs to be realized because Law No. 11 of 2020 only regulates the main things.

## 1. Introduction

The importance of the position of Micro, Small, and Medium Enterprises (MSMEs) in national economic growth has caused the government to seek innovations to facilitate the development (MSMEs) in Indonesia (Susanto et al., 2022). Especially since Covid 19 2020, MSMEs have been most affected by the social restriction policy developed by the government related to the quiet business and business activities carried out by SMEs. In order to accelerate economic growth and simplify the

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system, the Risk-Based Online Submission System (OSS RBA) was launched. The formation of the 2020 Job Creation Law is more in favor of big business and foreign investment. The government is seen as only pursuing an increase in the ease of rating for foreign investment and large-scale businesses and ignoring MSMEs. Article 3 of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (Widodo et al., 2022). Getting attention, protection, and empowerment from the government through government policies that are pro-MSMEs, and policies on ease of doing business for MSMEs are eagerly awaited by the people who are mostly engaged in this activity (Riananda et al., 2022).

The ease of practicing business for MSMEs continues to be a problem in Indonesia because, with the enactment of Covid 19, MSMEs have become a trigger in trying to get maximum profits (Arie & Fikry, 2021). In 2020 a new Law was, namely, Law No. 11 of 2020 concerning Job Creation is also expected to be a new milestone for MSMEs, but it continues to need fixing. The difficulty of MSMEs in developing their business and the difficulty in obtaining working capital are indicators of the ineffectiveness of laws created to facilitate business for MSMEs. Many MSMEs have bankrupted their businesses and need help to repay the loan capital at the bank, which causes bad credit.

The regulation on the ease of doing business in the Job Creation Law is only superficial and not basic because what is regulated is only aspects of starting a business and only regulates some aspects of MSME business. These conveniences include making it easier to start, manage, and develop a business or MSMEs started by the community (Djalente et al., 2020). Law Number 11 of 2020 of a total of 186 Articles in the Job Creation Law, 18 of which aim to advance MSMEs in Indonesia. Article 91 of the Job Creation Law is facilitation in the licensing sector for MSMEs which is getting easier and simpler.

The government issued Regulation 7 of 2021 concerning the Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises. These regulations have not touched all aspects of ease of doing business for MSMEs because what is regulated is only the main thing whose elaboration is still having difficulties implementing. Aspects of ease of starting a business, licensing, facilitation, access to financing, access to the supply chain, to market access for cooperatives and SMEs". At the level of implementation of MSMEs, it is still difficult to get the ease of doing business, and it is difficult to compete with medium and large entrepreneurs. Especially during the difficult period of doing business during the Covid-19 pandemic, Government Regulation Number 7 of 2021 was issued. PP No. 7 of 2021 revokes: 1. PP No. 17 of 2013 concerning the Implementation of Law No. 20 of 2008 concerning MSMEs (State Gazette of the Republic of Indonesia).

This is considering that MSMEs are the backbone of the national economy. With labor market flexibility, re-skilling, up-skilling, and worker welfare programs, the productivity and income of MSMEs can be increased. The problem with the forms of ease of doing business is regulating variations in the forms of Limited Liability Companies (PT) in accordance with the characteristics of Micro and Small Enterprises (UMK). Medium-sized businesses cannot use this legal form of business entity. Based on the Decree of the President of the Republic of Indonesia Number 11 of 2020 (Sumampouw et al., 2021). With this provision, it is necessary to take countermeasures, which were carried out based on Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of COVID-19 where the government emphasizes that Large-Scale Social Restrictions are carried out while still paying attention to meeting the basic needs of the population.

It is understandable that food is one of the basic needs of the population. COVID-19 outbreak in Indonesia. This is to support business actors in ensuring the production chain and distribution of

consistently high-quality processed food, including during certain emergency statuses during the COVID-19 outbreak in Indonesia. In addition, to ensure the implementation of the duties and functions of public services and in Indonesia. COVID-19 outbreak in Indonesia. This is to support business actors in ensuring the production chain and distribution of consistently high-quality processed food, including during certain emergency statuses during the COVID-19 outbreak in Indonesia. In addition, to ensure the implementation of the duties and functions of public services and in Indonesia. COVID-19 outbreak in Indonesia. This is to support business actors in ensuring the production chain and distribution of consistently high-quality processed food, including during certain emergency statuses during the COVID-19 outbreak in Indonesia. In addition, to ensure the implementation of the duties and functions of public services and in Indonesia.

## 2. Materials and Methods

Normative legal research methods are used in this paper which focuses on studying the legal materials of legal documents, legal records, and statutes. What regulates MSMEs includes the Job Creation Law. Law Number 11 of 2020 concerning Job Creation and Its Derivatives in the Form of Presidential Decree Number 7 of 2021 concerning Empowerment and Business Protection for MSMEs in the regulatory regulations detailing normative legal research methods and legal materials used are obtained from literature studies, namely: a Material -Primary legal materials: laws and regulations governing UKMN b, Secondary legal materials: literature and written works in the field of law that are in accordance with the title focused on UKMN regulations, Tertiary legal materials: general dictionaries and legal dictionaries. This study's problem approaches are the Statute Approach and the Conceptual Approach. The nature of the research used is descriptive research, namely a study that aims to provide an overview or explanation.

## 3. Results and Discussions

*MSME Capital Regulations in the Job Creation Law*

The Job Creation Law, one of the other important aspects to be discussed, is the effectiveness of the ease of doing business for Micro, Small, and Medium Enterprises (MSMEs). The regulation of MSMEs in the Job Creation Law is very important considering the number of MSME actors in Indonesia. Based on data obtained from the Central Statistics Agency (BPS) in 2019, there were 64.2 million businesses, and based on data obtained from the Directorate General of State Assets, MSMEs contributed 60.34 % of the total Gross Domestic Product (GDP) or around IDR 8,400 trillion. In addition, MSMEs are able to absorb 97.02% of the total workforce and 99% of total employment. Even from investment, MSMEs provide an investment value of 58.18% of total investment.

In Law No. 20 of 2008 concerning MSMEs, there are criteria regarding the type of business: micro, small, and medium enterprises. The criteria for micro business must meet the requirements by having a maximum net worth of IDR 50,000,000 (fifty million rupiahs) and not having annual sales of a maximum of IDR 300,000,000 (three hundred million rupiahs).

Furthermore, for the criteria for small businesses, business actors have a net worth of more than IDR 50 million to IDR 500 million and have annual sales of more than IDR 300 million up to a maximum of IDR 2.5 billion. Likewise, the criteria for medium-sized businesses that must have a net worth of more than IDR Five hundred million up to a maximum of IDR 10 billion and have annual sales of more than IDR 2.5 billion up to a maximum of IDR 50 billion.

From a juridical analysis point of view, even though the job copyright law has regulated in detail the distribution of indicators for ease of doing business, it still needs to be clarified. The Job Creation Law, related to the criteria for micro, small, and medium enterprises, has not provided detailed criteria related to the total net worth of the business and the value sales results. This is because the provisions of the criteria in the Job Creation Law will further be regulated in a Government Regulation. This means that business actors have yet to receive clarity regarding the criteria for micro, small, and medium enterprises until there is a Government Regulation that regulates further.

Financing and guaranteeing for micro and small businesses in the Job Creation Law provides more firmness and obligations by the government to business actors. If in Law 20/2008, the government's obligation to provide financing and guarantees is only a permissibility marked with the conjunction "can" in the provisions of Article 21 Law 20/2008. The word "can" in Law 20/2008 reflects the discretion of the government to carry out its obligations or not.

Capital and financing for SMEs are still difficult to implement independently but must be supported by the government to strengthen SMEs' competitiveness in market competition. Therefore, Article 21 of Law 20/2008 does not provide legal certainty for business actors. This is different in the Job Creation Law, where the "can" element is abolished so that the government has an obligation to provide financing from the provision for an annual profit share for micro and small businesses. A company is a collection of capital or shares collected by a group of people (Gaver & Gaver, 1993).

The government and banks must support capital and financing allocated to micro and small businesses in the form of loans, guarantees, grants, and other financings, as well as the role of the central and regional governments to provide incentives in the form of facilitating licensing requirements, reducing tariffs for facilities and infrastructure, and other forms of incentives to the business world that provides financing for micro and small businesses.

The provisions regarding financing capital and guarantees for micro-small businesses in the Job Creation Law provide certainty for the MSME community, and the government should be able to ensure that financing for micro-small businesses runs smoothly. It is concerning Job Creation and Empowerment of Micro, Small, and Medium Enterprises (MSMEs). This was formed to facilitate the business climate in Indonesia. The urgency of the job creation bill is that there are dynamics of global change that need to be responded to quickly and precisely because, without policy reformulation, economic growth will slow down. With Job Creation, it is hoped that there will be changes in the economic structure that are able to move all sectors to encourage economic growth reaching 5.7% - 6% through creating quality jobs, increasing investment so as to increase income and purchasing power, and encourage increased consumption and increased productivity will be followed by an increase in wages so as to increase income, purchasing power, and consumption. If this is not done, employment will move to other more competitive countries, the number of unemployed people will increase, and Indonesia will be trapped in a middle-income trap. Because of its high urgency, this law is included in the 2019-2024 National Legislation Program. It is included as one of the priority laws to be discussed and ratified in 2020.

The Job Creation Law dynamically raises public controversy. Rejection of this Law has also surfaced because the Job Creation Law is considered to be more in favor of big business and foreign investment. This law is considered to have neglected protection arrangements regarding employment, the environment, and natural resources. The government is considered to be only pursuing an increase in the ease of doing business (EODB) rating. MSME PTs that are in accordance with the UMK can be called individual PTs because they can be founded by one person. This PT model is known in the United Kingdom (UK) and the European Union (EU) and is also applied in Southeast

Asian countries such as Malaysia and Singapore. Single-Member Private Limited Liability Company or Single-Member Company is used in their laws and regulations as a synonym for an individual PT that will be proposed to be regulated (Setiadi et al., 2022). This individual PT for UMK does not require a Deed of Establishment but only a statement of establishment of the company, which is ratified electronically by the Minister of Law and Human Rights (approval of the legalization fee can be waived).

Access to capital is very important for the empowerment or development of MSMEs. The program is implemented by various ministries or agencies (K/L) with several focus areas, namely increasing access to markets; increasing access to financial services; improving the quality of human resources through competency training and mentoring; as well as improving policies to create a conducive business ecosystem such as ease of licensing. However, the implementation of the MSME program is seen as still needing to support MSME development. The National Team for the Acceleration of Poverty Reduction (TNP2K) conducted a study on mapping MSME empowerment programs and tracing efforts to synchronize MSME empowerment programs (Sudipa & Nurjani, 2021).

This study generally has the following objectives: (1). Mapping and analyzing MSME empowerment programs implemented by various ministries/institutions. (2). Explore and take lessons from other countries that have experience in harmonizing and synchronizing MSME empowerment programs. (3). Conduct an assessment of readiness for synchronizing MSME empowerment programs. (4). Provide recommendations on the steps needed to synchronize MSME empowerment programs. This study uses a desk and literature review approach as well as qualitative analysis. The activities in this study include synthesizing various literature and sources to obtain a population map of the MSME empowerment program, describing the leading MSME empowerment programs, making systematic studies of the experiences of other countries, as well as in-depth interviews with sources from the countries concerned, in-depth interviews with stakeholders in the MSME development program, as well as making recommendations for synchronization steps that might be implemented in accordance with the Indonesian context.

In Indonesia, the number of small businesses accounts for more than half of the activities in the business world (Cf. Nurlette & Sumekar, 2021). Efforts to grow the capability and resilience of Micro, Small, and Medium Enterprises (MSMEs), which have a large number and are spread throughout the country, are activities that cannot be separated from efforts to develop and grow national capability, resilience, and resilience as a whole. Nevertheless, until now, this country still has much unemployment. This is a problem that has never been separated from Indonesia. This proves that the government still has a very difficult task in facilitating the development process to achieve people's welfare. This fact is also a challenge for small and medium companies that only compete in the domestic arena within a country's territory or even cover the city area.

In general, large companies and foreign countries have almost all the advantages compared to Micro, Small, and Medium Enterprises (MSMEs) starting from advantages of capital, cost, efficiency, network, and others. Small businesses face various challenges and constraints, such as the low quality of human resources, low levels of productivity and quality of products and services, lack of technology and information, production factors, inadequate facilities, and infrastructure, aspects of funding and financing services, the business climate is not yet supportive, and coaching coordination is not good.

The MSME sector is, in fact, the support and foundation for most of the large companies in developed countries, and this is an important component of community empowerment. Even though the MSME sector helps, the role of the government and large companies will be fine with changes or ever-changing policies. Change as the dollar changes and modernization of some of them will persist. For small and medium entrepreneurs to survive and develop, the role of the community and related

figures is also needed, as well as the role of the state apparatus as a companion and motivator tasked with continuing to develop MSMEs in their respective regions. However, in reality, the strategic contribution of MSMEs in the industrial sector in increasing income distribution has yet to be able to encourage the government to pay greater attention to this sector. Therefore, entrepreneurs in the MSME sector usually move and develop their businesses in a self-taught way without direct guidance and the role of the government. This causes an imbalance between entrepreneurs and the government itself. In the context of implementing this autonomy, it is undeniable that in carrying out full autonomy, in its implementation, adequate funds are needed. Moreover, through law no. 33 of 2004, the ability of the region to obtain funds can be increased.

With the Job Creation Law Number 11 of 2020, it is automatically hoped that MSMEs will experience progress because this law makes it easier for MSMEs to obtain capital or obtain capital assets, meaning that the welfare of MSMEs with Law Number 11 of 2020 is expected to increase. Planning management is the process of defining a goal, creating a strategy to achieve that goal, and developing a work activity plan.

*Business Licensing for MSMEs According to the Job Creation Law*

The licensing system for MSMEs after the entry into force of the Job Creation Law is regulated in Article 91 of the Job Creation Law, discussing business licensing. Registration for micro and small businesses can be done online or offline by attaching a KTP and business certificate from the local RT. Registration is carried out through electronic business licensing to obtain a business identification number (NIB).

The enforceability of the NIB is that it is a single license that applies to all business activities. This single permit also includes business licensing, Indonesian national standards, and halal product guarantee certification. Halal product certification relates to the breath contained in Article 48 of the Job Creation Law. Namely, for micro and small business actors, the obligation to be halal certified is based on the statements of micro and small entrepreneurs. Of course, this is a pros and cons, considering, on the one hand, there is a question of whether the halal substance can be guaranteed or not, but on the other hand, this arrangement does make it easier for MSMEs to obtain permits easily.

The legal basis for OSS (Online Single Submission) licensing for MSMEs is the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 02 of 2019 concerning Electronically Integrated Business Licensing for Micro and Small Enterprises. The benefits of OSS (Online Single Submission) for MSMEs are as follows. (1) To facilitate the processing of various business permits, both prerequisites for doing business (permits related to location, environment, and buildings), business permits, as well as operational permits for business operations at the central or regional level with a mechanism for fulfilling commitments to permit requirements. (2) To acilitate business actors to connect with all stakeholders and obtain permits safely, quickly, and in real time. (3) To facilitate business actors in reporting and solving licensing problems in one place; and (4) To facilitate business actors to store licensing data in one business identity (NIB).

The Job Creation Law places an obligation on the central and regional governments to provide legal aid and assistance services for micro and small businesses. The problem is that there needs to be further explanation about what kind of legal assistance and assistance is provided by the government to business actors. This Job Creation Law needs to explain which institutions provide legal assistance and the mechanism. This raises questions in the community about whether all issues related to MSMEs can be requested for legal aid services or only certain issues. Therefore, there is a

need for further regulation, both later set forth in a Government Regulation or other implementing regulations.

With the existence of the Job Creation Law, new arrangements by the government need to be emphasized again with implementing regulations because many things still need to be further detailed. Because the essence of the Job Creation Law for MSMEs is how to make MSMEs more developed and able to compete with an easy licensing process, legal certainty, and also prioritizing superior product quality.

OSS-RBA is a one-door system. Therefore, business actors only need to visit a few places to apply for permits. The OSS-RBA system has been integrated with the Ministry of Home Affairs, the Ministry of Finance (Tax Service Office), the Ministry of Law and Human Rights (company information), and the Ministry of Agrarian Affairs and Spatial Planning (detailed spatial planning) for the establishment of business activities. OSS is also integrated with the One Stop Service (PTSP) of the Technical Ministry and Regional Institutions for business permits, location permits, and environmental permits, while the registration process at OSS and business development is managed by the Ministry of Investment/Investment Coordinating Board (BKPM).

Micro, Small, and Medium Enterprises (MSMEs) are trading businesses managed by business entities or individuals which refer to productive economic businesses according to the criteria applied by Law Number 20 of 2008. The classification of MSMEs can be done based on turnover criteria, total assets, and the number of employees.

The uncertain business climate is certainly a challenge for MSME actors, especially with the addition of difficult regulations. In fact, permits are needed for business actors so that they can have legality to support their business. The Investment Ministry/Investment Coordinating Board (BKPM) has committed to simplifying business licensing for MSMEs. This is achieved by utilizing the One Stop Service System (PTSP). For Low-Risk MSEs, NIB can apply as legality, Indonesian National Standard (SNI), and Halal Product Guarantee Certificate (SJPH).

Business Licensing After obtaining the NIB, the perpetrator businesses can continue processing business permits. Indonesia divides business licenses into Business Licenses and Commercial or Operational Licenses. Business actors who have obtained a NIB are required to have a Business License. Obtaining a Business Permit means that a business actor must meet the basic requirements for a Location Permit, an Environmental Permit, and an IMB in his business area. In addition, business actors are also required to update their business development information on the OSS system. Commercial or Operational Permits are granted to business actors to meet standards, certificates, licenses, and registration of goods/services according to the type of product commercialized through the OSS system.

## 4. Conclusion

Some of the conclusions obtained from the results of this study are as follows. Based on the study of legal effectiveness, the Job Creation Law Number 11 of 2020 has yet to regulate all aspects of ease of doing business for MSMEs who always experience business problems competing with large businesses. Capital for MSMEs is still difficult because, in general, MSME business actors have small capital rather than large capital. To increase development productivity and business results, MSMEs need capital to improve business quality. This law makes it easier for MSMEs to get capital, not as complicated as the previous law.

Next, job Creation Law No. 11 of 2020 has yet to be effective in responding to the legal needs of MSMEs because it is still difficult to obtain permits when dealing with large-scale businesses. Business licensing in Law Number 11 of 2020 for MSMEs, namely OSS-based electronic licensing with this

licensing model, makes it easier for MSME business actors to take care of permits because they only upload all the requirements on online internet media. This system is more effective than the previous system, where entrepreneurs manage themselves and deal with people so that transactions are easy to occur, and there are many obstacles for MSME business actors to obtain permits.

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