

Legal Protection for Micro, Small, and Medium Enterprises in Aceh Province, Indonesia

Yusri^{1*}, Prof. Dr Tan Kamello², Prof. Dr Husni³, Dr Imam Jauhari⁴

¹Phd Student in Law Faculty, University of Syiah Kuala, Indonesia

²Supervisor, University of North Sumatera, Indonesia

³Co Supervisor, University of Syiah Kuala, Indonesia

⁴Co Supervisor, University of Syiah Kuala, Indonesia

*Corresponding Author. Email: yusriabidin@unsyiah.ac.id,

Mobile Phone: +62.8126904995

ABSTRACT

This study aims to raise the urgency and explain the types of legal protections for micro, small and medium enterprises (SMEs) for their better involvement in free world trade. This research used a juridical normative method and library research to collect the data. The research results that SMEs need to be protected because they are an integrated part of the economy, which has potential to improve the economy of citizens. The legal protection for the enterprises needs to be offered sustainably as a whole and in optimal capacity through developing conducive climates, offering opportunity for businesses, and supporting the enterprises. This will improve the roles of SMEs for economic development and equality, public welfare, and lower unemployment rate, which eradicates poverty. The law for SMEs has provided protections which are protective, facilitative, and consultative.

Keywords: *legal protection, micro, small, medium enterprises*

1. INTRODUCTION

Micro, small and medium enterprises (SMEs) play an essential role in the economic system of Indonesiaⁱ because the enterprises provide access to employment in various sectorsⁱⁱⁱ. The sectors of enterprises include industry, service, agriculture and plantation.

The SMEs grow by 3.1% over the years. The most recent data show that the number of SMEs was 57.2 million. In Aceh, the number reached 72,307 per December 31st, 2017^{iv}. The enterprises spread in 23 districts and municipalities in Aceh. This shows that SMEs play very strategic roles for national development, especially in providing job opportunities, so it will decrease the unemployment rate.

Economic globalization and liberation give adverse effect for the SMEs in running their businesses. Atmasasmita^v stated that the adverse effects of capitalism lead to unhealthy competition and monopoly without considering local SMEs both in domestic and international levels. In addition, SMEs do not always have equal opportunity for market share or access to capital from financial institutions. However, large-scale enterprises have a privilege to access sources of public economy, thus they can secure opportunities from SMEs^{vi}. According to Fajar^{vii}, SMEs are always disadvantaged when challenged by big cooperations although the government put some efforts to protect them. Furthermore, in the context of free

competition, there is not much can be done by the SMEs against the big cooperations^{viii}.

In running their businesses, SMEs in Aceh are faced with many problems, including juridical, economic, financial and political problems. In an economic and financial perspective, they have limited access to capital, financial management, marketing, or multiple business sectors. The protection offered by the government, both preventive and repressive protection, has not comprehensively protected SMEs in Aceh province.

Based on the explanation, it is essential that a concept is devised for legal protection for SMEs to participate in free competition. Therefore, the research questions in this study are a) what is the condition of SMEs in Aceh?, and (b) what is the most important aspect for legal protection of SMEs in Aceh to get involved in free competitions?.

2. METHOD

The study method used in this research was normative juridical by using secondary data derived from primary, secondary and tertiary legal materials. The data were collected from various resources such as legislation, journals, books, research reports. The data were analyzed using a content analysis technique.

3. RESULTS AND DISCUSSION

The role of the state government based on the concept of a legal state is to protect the citizens and improve their welfare. This is in line with the mandate of the founding fathers of Indonesia stated in paragraph 4 of the 1945 Constitution preamble.

Article 33 of the 1945 Constitution is the constitutional principle of the economic system in Indonesia, i.e. the principle of togetherness. Based on this principle, the objective of the national economy is to attain the prosperity of the people. Based on the constitutional principle, the economic system adopted in the 1945 Constitution is a social-economic system based on social justice in accordance with the fifth pillar of the Pancasila.

In the original manuscript of the explanation of Article 33 of the 1945 Constitution, it was emphasized that the focus is on the prosperity of all the people, suggesting that capitalism and company free competition are rejected in Indonesia^{ix}. The rejection of the capitalist system and globalization was motivated by the understanding that those systems are the characteristics of modern colonialism which can jeopardize national economic, political, and legal systems. The capitalist economic system is also claimed as the cause of poverty and economic injustice.

The fundamental values in the economic system adopted in Pancasila are different from those in the capitalist economic system. According to Emizon^x, the values in the capitalist system are individualism, liberalism, materialism, and those values are associated with globalization starting from the first to the third phase. With the values in the capitalist system, the globalization in the form of free trade advantages developed countries because they have access to large capital and technology to compete in the market.

The main function of law is to protect and maintain equality against any interests^{xi}. According to Bentham cited from Ali^{xii}, the function of law is to bring "the greatest happiness of the greatest number," and the function of legislation is to achieve four objectives, i.e. to provide subsistence, abundance, security, and equality. The main characteristic of utilitarianism revealed by Bentham is that the function of law is to give an abundant advantage for all people. Meanwhile, Mertokusumo^{xiii} explained that, as the protection of human interest, the law has a function to create harmony and equality which can protect the people's interest. According to Rani^{xiv}, the law is required because there are always many interests which need protection by law. In short, the key function of law is to provide security and protection for all interests, protect people against any actions which can disadvantage or endanger them.

According to Raharjo^{xv}, legal protection provides guidelines regarding violated human rights to people in order that they have a privilege for the rights given by law. Raharjo^{xvi} also stated that law is initially established to do not only regulate but also to attain justice, happiness, and prosperity to people.

Among other responsibilities of a state, in the economic sector, it is responsible to create an economic condition which can provide equal opportunity for all people^{xvii}. This purpose cannot be achieved in free trade. The free trade involves trading activities across countries, including export and import, without control or intervention in terms of tariff, quota, subsidiary, or other limitation to prevent trade flow of goods^{xviii}. Free trade does not have equal income; it is just a share of income^{xix}.

The role of law based on Hartono^{xx} in the economic sector is to establish equality and harmony in the relationship between strong and big corporations and small enterprises in order to maintain justice. The purpose of economic law is to create a new balance between customers, businessmen, people, and government because the previous equality has been revised and changed.

The establishment of global economic associations such as AFTA, NAFTA, and AEC is a fact which has to be faced by developing countries, including Indonesia. One of the problems for Indonesia in this globalization era is the development of national economic law which has not been able to accommodate all business activities in national and international levels^{xxi}. The participation of Indonesia in trade and investment agreements with other countries, such as GATT, TRIPs, AFTA, OPEC, CAFTA, and AEC is a development in the economic sector which directly influences legal development.

Globalization and liberalization accompanied by the establishment of AEC in December 2015 give both positive and adverse impacts to Indonesia. Radjaguguk^{xxii} argued that free trade can contribute to inequality between developed and less advantaged countries, and affect the conditions of the citizens in those countries.

Regarding free trade, Indonesia will experience the adverse effect as described by Tambunan^{xxiii} who claimed that there is an indication that Indonesia will lose the competition in the ASEAN market. He added that significant number of programs established by Indonesian government since the new order does not help SMEs to adequately perform. Another effect of free trade is a sign of inequality between developed and developing countries. Developing countries will rely more on others in free trade^{xxiv}.

To anticipate the adverse effect of competition in CAFTA and AEC periods, the governments, especially regional governments, need to establish regulations which protect SMEs. The legal protection endeavour for SMEs is also the responsibility of a state in achieving the purpose of a country that is to attain prosperity for the people.

3.1. The Concept Of Legal Protection For Smes

The concept of legal protection can be formulated as one of the efforts to protect SMEs in facing the impact of unhealthy business competition in national and international levels. Regarding the concept of legal protection in the legislation of SMEs and other regulations, legal protection is used to give rightful for

legal subjects. Micro, small and medium enterprises are the legal subjects in running their business which experience difficulties and obstacles in a business competition in this globalization era. The impact of free competition has prevented SMEs to keep running their business activities; therefore, they need to be protected through regulations and policies. The legal protection for micro, small, and medium enterprises is a dependent variable which can be influenced by free competition.

3.2. The Concept Of Free Competition

Free competition, also known as free trade^{xxv}, is a term used in international trade which is free from tariffs, quotas, or other restrictions. Free trade is defined as trade across countries, which include export and import, which is not restricted or intervened by tariffs, quotas, subsidies and other restrictions which can pervert the course of goods distribution. In addition to tariffs, free trade is also secured from non-tariff restrictions among country members. Black's Law Dictionary defined free trade as "a situation where all commodities can be freely imported and exported without special taxes or restriction being levied"^{xxvi}

Free trade is a concept of an economy which refers to product marketing across countries without import and export taxes and other marketing restrictions. Since Indonesia participated in international agreements regarding free trade, Indonesia is bound to some international agreement, bilateral or multilateral agreement, such as the General Agreement on Tariffs and Trade (GATT) and other international agreements. The area where free trade is conducted among country members is called free trade area^{xxvii}. There are some free trade areas which are usually referred to such as NAFTA, ASEAN China Free Trade Agreement (ACFTA) and ASEAN Economy Community (AEC). Our participation in GATT, GATS, TRIPs, WTO, and APEC is a development in economy which can influence legal development (Emirzon, 1999). Hartono^{xxviii} revealed that to prevent the adverse effect of globalization and liberalization on people's lives and national law is by establishing detailed legislation related to economy to develop international cooperations in economic sector very carefully and setting secure regulations to protect the people and the identity of the people in Indonesia.

In the principle of free trade, the role of government is restricted to regulator and protector for trade operation. In this case, the state only plays its role as law enforcement, who is not at all involved in the people's welfare^{xxix} including giving protection for SMEs. Therefore, a free competition of AEC is a dependent variable because legal protection of SMEs really depends on free competition.

3.3. The Increase Number of SMEs in Aceh Province

The number of SMEs has increased over the years. The increase was more significant in micro and small sectors than in medium and big enterprises. Department of Cooperation and SMEs in the district and provincial levels annually maps and update the data of SMEs. This data mapping is essential for analyzing the potential of development and empowerment of SMEs as an effort taken by the state to protect them.

Field personnel officers are assigned by the Department of Cooperation and SMEs to collect data of SMEs in districts and municipalities in Aceh Province. The result of data collection showed that there were 75,207 SMEs in Aceh Province. According to the Head of SMEs Division at the Department of Cooperation and SMEs in Aceh, Taufik, the number of enterprises in the directory of the Department of Cooperation and SMEs in Aceh in 2017 had not been validated, and thus it needs to be cross-checked with the data from the Aceh Central Statistics Agency. The data collected annually by the Department of Cooperation and SMEs are used as the consideration in developing programs to protect and empower SMEs.

3.4. The Urgency Of Legal Protection For SMEs

Considering the significant number and roles of SMEs in all provinces in Indonesia, it is urgent to devise protection and empowerment for enterprises in free competition. As a philosophical concept, legal protection for the enterprises is based on the protection principle in Pancasila as the state ideology, with the 1945 Constitution as the constitutional principle. Therefore, the legal protection principle for SMEs in Indonesia is in line with the objective of state establishment as mandated in the preamble of the 1945 Constitution, which is to protect all the people of Indonesia and to improve public welfare. Based on the constitutional concept, the essence of protection for the enterprises is to protect them from the adverse effect of free competition in order to attain prosperity for the Indonesian citizen.

Micro, small and medium enterprises as a media for business activities play a significant role in improving public prosperity in Indonesia. One of their strategic roles is to provide job opportunity. Therefore, the SMEs keep developing as big enterprises and state own enterprises develop. Based on the current data in the district and provincial levels, the number of SMEs increased significantly. This increase is claimed to strengthen the foundation of the national economy. The economy in Indonesia will have a strong foundation if the SMEs become the key players in the national economy. Therefore, the development of cooperation and SMEs need to be prioritized in the long-term national economic development^{xxx}. Thus, we expect that the productivity and

competitiveness of SMEs increase. The government policy to improve and encourage SMEs to participate in AEC can protect and empower them. Therefore, the government should focus on regulation to create healthy competition for Cooperations and SMEs. The government should also simplify regulations regarding business license to encourage enterprises to run their business activities more conducive.

Regarding the existence of SMEs in Indonesia, Tanjung^{xxxvi} stated that 99 per cent of enterprises in Indonesia are categorized into SMEs, which provide 97 per cent of Indonesian workforce and contribute 57.6 per cent of Gross Domestic Product. Meanwhile, Aceh Province is the home for 75,207 SMEs spread in 23 districts and municipalities.

Komaruddin^{xxxvii} argued that legal protection is required, so SMEs can develop during this free competition which is based on economic liberalization. The legal protection is significant because of several reasons. First, SMEs are ones of the pillars for economic development, and they should be empowered and protected by the government. Second, SMEs have potential to develop well, so it is expected that they can participate in global economic activities. Finally, the existence of SMEs proves that Indonesian people are financially independent, and thus there is a good prospect for Indonesia to compete in the free trade economic system.

The effect of economic liberalization through free competition process on SMEs needs to be anticipated with government policies in the form of preventive, protective, and facilitative policies. Otherwise, they will not be able to run their businesses. Therefore, Komaruddin^{xxxviii} claimed that legal protection principles are required for SMEs, so they can survive the economic liberalization. He added that there are four principles of legal protection in economic law regarding SMEs. They are the principles of:

- a. the economy in the 1945 Constitution,
- b. national interest protection,
- c. protection in International and civil law, and
- d. protection for disadvantaged economic class.

The principles of legal protection are emphasized into policies and regulations, both in central government and provincial government levels. There are many policies established by the government to protect and empower SMEs in accordance with the authority of the government. In the national level, legal protection for SMEs has been regulated in Law No. 20 of 2008 regarding SME and Government Regulation No. 17 of 2013. Before the establishment of Law No. 20 of 2008, the protection for the enterprises was regulated by Law No. 9 of 1955 regarding small enterprises. The legal protection for SMEs is also regulated under regional government regulation. In Aceh, the legal protection for the enterprises is regulated by the Regional Government Regulation, called *Qanun* No. 10 of 2004 regarding the empowerment of centre for small enterprises.

4. CONCLUSION

There are some reasons for the urgency of legal protection for SMEs, one of them is that the enterprises have played a strategic plan in attaining public welfare and national economic. In addition, the SMEs have opened 97 per cent of opportunity for workforce. Micro, small and medium enterprises have also survived global economic crises. Finally, the enterprises have contributed to the national Gross Domestic Product. The legal protections for the SMEs in Indonesia are regulated in legislation in the form of regulations and policies which are protective, facilitative, and consultative. In addition, Law No. 20 of 2008 has provided the SMEs with preventive protection.

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