

Advocacy Paper on the Draft of the Omnibus Bill on Job Creation (RUU Cipta Kerja) for Micro, Small and Medium Enterprises PSHK (Pusat Studi Hukum)

Foreword

Micro, Small, and Medium Enterprises (MSMEs) play a critical role to sustain national economy. In many countries, such as Finland, France, Italy, South Korea and Australia, almost 100% entrepreneurs work in small and medium enterprises with more than 60% labor absorption. In Indonesia, over 64.2 million MSMEs are recorded to contribute 99.9% of the total entrepreneurs with labor absorption of 97%.

Indonesia's SME Sector is considered to be capable of surviving throughout unstable economic conditions. For instance, during the 1998 economic crisis, the growth of the manufacturing and service industry took a halt. In line with the stagnation of growth in these sectors, Loayza and Rigolini (2011) described the role of MSME from the informal sector as the "safety network" because workers who were affected by the termination of employment from the formal sector tend to shift to the informal sector.

Nurul Widyaningrum dkk analyzed three factors that influences the stagnation of growth of MSMEs in Indonesia: First, internal weaknesses related to management capacity. Second, the lack of infrastructure that bridges MSMEs with the source of capital, training, technology, and management; Third, the exploitative relationship patterns within the chain of command of MSMEs. The first two factors are easy to be found in practice, especially in relation to managerial problems and infrastructural limitations that connects MSMEs with the source capital and development. However, the third factor on exploitative relationship patterns is rarely reviewed. Without understanding the structure and the chain of command, while also knowing the strengths of each actors within pre-existing business relations, the MSME development program may be viewed as counterproductive as it only benefits those with a stronger position as opposed to MSMEs.

Through the Draft of the Omnibus Bill on Job Creation (RUU Cipta Kerja), the Indonesian government claims to do a reconstruction with the regulation on MSMEs to drive national economic growth. On July 4th 2020, the Legislation Body (Baleg) House of Representatives (DPR) together with government representatives and representatives and representatives of the Regional Representative Council (DPD) discussed the Inventory of Problems List (DIM), including those related to the SME cluster in the Job Creation Bill, specifically regarding the convenience, protection, and empowerment of MSMEs.

Vice Chairman of Baleg Achmad Baidowi stated that discussions on the Omnibus Bill on Job Creation regarding the SME cluster can improve the development of SMEs in Indonesia, namely through the ease of business licensing, guidance and development of SMEs, and fiscal incentives. However, the new SME regulation on the Job Creation Bill which focuses on formalizing SMEs through the ease of creating business licenses does not solve various problems of SMEs in Indonesia.

Regulatory Issues Regarding SMEs

The first regulatory issue regarding MSMEs is the different criteria between micro, small and medium enterprises. These three business criteria are currently regulated in Article 6 No. 20 of 2008 concerning Micro, Small and Medium Enterprises (UMKM Law). However, these

criteria differ from the criteria for Small, Medium, and Large industries as stipulated in Article 102 of Law Number 3 of 2014 concerning Industry (Industry Law).

By sector, the criteria regarding the micro, small, and medium enterprises are arranged differently from the UU UMKM regulation as in Law Number 13 of 2010 concerning Horticulture (Horticulture Law) and Regulation of the Minister of Marine Affairs and Fisheries Number 37 of 2016 concerning the Fish Processing Scale. The different criteria that varies in several of these regulations produce confusion, not only to the business actors, but also for the policy makers in the MSME sector. Moreover, the different criteria produce a bigger impact on the provision of fiscal incentives, tax incentives, assistance, and legal assistance for MSMEs.

Second, there are MSME licensing problems related to overlapping existing regulations. Business actors wishing to formally establish a business must acquire a Business Identification Number (NIB). The procedure for obtaining a NIB is related to managing a domicile a Trading Business Permit (SIUP) that requires each other, followed by permits that require repeated requirements. In practice, the formal process of establishing MSMEs takes up time and are costly.

Meanwhile, the establishment process is also tied to several regulations at the same time, among are the Civil Code, the Commercial Law Code, the Banking Law, the Limited Liability Company Law, the Cooperative Law, the UMKM law, Law on Taxation, and Government Regulations on Electronic Integrated Business Licensing (PP PBTSE).

Licensing problems do not stop with the establishment process. After the business is established, the business actor faces operational issues that include matters other than commercial permits, land/building/office building permits – including if it requires an environmental impact analysis (AMDAL), labor related to minimum wages, business development, employment minimum wages, business development, and intellectual properties.

These operational problems are linked to regulations that are scattered, such as Law on trade, Law on Halal Product Guarantee, the Law on Industry, the Law on Basic Agrarian Affairs, the Law on Manpower, the Law on Business Competition, the Law on Patents, and the Law on Trademarks. When the business is unable to handle operational problems, the business will face the threat of bankruptcy. In conditions of bankruptcy, MSMEs are faced with bankruptcy or liquidation issues related to the Law on Bankruptcy and the Law on Limited Liability Companies. The complexities of the licensing process and operational requirements has resulted in the trend of MSMEs choosing not to register themselves to maintain their informal forms.

Apart from licensing, the most common problem found was the difficulty of MSMEs in accessing capital or funding sources. In practice, many MSME actors are caught in mobile bank debt or loan sharks because access is easier without collateral. The process of disbursing funds is made so fast and easy, almost unconditional, coupled with personal relationships between loan sharks and MSME actors. On the other hand, to access banking institutions, MSME actors are faced with warranty issues such as land and buildings to access capital.

Another problem is unbalanced partnership. One example is the partnership in the online transportation business sector which tends to be disadvantageous for the driver. In that relation, the drivers are referred to as partners but treated as that without workers' rights. Unbalanced partnerships can also occur between small business actors and large business actors, namely when power relations feel more dominant than partner relations.

Despite of the existence of a Business Competition Supervisory Commission (KPPU) which acts as a referee over the partnership based on the UMKM Law and Government Regulation No. 17 of 2013 concerning the implementation of the UMKM Law, UMKM's awareness of the existence and function of KPPU in the field is still minimal while there are only a small number of KPPU offices. That is what contributes to the occurrence of unbalanced partnership and hinders the development of small enterprises.

Analysis Related To The Protection of MSMES on the Draft of the Job Creation Bill

The substance of the Job Creation Bill that regulates MSME focuses on the creation of easier business licensing processes, MSME criteria, single database, integrated management of MSMEs, and facilitation of partnerships between MSMEs and large businesses. The bill is considered to have good objectives in employment opportunities, income, and increasing economic growth. However, these good goals are not immediately reflected in the existing drafting process, article formulation and discussion processes.

The lack of involvement of affected parties, including actors in the UMKM sector, in the formulation process is one of the many criticisms of the creation of the Job Creation Bill. The government argues that a number of new arrangements in the bill were formed to provide convenience, protection, and empowerment of MSMEs. The new provisions proposed by the government can be seen in table 1.

According to the formulation of the Work Creation Bill, the government's priorities related to the MSME sector focuses on the issue of the MSME's legality because the government considers informal business forms to cause MSMEs to not develop. The study of Alexander Rothenberg, et al. found that most MSMEs in Indonesia firmly maintain their informal form. MSMEs do not wish to expand their business due to their lack of access to bank institutions. In addition, by keeping the structure of the business informal, MSMEs can avoid paying taxes.

In accordance to Hernando De Soto, the phenomenon of informality and illegality of the business must be answered through the formation of public policies aimed at legalizing informal businesses and other economic activities. According to him, informal small businesses in developing countries are economic assets that are seen as "dead capital" that can actually be revived by the official legal system. Dead capital is then converted into liquid capital so that people can get access to formal credit to invest in their homes and businesses. The assumption is that by moving capital, the economy will also live and continue to develop. The assumption is that by moving capital, the economy will also live and continue to develop.

As well as formalizing small businesses, De Soto further advocates of small businesses. He recommended an improvement in the economic potential of existing assets,

Table 1. Proposed Regulations related to UMKM Protection in the Job Creation Bill (source: Manuscript of the Job Creation Bill)

Subject	Proposed New Provisions in the Job Creation Bill
Criteria for Micro, Small, and Medium Enterprises	<p>Article 6</p> <p>(1) Criteria for Micro, Small, and Medium Enterprises shall at least contain indicators of net worth, annual sales proceeds, or investment value, and number of workers in accordance with the criteria for each business sector.</p> <p>(2) Further provisions regarding the Criteria for Micro, Small and Medium Enterprises are regulated by a Government Regulation.</p>

Single Database	Article 95 (1) The Central Government shall collect data on MSME (2) Results of data collection as a single MSME database. (3) The single database referred to in paragraph (1) must be taken into consideration in determining the policy regarding MSME (4) Further provisions regarding a single database are regulated by a Government Regulation
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Integrated Management of Micro and Small Enterprises

Article 96

(1) The Central Government encourages the implementation of integrated management of Micro and Small Enterprises through the synergy of the Central Government, Regional Government, and related stakeholders.

(2) The Integrated Management of Micro and Small Enterprises as referred to in paragraph (1) is a group of Micro and Small Business groups that are involved in a general product chain, dependence on the skills of similar workers or use similar and complementary technology in an integrated manner starting the stage of establishment / legalization, financing

(3) provision of raw materials, production processes, curation and marketing of Micro and Small Business products through electronic / non-electronic trading.

(4) The determination of the location of the Micro and Small Business Clusters is compiled in a Government program by taking into account the strategy for determining the location of the business.

(5) The Central Government and Regional Governments carry out assistance for Micro and Small Enterprises in providing Human Resources, budgets, and facilities and infrastructure.

(6) In providing Human Resources, budget, and facilities and infrastructure as referred to in paragraph (4), the government provides facilities covering aspects of production, infrastructure, value chain, establishment of legal entities, certification and standardization, promotion, marketing, digitization, and research and development.

(7) The Central Government coordinates the integrated management of Micro and Small Enterprises in cluster arrangement.

(8) The Central Government evaluates the integrated management plan of Micro and Small Enterprises in cluster arrangement.

(9) Further provisions regarding the integrated management of Micro and Small Enterprises are regulated by a Government Regulation.

Subject	Proposed New Provisions in the Job Creation Bill
Ease of Business Licensing	<p>Article 98</p> <p>(1) In the framework of facilitating Business Licensing, the Central Government plays an active role in conducting guidance and registration for Micro and Small Enterprises.</p> <p>(2) Registration as referred to in paragraph (1) shall be carried out by providing an electronic business identification number through Business Licensing.</p> <p>(3) The business registration number as referred to in paragraph (2) is a single license that applies to all business activities.</p> <p>(4) Single licensing as referred to in paragraph (3) includes Business Licensing, distribution permits, Indonesian national standards, and halal product guarantee certification.</p> <p>(5) The Central Government shall provide guidance to the fulfillment of distribution permit standards, Indonesian national standards, and halal product guarantee certification.</p> <p>(6) In the event that the business activities as referred to in paragraph (3) have high risk criteria for health, security and safety as well as the environment, in addition to having a business registration number, Micro and Small Businesses are required to have standard certification and / or permits.</p> <p>(7) The Central Government facilitates standard and / or permit certification as referred to in paragraph (4).</p> <p>(8) Further provisions regarding single licensing as referred to in paragraph (3) and facilitation of standard certification and / or permits as referred to in paragraph (7) shall be regulated in a Government Regulation.</p>
Fiscal and Financing Incentives	<p>Article 99</p> <p>1) In the framework of applying for financing facilities from the government, micro businesses are provided with facilities / simplification of tax administration in accordance with the tax laws and regulations.</p> <p>(2) Business licenses submitted by micro and small enterprises may be given incentives in the form of free of charge or fee waivers</p> <p>Article 100</p> <p>Micro and Small Business Activities can be used as program credit guarantees.</p> <p>Article 101</p> <p>(1) The Central Government simplifies the registration process and financing of Intellectual Property Rights, facilitates import of industrial raw materials and supporting materials, and / or facilitates export.</p> <p>(2) Further provisions regarding the ease and simplification of the registration process and financing of Intellectual Property Rights, ease of import of industrial raw materials and supporting materials, and / or export facilitation as referred to in paragraph (1) shall be regulated by a Government Regulation.</p>

Special Allocation Funds, Legal Aid and Protection, Procurement of Goods and Services, and Systems / Applications	<p>Article 102</p> <p>The government allocates the use of the Special Allocation Fund to fund the empowerment and development activities of MSMEs.</p> <p>Article 103</p> <p>The government facilitates the provision of legal assistance and assistance services for Micro and Small Enterprises.</p>
Bookkeeping / Financial Records	<p>Article 104</p> <p>The Central Government and Local Governments prioritize Micro and Small Business products / services in the procurement of government goods / services in accordance with statutory regulations.</p> <p>Article 105</p> <p>The government facilitates the use of a financial accounting / recording system / application that makes it easy for Micro and Small Enterprises.</p>

dispersed information that is integrated into one system, encourages accountability, makes assets accessible, keeps people networked, and protects transactions. This recommendation was born out of the challenges faced by developing countries, particularly regarding whether business actors and the public can understand legal institutions and have the political will necessary to build an accessible economic system.

In the Job Creation Bill, try to answer the problem of the legality of MSMEs by regulating licensing simplification for MSMEs. The simplification of licensing is related to the criteria for MSMEs, which have been considered as an informal business sector. Simplification of licensing will use a single database of Online Single Submission (OSS). There are several notes in simplifying licensing, for example, who will have the authority to manage OSS for MSMEs, what data will be regulated, and what mechanisms are established so that business actors feel the positive impact of the database.

Unfortunately, the Job Creation Bill does not regulate in detail how the OSS management mechanism is, but instead delegates further regulations to the government through the formation of implementing regulations, in this case Government Regulations (PP). In practice, the process of establishing PPs tends to be more difficult to monitor than the process of establishing laws. In addition, the control mechanism of OSS management is still unclear. For comparison, the registration of business entities in England is carried out by an official institution, namely the Companies House, which is under the Ministry of Business, Energy and Industrial Strategy. The agency records all business entities and provides an annual report that can show the progress or decline of the registered business entity. The report will be used as evaluation material for both registered business entities and the government so that a good control mechanism is created by the government and the public.

Meanwhile, the Indonesian government, through the Ministry of Law and Human Rights, is discussing the obligations of all business entities, including MSMEs and large businesses, to submit annual reports (annual filing). The hope is that business entities can be monitored for their assets and turnover to synchronize with their obligations, such as taxation. This concept follows the application of mandatory business entity annual report filing mechanisms in several other countries, such as in the UK through Companies House, Malaysia, Singapore, the Netherlands and the United States.

Apart from unclear OSS management, the Job Creation Bill regulates MSME criteria and a single database based on turnover. In fact, it is very difficult to do because it is not easy to determine and define turnover-based MSMEs. Widyaningrum considered that the criteria for MSMEs should be based on the number of workers. However, in the era of rapid technological development, there are many businesses in the information technology sector that do not have many workers, but their turnover is far above the MSME turnover category. Member of the Work Committee (Panja) of the Job Creation Bill, Ledia Hanifa, views that the categorization of MSMEs should not only be based on capital, turnover, or number of workers, but also consider a combination based on the *International Standard Industrial Classification of All Economic Activities* (ISIC).

With regards to central government facilitation of partnerships, the Job Creation Bill has not explicitly regulated control mechanisms if large businesses carry out exploitative patterns of small businesses. In addition, the existing partnership pattern has not yet reached economic sharing. This means that it is still unclear whether MSMEs will actually become partners or simply become workers as “business partners” of large business actors.

Meanwhile, matters relating to the integrated management of micro and small businesses by the central government in the form of the provision of NIB are seen to only draw regional authority to the center. In the management of micro and small enterprises, the central government should not ignore the role of local governments. Christian von Luebke's study through a survey of 1000 business actors shows that local governments have a significant role in policy reform, especially in explaining matters related to economy, licensing, taxation, and vulnerability to corruption.

Regarding government support and assistance to MSMEs, even though it has been regulated, in practice, the form of assistance provided by the government is often not on target. So far, facilitation of mentoring has only resulted in data collection and very few assistance has been found that reach out to mentoring to improve business quality. The issue of assistance also relates to legal aid. A number of problems related to legal aspects that business actors still have to solve include permitting, expanding business forms, establishing partnership relationships, to resolving disputes.

Government efforts to facilitate assistance and legal aid in the Job Creation Bill is not sufficient to guarantee that small and micro business actors can access the needs for solving existing legal problems. Therefore, what should be regulated is the government's guarantee to ensure access to legal assistance for MSME actors.

CLOSING

MSME is one of the sectors directly related to the purpose of the creation of the Job Creation Bill. Unfortunately, the provisions related to MSME formulated in the Job Creation Bill do not yet address the problems faced by MSMEs. Based on the initial discussion and analysis of the MSME material in the Job Creation Bill, here are some considerations from the Indonesian Center for Law and Policy Studies (PSHK).

First, the Job Creation Bill has not guaranteed safe access to finance for MSME players. Guarantee of safe access to finance is one of the initial issues that must be resolved before further debating whether or not a form of business should be formalized. Basically, any form of business, whether formal or informal, cannot start operations without capital through easily accessible financing.

Second, the Job Creation Bill has not provided clarity regarding the management of a single database, especially regarding who has the authority to manage OSS for MSMEs, what data will be regulated, and what kind of mechanism is established so that business actors feel a positive impact. from a single database.

Third, the turnover-based MSMEs criteria stipulated in the Job Creation Bill require a reformulation by taking into account other factors such as the number of workers, the amount of capital, and matters listed in the *International Standard Industrial Classification of All Economic Activities* (ISIC).

Fourth, in the management of MSMEs, the authority and strategic role of regional governments should be maintained, not attracted to the central government. The argument that the central government has the authority to manage a single database is irrelevant because a single database is only an auxiliary mechanism in the data collection process as a consideration for formulating MSME policies.

Fifth, the government must ensure guaranteed access to legal assistance, not only facilitating legal assistance for MSME actors. Access to legal assistance can be started from disseminating literacy programs and legal mentoring related to licensing and contracts that business actors often face.

Finally, the problem of vulnerability that is owned by MSMEs is not resolved through the formation of the Job Creation Bill. The effort that the government should make is to reduce the risk of vulnerability to land or increase land access through facilities for providing business premises. In addition, the government can also encourage an insurance system for MSMEs that experience business failures. Also, the government needs to open up the possibility of providing support to MSMEs through a mechanism for granting grants to MSMEs that have succeeded in achieving certain targets, such as employment or having an extensive marketing network.