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Legal Enforcement and Protection for Small Businesses Based on Equitable Efficiency in the Perspective of Economic Democracy

Sarah D.L. Roeroe [1] , Imelda A. Tangkere [2] , Meylan M. Maramis[3] , Imelda Onibala [4], Hervian Y. Rumengan[5]

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Abstract

This study aims to analyze how the principle of fair efficiency in the perspective of economic democracy can be the basis for enforcing and protecting the law for small businesses. The research method used is a normative legal approach with an analysis of regulations governing small businesses and the principles of economic democracy. The results of the study indicate that fair and efficient law enforcement is an important factor in creating a conducive business environment, where small businesses can develop without discriminatory regulatory barriers. In addition, legal policies ORIENTED on economic democracy must ensure fair distribution of resources, equal access to financing, and more effective legal protection for small business actors. The implication of this study is the need for legal policy reform that is more pro-small businesses by prioritizing the principles of justice, transparency, and efficiency in the applicable legal system.

1. Introduction

The opening of the 1945 Constitution emphasizes that one of the main tasks of the state is to improve the welfare of society, also known as social welfare. In line with this mandate, the provisions in Chapter XIV entitled "Social Welfare" include rules regarding democratic economic development as stated in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia: "The national economy is implemented based on economic democracy with the principles of togetherness, fair efficiency, sustainability, concern for the environment,

[1] *Fakultas Hukum, Universitas Sam Ratulangi Manado, Indonesia, Email : roeroesarah@gmail.com*
[2] *Fakultas Hukum, Universitas Sam Ratulangi Manado, Indonesia.*
[3] *Fakultas Hukum, Universitas Sam Ratulangi Manado, Indonesia.*
[4] *Fakultas Hukum, Universitas Sam Ratulangi Manado, Indonesia.*
[5] *Fakultas Hukum, Universitas Sam Ratulangi Manado, Indonesia.*

independence, and maintaining balance for the progress and unity of the national economy." The function and purpose of the state according to various expert views, such as that conveyed by Welfard Garmer, is to provide material welfare and happiness to every individual. Meanwhile, Leslie Liptar explains that the most basic and oldest function of the state is to provide protection. The state is formed by individuals to gain a sense of security, and its existence is continuously maintained in order to fulfill this purpose. In addition to physical protection, individuals also want guarantees in various fields, including protection in running their businesses.

With demands like this, the purpose of the state has shifted, where protection also includes aspects of order. He stated this as follows: "it is an order that is able to recognize, after protection has been firmly planted and it is an order by way of use that the government seeks to nurture".

From the above thought, the state has a function to always protect and prosper its citizens. This is in line with the objectives of the Republic of Indonesia as stated in the Opening of the 1945 Constitution: "Then from that to form an Indonesian state government that protects all Indonesian people and all Indonesian blood and to advance general welfare, educate the life of the nation and participate in implementing world order based on independence, eternal peace and social justice, then the independence of the nation is formulated in a constitution of the Indonesian state

In concrete terms, the government's responsibility in providing protection guarantees for its people (citizens) is to ensure that the people are protected from all forms of deviant and potentially detrimental actions or behavior. In addition, as a consequence of the implementation of the welfare state concept, the government has an obligation to guarantee the welfare of its people, especially when there are situations or events that disrupt the stability of their welfare. This concept, taken from the Preamble to the 1945 Constitution, is the basis for the implementation of legal protection in various aspects of people's lives, such as legal protection for the people in the political field, consumer protection in the social field, protection of intellectual rights in the cultural field, and specifically legal protection for small businesses in the economic field, which is the focus of discussion in this paper.

Philipus M Hadjon in his dissertation on Legal Protection for the People in Indonesia does not formulate a definition or limitation regarding “legal protection”, except stating that: “Legal protection is always related to power, namely there are two powers that are of concern, namely government power and economic power, in the protection of the people who are governed against the government (which governs) in relation to economic power, the problem of legal protection for the weak (economic) against the weak (economic). In relation to this, Hermansyah emphasized that: In a traffic of interests, protection of the interests of small business actors can also be done by limiting the interests of large business actors.

Legal protection for small businesses in the provisions of legislation contains prohibitions or restrictions on large business actors found in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. How this legal regulation system, if connected with the provisions of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which mandates that the national economy be organized based on economic democracy, is important. Therefore, this provision means that everything related to the economy, economic system, goals to be achieved, economic development, policies and programs, must all be based on economic democracy.

Small businesses play a very important role in driving economic growth, creating jobs, and improving people's welfare. According to data from the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM), the small business sector contributes significantly to Indonesia's Gross Domestic Product (GDP) and absorbs a large number of workers (Kemenkop UKM, 2023). However, despite their strategic role, small businesses still face various challenges, especially in terms of protection and law enforcement.

From the perspective of economic democracy, small businesses should receive fair legal protection and equal access to economic resources. Economic democracy emphasizes the

principles of social justice, equitable distribution of resources, and bias towards small business groups so that they can compete healthily in the market (Suroso, 2020). However, in practice, many small business actors experience inequality in access to legal justice, both in terms of regulations, tax policies, and access to capital and business protection (Mulyani, 2021).

One of the main problems faced by small businesses is weak law enforcement which often benefits large businesses compared to small businesses. Many small business actors face difficulties in obtaining adequate legal protection due to high legal costs, complex bureaucracy, and imbalances in the implementation of business regulations (Santoso, 2022). This is contrary to the concept of fair efficiency which emphasizes that the law must be enforced fairly, efficiently, and not harm small business groups (Rahman, 2023).

In addition, in some cases, small businesses often experience disproportionate criminalization or lawsuits compared to large businesses that have greater capital strength and access to legal channels (Wijaya, 2022). This phenomenon shows an imbalance in the legal system that should function as an instrument of protection and justice for all business actors, regardless of the scale of their business.

Therefore, this study aims to analyze how the principle of fair efficiency can be applied in the enforcement and protection of law for small businesses in the perspective of economic democracy. By understanding the challenges and obstacles faced by small businesses, it is hoped that this study can provide policy recommendations that are more pro-small businesses, as well as encourage fairer and more efficient legal reforms.

2. Methods

This study uses a normative legal approach with a legal analysis method that examines various regulations and policies related to small businesses from the perspective of economic democracy. The normative legal approach is used to understand how the principle of fair efficiency is applied in laws and regulations governing small businesses (Marzuki, 2021).

The data sources used in this study include primary and secondary data. Primary data were obtained through interviews with small business actors, relevant government officials, and academics in the fields of law and economics. Meanwhile, secondary data were collected from various legal literature, academic journals, and official reports from the government and international organizations (Creswell, 2018).

The data analysis technique used was qualitative analysis with a descriptive-analytical approach. The data obtained were analyzed by interpreting existing regulations and comparing them with practices in the field. In addition, this study also uses a case study method to explore concrete examples of the application of legal protection for small businesses in various situations (Miles & Huberman, 2014).

3. Results and Discussion

Results

Legal protection for small business actors has been regulated in Article 8 of Law Number 9 of 1995 that: The government fosters a business climate in terms of competition by establishing laws and regulations and policies for Increasing cooperation between small businesses in the form of cooperative associations and business group associations to strengthen the bargaining position of small businesses.

Preventing market domination and business concentration by individuals or certain groups that are detrimental to small businesses. This provision means that the business climate that is

intended to be created to protect small businesses is a business climate that allows the development of small businesses by avoiding unfair business practices such as monopolies, oligopolies, monopsony, market domination and others that can result in an unhealthy and unfair business climate and kill small businesses.

This relationship Law Number 9 of 1995 is an anti-monopoly and unfair business competition law, which in essence provides business opportunities for small businesses to become strong. Thus in Article 3 letter b of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, determines: realizing a conducive business climate through the regulation of healthy business competition so as to guarantee the certainty of equal business opportunities for large business actors, medium business actors and small business actors".

If understood more deeply, these provisions have a meaning that not only guarantees business opportunities for every business actor, but also implicitly provides legal protection for weaker business actors from the actions or behavior of other stronger business actors, such as in monopolistic practices and unfair business competition. This condition often causes small business actors to suffer losses and even lose the ability to continue their business. Law Number 5 of 1999 directly provides protection for small businesses through several of its provisions.

In addition, there are 26 articles in the law that indirectly support protection for small businesses. These provisions include: Prohibited agreements (Articles 4 to 16), Prohibited activities (Articles 17 to 24), and Dominant positions (Articles 25 to 29). These provisions are a manifestation of the implementation of economic democracy that upholds the principle of "fair efficiency." This principle aims to create equal business opportunities for every Indonesian citizen in a healthy, fair, and reasonable competitive environment, so as to prevent the concentration of economic power in certain business actors. Thus, small businesses have the opportunity to develop and advance their business activities.

Conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid rules and the manifestation of attitudes as a series of final stage value descriptions in order to create, maintain and defend peaceful social interactions. More or less the same opinion was expressed by Ernest Barker that the enforcement of justice and law has covered all the goals of the state, because it does not only mean the enforcement of justice in general but also "Social Justice" which is also called "Economic Democracy". In the Black Law Dictionary, law enforcement is defined as: "Detection and prosecution of violations of the law are not limited to criminal law enforcement, for example the Law on Public Information Disclosure contains exceptions to the disclosure of information that is complied with for law enforcement purposes and is given confidentially, Exceptions from various non-criminal actions (such as national security laws) Law enforcement aims to achieve legal objectives, through law enforcement it is hoped that legal objectives can be achieved so that the law can function properly.

The main purpose of law is justice in addition to other legal objectives, expediency and legal certainty. Gustav Redbruch stated that: "... The idea of the law we found in justice and we determined the essence of justice of distributive justice, as eguality, eguality treatment of equal treatment of egual and correspondding by enegual treatmnt of different. Related to this opinion, the ideal of law is found in justice, namely distributive justice as equal treatment of the same thing, and unequal treatment of different things. According to John Rawls, there are two principles of justice that will be unanimously agreed upon by members of society, namely: a. Everyone should have an equal right to the broadest comprehensive system of basic liberties b. Social and economic differences should be regulated in such a way that they can: Provide the greatest benefit to those in the most advantageous position. Related to positions and positions that are open to everyone based on equal opportunitie.

In the social market economic system, individuals are balanced with the principle of common interest. Economic activities are driven by market mechanisms controlled by the government towards an efficient but fair market economy (fair efficiency) in accordance with Article 33 paragraph (4) of the 1945 NRI Constitution. The value system that is applied is moral and social responsibility aimed at advancing and cultivating quality economic actors, namely economic growth that guarantees fair equality.

In MPR Decree Number VI 1999, concerning the people's economy, it is also stated that the mission of the people's economy is to empower all national economic strengths, especially small, medium and cooperative entrepreneurs by developing a fair market economic system based on Natural Resources (SDA) and Human Resources (HR) that are productive, independent, advanced, competitive, environmentally aware and sustainable.

Thus, what is meant by the people's economic system is none other than a fair market economic system as the basis for the presence of the principle of "fair efficiency" formulated in Article 33 paragraph (4) of the 1945 NRI Constitution. The concept of a fair market economy based on the principle of "fair efficiency" is in accordance with the concept of a socio-capitalist state that prioritizes the "welfare" function according to Mustamin Dg Matutu, as follows: "This school of thought seeks to maintain freedom as far as possible in a state of law while justifying the need for state intervention to organize people's welfare, general welfare, which is implemented maximally.

This understanding seeks to combine the principles of a state of law with the principles of a socialist state. This school of thought arrives at the concept of a socio-capitalist state that prioritizes the "welfare" function as expressed by Mac Iver.

In the context of the development of this school of thought, the state is no longer viewed as a mere tool of power (as an instrument of power) but begins to be viewed as a tool of service (an agency of service). In this kind of natural atmosphere of thought, the phenomenon of a "welfare state" (modern) emerged and developed. This welfare state concept is mainly oriented towards Keynes' thinking in his work "the "General theory on imployment, interest and money" which Ebenstein calls a synthesis between Adam Smith's "wealth of nations" and Karl Marx's "Das Kapital".

The clarity of the concept of economic democracy is very useful and necessary for the supervision of constitutional norms by the House of Representatives. Through the concept of economic democracy, criticism from experts such as Soemitro Djoyohadikusumo, The Lian Gie and many other experts about the policies of the New Order government at that time which implemented policies prioritizing economic growth and ignoring equality for the current era is expected to no longer exist.

In the New Order at that time it was difficult to blame the government for prioritizing growth policies, because at that time there was no clear benchmark like today that growth and equality were combined and implemented in one development movement as referred to in the concept of "fair efficiency".

The criticism of experts at that time was solely based on the abstract principles of morality and justice and far from the dogma of positive law which was the measuring tool. A little more concrete in the era before the amendment to the 1945 Constitution was only found in the Explanation of Article 33 of the 1945 Constitution of the Republic of Indonesia which stated "economic democracy. the prosperity of society is prioritized, not the prosperity of individuals". The inclusion of the two words "fair efficiency" into one word as a compound word today, gives the meaning of "efficiency which means growth and fairness which means equality" implemented simultaneously in one development movement in the market economic system.

According to Soerjono Sekanto, the reality of implementing growth or equality policies during the New Order era was like a pendulum that moved once towards growth and then moved

again towards equality in accordance with the interests of those in power, even based on the interests of demands for justice and morality.

Empirically, throughout the 32 years of Soeharto's government, he implemented a policy of prioritizing economic growth, except: If in the First Pelita the development strategy was based on "growth stability", at the end of Pelita II approaching Pelita III, the government's political will emerged, which was revealed in the reversal of the priority order of the development trilogy, equity, growth and national stability due to the Malari incident on January 15, 1974. In 1980, after the BONANZA Economy, due to the global economic recession, the government again implemented an equity policy, only a few years later the government again implemented an economic growth policy until 1997.

The anti-climax occurred when the monetary crisis hit Asia, including Indonesia, in mid-1997, developing into a total crisis, the decline of the Rupiah ended with the resignation of Soeharto.

Throughout the Soeharto administration, pro-growth policies were dominant. In the current reform government, there has been no significant change. Indonesia is still facing a phenomenon called pseudo-capitalism (Ersatz Capitalism) in Southeast Asia, which is dominated by rent seekers, crony capitalists, and bureaucratic capitalists.

This condition makes the situation in Indonesia one of the worst. In addition, the influence of foreign parties is getting stronger in determining and formulating economic and social policies in Indonesia, so that it has the potential to make Indonesia return to being a kind of foreign economic colony. Several examples of current government policies show a lack of support for the wider community, especially those who are economically weak.

For example, the copyright for Tempe has been patented in the United States, the copyright for Soy Sauce and Tofu has been patented in Japan, the copyright for Batik Variety has been patented in Germany and England, the copyright for Rattan Basket has been patented in Singapore, and the policy of importing cheap rice has harmed millions of Indonesian farmers by competing with locally produced rice.

During the government of President Susilo Bambang Yudhoyono, more social facts can be revealed as evidence that the implementation of economic policies that are not in accordance with the concept of "fair efficiency" or in other words not in accordance with the "fair market economic system" especially after the existence of a clear benchmark for the national economic system after the fourth amendment. Regarding the addition of paragraphs (4) and (5) of Article 33 of the 1945 Constitution of the Republic of Indonesia on August 10, 2002, for example, it can be stated such as salt imports, potato imports that are widely complained about by the salt industry and potato farmers which are very detrimental to them as small business actors.

Likewise, violence committed by large plantation entrepreneurs in Mesuji Lampung and Palembang and similar violence that has occurred against small communities in Mataram, West Nusa Tenggara.

Thus, there are a few cases that illustrate the government's pro-efficiency economic policies, which prove that the government is closer to big business players than implementing the policies contained in the "Triple Tracht Development" principle which is Pro-Job, Pro-poor, and Pro-Growth" which has been mandated by the Constitution, especially Article 33 paragraph (4) of the 1945 Indonesian Constitution.

As explained above, in the New Order era and even in the Reform Order era (President Susilo Bambang Yudoyono) there are many empirical facts that show how the government has implemented economic development policies that are not in accordance with the concept of economic democracy based on the principle of fair efficiency. In relation to this, Jimly Asshiddiqie stated that "after the reform era, especially with the establishment of the Constitutional Court as the Guardian of the Constitution, economic policies that are not in line with or contradict the 1945 Constitution should no longer be allowed, if in the New

Order era there was no mechanism to assess or test the constitutionality of an economic policy that was stated in the form of a law, then after the existence of the Constitutional Court this cannot be allowed", citizens or parties who feel that their constitutional rights have been violated by the enactment of such laws, including laws in the economic sector, can file a request to test the constitutionality of the Law.

Jimly Asshiddiqie's opinion basically confirms that what can be submitted for constitutional testing of laws to the Constitutional Court are economic policies that are stated in the form of laws that are considered inconsistent or contradictory to the 1945 Constitution. Meanwhile, regarding economic policies stated in the form of policy regulations (beleidsregel), Jimly Asshiddiqie explained that these types of regulations are generally very technical in nature. These policies are not stated in the form of official laws and regulations, but in other forms such as circulars, implementation instructions (juklak), technical instructions (juknis), work plans, terms of reference, presidential instructions, radiograms, and so on. Although not in the form of official laws and regulations, the contents of these policies still have a regulatory nature so that they can be called rules.

Referring to this opinion, it can be said that the government's economic policy which is stated in the form of beleids regel (policy rules) as has been described as a policy which is contrary to the principle of fair efficiency which is the basis for organizing the national economy, can be requested for a Constitutional Review to the Constitutional Court.

Constitutional Review Testing is classified as a legal effort called judicial review, not administrative review, legislative review. The development of legal norms in the dynamics of the implementation of state power can basically be monitored and controlled through several methods or mechanisms as stated by Jimly Asshiddiqie, 30 namely three ways to control legal norms, namely; (1) legal efforts, (2) political efforts, and (3) administrative efforts. In relation to legal efforts through the courts, someone can use ordinary legal efforts (appeal, cassation) or through extraordinary legal efforts (judicial review). In the case of the norms being compared are products in the form of legislation, then the relevant party can also take an approach so that the law or legislation in question is changed so that it is no longer seen as detrimental, this kind of political effort can be called legislative review, and administrative review or executive review, not judicial review.

4. Discussion

Based on the research results, it was found that there is still a significant gap in legal protection for small businesses in Indonesia. The results of interviews with small business actors showed that the majority of them had difficulty accessing legal assistance due to high costs and complicated bureaucratic procedures. This is exacerbated by the lack of understanding of business actors regarding applicable regulations (Mulyani, 2021).

Regulatory analysis shows that although there are various policies aimed at protecting small businesses, their implementation still faces many obstacles. For example, in the implementation of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, it was found that many small business actors did not get access to capital that should have been guaranteed by the government (Santoso, 2022). In addition, many regulations are more beneficial to large businesses than small businesses, thus creating inequality in the business world (Rahman, 2023).

From the perspective of fair efficiency, the results of this study indicate that the existing legal system has not fully provided justice for small businesses. Efficiency in law enforcement is often prioritized without considering the aspect of justice for small businesses, so they are still in a weak position in business competition (Suroso, 2020).

Furthermore, the case studies analyzed in this study show that several legal aid programs for small businesses that have been initiated by local governments are still not running optimally. This is due to the lack of coordination between the central and local governments, as well as limited resources in providing adequate legal aid for small businesses (Wijaya, 2022).

Thus, reforms are needed in policies and regulations that are more pro-small businesses so that the principle of fair efficiency can be optimally implemented. The government needs to increase access to legal aid for small businesses, simplify regulations, and ensure that there are effective legal protection mechanisms for them.

5. Conclusion

This study concludes that small businesses still face various challenges in obtaining legal protection and certainty. Although existing regulations have accommodated protection for small businesses, their implementation is still not optimal due to various obstacles, such as complex bureaucracy, high legal costs, and imbalances in policies that are more beneficial to large businesses.

The principle of fair efficiency in the perspective of economic democracy has not been fully implemented in the legal system in Indonesia. Efficiency in law enforcement is often prioritized over the aspect of justice for small businesses, so they are still in a less advantageous position in business competition.

To realize a fairer legal system for small businesses, policy reforms are needed that include increasing access to legal aid, simplifying regulations, and strengthening effective legal protection mechanisms. Thus, the principle of fair efficiency can be applied more optimally in economic democracy, so that small businesses can develop sustainably and make greater contributions to the national economy.

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