



Legal protection of micro, small and medium post enforcement law number 11 of 2020 concerning Job creation law

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Abstract

This research aims to discuss legal protection for entrepreneur and the impact of Job Creation Law on the digitalization of Micro, Small and Medium Enterprises (hereinafter referred to as MSMEs) in the midst of a pandemic. This research is an empirical legal studies that uses a qualitative descriptive research method which originates from interviews, positive laws that apply in Indonesia, books, journals, and other scientific writings. The results of this study show legal protection for business entrepreneur in digitalizing MSMEs includes: ease of business legality and access to information; ease of financing and incentives; prohibition of large and medium enterprises to own and/or control micro and small business; obtaining allocations and guarantees for production and marketing; and provision of legal assistance and services. The Job Creation Law also had a positive impact in encouraging the digitalization of MSMEs in the midst of a pandemic which was marked by an increase in e-commerce transactions, the value of electronic trade transactions, the value of digital banking transactions, and so forth.

Keywords: job creation law, legal protection, MSMEs digitalization

Introduction

Nawa Cita is used as the main program or goal of Jokowi government in carrying out its government. Nawa Cita is integrated into National Medium-Term Development Plan (referred to as RPJMN) 2020-2024 which become direction for national development agenda with vision "Continuing Infrastructure Development Connecting Small Areas, Economy, Tourism, Rice Fields, Plantations, Fishery Ponds" [1]. Related to MSMEs, government is concerned with providing a number of incentives for communities affected by COVID-19 pandemic.

For MSMEs entrepreneur, COVID-19 pandemic has disrupted business operations to carry out digital transformation, because face-to-face sales have decreased due to the physical restriction policy. Digitalization by MSMEs can provide benefits, namely wider marketing for their products with the help of technology compared to conventional methods. MSMEs can sell their products not only in their area but can also expand to worldwide [2]. MSMEs digital transformation has a positive impact and also has the potential to have a negative impact. Cybercrime also becoming a serious threat to digital transformation. There have been more than 192.000 attacks on MSMEs in Indonesia [3]. MSMEs considered as potential targets therefore there are many cyber-attacks that make MSMEs as the target of attack. Challenge for MSMEs in midst of a massive digital economy that is increasing rapidly requires MSMEs entrepreneur adapt to information technology and protect against cybercrime [4].

Existing regulations still have many limitations and weaknesses in protecting cyber infrastructure and security. Several laws have been issued, including Law Number 36 of 1999 concerning Telecommunications, Law Number 32 of 2002 concerning Broadcasting, Law Number 14 of 2008 concerning Public Information Disclosure and Law Number 19 of 2016 concerning Information and Electronic Transactions. These laws and regulations still have

limitations in the context of telecommunications infrastructure, broadcasting and informatics for services. So that on November 2, 2020 government issued Law Number 11 of 2020 concerning Job Creation [5].

Enactment of Law Number 11 of 2020 concerning Job Creation has brought changes related to digitalization. Government demanded to carry out digitalization by providing incentives to human resources, budget, facilities and infrastructure. MSMEs entrepreneur are not only legally protected, but the government is also responsible for providing digitally integrated MSMEs data collection, as well as providing resource facilities according to the needs of entrepreneur [6].

Government supports MSMEs digitalization program through Law Number 11 of 2020 concerning Job Creation, providing easiness business permits for entrepreneur through the Online Single Submission System (referred to as OSS System). Government conducts training and registration for MSMEs which can be done by online and offline [7].

Based on CISCO data in 2021, 60% of MSMEs in Indonesia have experienced customer information data theft, and 33% of MSMEs have experienced digital security issues in last year [8]. The rise of cybercrime cases should be a reminder for MSMEs that use digital as media to be more careful. Carelessness when users access internet can result in attacks and cause risks and losses [9].

There are three social engineering methods that are most common in 2021, namely phish-ing (sharing dangerous fake links), baiting (lure the victim with reward of benefits or gifts), and pretexting (trick victim into obtaining personal data) [10]. Elvlyn and Marhaen's research shows that legal protection for business entrepreneur in digitalizing MSMEs includes: ease of business legality and access to information; ease of financing and incentives; prohibition of large and medium enterprises to own and/or control MSMEs; obtaining allocations and guarantees for production and marketing; and provision of legal assistance

and services. Law Number 11 of 2020 concerning Job Creation has had a positive impact in encouraging the digitalization of MSMEs in the midst of a pandemic marked by an increase in e-commerce transactions, value of electronic trade transactions, value of digital banking transactions, and so forth. Another research was conducted by Caroline, Murwadi, and Sukarsa which resulted legal protection for MSMEs digital social enterprise provided through laws and regulations regarding business entities and tax deductions for MSMEs, and real actions carried out by government agencies through ministries, authorities, and BUMN ^[11].

Based on description above, it shows that digitalization is a challenge for MSMEs amidst massive development of digital economy which is growing rapidly. Digital transformation of MSMEs has positive impact but also has the potential of negative impact, namely occurrence of cybercrimes. The government has made efforts to protect MSMEs from cybercrime through ratification of Law Number 11 of 2020 concerning Job Creation. This Law is government effort to support easiness in doing business in Indonesia, but development of cybercrimes is still occurring. As a country based on law (rule of law), it is appropriate for government to provide legal protection for MSMEs.

Research Methods

This research using empirical legal studies. Empirical legal studies means that it is real in other words is approach the problem which being studied with law that is applied or in accordance with the realities that live in society ^[12]. This empirical legal studies uses a qualitative approach, namely research that intends to understand phenomena about what is experienced by research subjects such as behavior, perceptions, motivations and actions by means of descriptions in the form of words and language, in a special natural context and by utilizing various natural method ^[13]. This research study more depth about legal protection of MSMEs against negative impacts of digitalization after enactment of Law Number 11 of 2020 concerning Job Creation using primary and secondary data. Data collection was carried out using interview techniques and literature study. Data analysis was performed with a qualitative descriptive analysis.

Discussion

There are at least two aspects of digitalization for MSMEs, namely legal digitization and economic digitalization. Legal digitization can be carried out by MSMEs through taking actions that have been accommodated by law. This legal action is carried out to obtain legal recognition, legal protection, and certainty of position in the name of law. Business entrepreneur must first understand the existence of MSMEs from a legal perspective. This is intended so that entrepreneur know the form of legal protection and state recognition of their daily business.

Protection of MSMEs based on active law in Indonesia which is regulated in Article 34 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which stipulates that state must develop a social life and security system for all and empower those who are weak and incapable of conforming to human dignity ^[14]. Social protection as referred to 1945 Constitution needs to be regulated more clearly. The government regulates and ratifies laws and regulations in

MSMEs sector which are regulated according to Law no. 20 of 2008 (MSMEs Act) in order to regulate the functions and rights of MSMEs entrepreneur. MSMEs are the main source in improving and stabilizing the country's economy, so the government approve Job Creation Law which not only aims to provide relief, assistance, guidance and empowerment of MSMEs together with cooperatives, but also aims to develop the protection and welfare of the manpower which is stated in the preamble of Job Creation Law. If we read in Chapter V, this law describes various facilities for MSMEs as a form of manifestation from the government which encourages the digitalization of MSMEs ^[15].

Chapter V Article 87 of Job Creation Law changes the provisions of Article 12 of MSMEs Law, which in essence this law simplifies the methods and types of business legality with a one-stop integrated service system, as well as providing relief and/or removing cost for issuing permits for micro and small business entrepreneur. Based on the provisions of this article, MSMEs do not only get facilities to simplify business legality, but also get simple service assistance, namely getting clarity and certainty of time, cost, security, responsibility, completeness of infrastructure, ease of access, discipline, politeness, and friendliness ^[16]. Therefore, MSMEs will get access to obtain as much information as possible related to the process of administration permits from the application stage to the issuance of the document.

Job Creation Law changes the provisions for financing and guaranteeing MSMEs contained in Article 21 of MSMEs Law. In essence, state administrators, State-Owned Enterprises (referred to as BUMN), and national large-scale business entrepreneur are obliged to provide financing, both from the provision for the annual profit share allocated to MSMEs in the form of loans, guarantees, grants, and other financing. The government is obliged to provide incentives, whether in the form of ease of licensing, reduction of cost for facilities and infrastructure or other forms of incentives. Then, Article 25 of MSMEs Law regarding partnerships was abolished. Whereas in Article 26 between letters e and letter f one pattern is added, namely supply chain. Furthermore, between the provisions of Article 32 and Article 33, one article is inserted which basically regulates implementation of partnerships with a supply chain pattern that can be carried out through activities from micro and small enterprise by medium and large enterprises which at least must cover the management of product transfers carried out by companies with raw material providers, industrial products from companies to consumers; and/or managing the availability of raw materials, supply of raw materials and fabrication processes.

Article 35 of MSMEs Law is amended with provisions providing guarantees that large business entrepreneur who have cooperation with MSMEs are not permitted to transfer power and/or ownership of assets owned by MSMEs entrepreneur. Vice versa, that medium business entrepreneur are also prohibited from transferring ownership of assets of MSMEs entrepreneur in entering into partnership relationships ^[17].

With the enactment of Job Creation Law, in practice the government guarantees to facilitate all forms of business legality as an effort to support MSMEs businesses. This is regulated in Article 91 of Job Creation Law which states that currently dealing with business legality can be done online or offline by simply attaching an Identity Card

(referred to as KTP), as well as a Business Certificate (herein after referred to as SKU) from the Neighborhood Association (referred to as RT). Business entrepreneur are required to make an application for the issuance of an SKU which is useful as proof that the entrepreneur is domiciled in local location. After that, online registration will certainly get an electronic Business Identification Number (referred to as NIB) as a single permit including Business Permits, Indonesian National Standards, and halal product guarantee certification that applies to all business activities^[18].

In carrying out business activities, small and micro entrepreneur are obliged to fulfill requirements for ownership of standard certification certificates and permits. Therefore, government is also participating in fostering the fulfillment of product standards and halal certification in meeting the needs of these small and micro entrepreneur.

Establishing an individual Limited Liability Company (referred to as PT) for small and micro entrepreneur, the government provides incentive facilities. This is regulated in Article 92 of Job Creation Law which states that state administrators provide exemptions and/or are given relief from tax administration fees, customs in processing their business permits. In order to improve and provide benefits to country's economy, the government provides income tax incentive facilities to micro-entrepreneurs as a form of support that can be used to develop their business scale and business capacity. Income tax facility also aims to be a learning medium to understand the importance of tax rights and obligations for micro-entrepreneurs. Meanwhile, customs facilities are provision of incentives by state administrators related to export and import activities in the form of relief and/or import duty exemption.

In Article 97 of Job Creation Law, MSMEs entrepreneur get easiness in carrying out marketing and post-production. This means it is a government support to increase the digitalization of MSMEs, entrepreneur and cooperatives must be allocated at least 40% of government's procurement of goods and/or services for MSMEs products. Likewise with the provisions of Article 104 of the Job Creation Law, the form of support by government is in the form of guaranteeing the allocation of at least 30% of commercial land, shopping and/or business places, public infrastructure for MSMEs entrepreneur^[19]. Thereby with the issuance of the Job Creation Law, protection in form of fostering and developing MSMEs and cooperatives through partnership programs, training, increasing competitiveness, innovation and market expansion, access to finance, and disseminating information as wide as possible.

Government, in order to broaden the basis for empowering and facilitating MSMEs as the objective of Job Creation Law, issued and ratified Government Regulation Number 36 of 2021 concerning Wages (referred to as PP No. 36/2021), and Government Regulation Number 7 of 2021 concerning Convenience, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises (herein after referred to as PP No.7/2021). Micro and small business entrepreneur get special exceptions in determining and/or providing minimum wages for their workers. What is meant by enactment of exceptions to provisions of the minimum wage for micro and small entrepreneur in practice must be a minimum of 50% of average public consumption and wages must be agreed upon at least 25% above poverty line at the provincial level^[20]. However, these exceptions must be based on terms and conditions of micro and small

enterprises as stipulated detail in Article 35 and Article 36 of PP No.7/2021.

Job Creation Law is considered brought improvements to various sectors, especially MSMEs, including digital business world. The development of electronic trade transactions is also expected to continue to increase in 2022, reaching up to 31.2% to IDR 526 trillion. This illustrates that the existence of Job Creation Law has more positive impact.

MSMEs are facilitated by easing requirements, such as not needing to attach collateral requirements when applying for credit, but only need to make their business activities as collateral for the loan application. This is regulated in Article 93 of Job Creation Law, which has point that micro and small business activities can be used as collateral for program loans. This support without collateral assets is crucial when trying to create sustainable MSMEs and keep non-performing loans (referred to as NPL) due to MSMEs business failures.

Conclusion

This research reach conclusion that since Job Creation Law enactment, among other things: first, MSMEs entrepreneur in government's digitalization program have provided convenience in terms of regulations and business licensing processes. State administrators guarantee and responsible when providing support and legal assistance, and/or relief for financing and provision of fiscal and non-fiscal incentives. Furthermore, the existence of a work partner implementation system through the supply chain concept can easily be carried out through activities of MSMEs by medium and large business activities. In addition, the government has also added guarantees for the allocation of at least 40% of domestic production, as well as providing a place for MSMEs development in public infrastructure. Second, related to issuance of Job Creation Law to accelerate digitalization of MSMEs in the midst of a pandemic, it has positive implications for the country. This is show by the digitalization program, MSMEs are one of the biggest supporters in improving the country's economy. The digitalization of MSMEs not only increases e-commerce transactions every year, but also plays a role as a provider of labor in various sectors.

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