

## FORM OF LEGAL PROTECTION OF SMALL BUSINESS IN THE CONTEXT OF BUSINESS COMPETITION IN INDONESIA

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### ABSTRACT

This study aims to determine how small businesses in Indonesia are afforded legal protection in the context of business competitiveness. This is normative legal study, which is often referred to as doctrinal legal research. This study employs 2 (two) approaches: the statutory approach and the conceptual method. The findings indicate that the legal protection of small business actors in business competition in Indonesia is a manifestation of the implementation of economic democracy that contains the principles of justice, unity and fairness to encourage the creation of business opportunities for every citizen in an atmosphere of healthy and reasonable competition so as not to cause the concentration of economic power on only a few business actors, but to provide opportunities for small business actors.

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### INTRODUCTION

Law as the only one governing instrument life public demanded For always follow development with method arrange things new as before Not yet Once there, like case arrangement to technology, transportation, and so on. There are settings the is something thing that can give certainty to public about existing rights and obligations set. The true law must sure, as guidelines supportive behavior something assessed order fair. There is one certainty will can operate function law with ok . Certainty no just moral demands , but rather in a manner factual characterize law . Something no law Certain No just bad law, but rather No law The same once. That nature including understand law That Alone (Shidarta, 2006) .

related with certainty law, in Indonesia itself has there is rule specially set about competition effort. Inside competition activity business breath with activity business That alone . In principle , everyone is entitled sell or buy goods or service what , with who , how much Lots as well as How method production , here it is what 's called market economy . In line with it , the behavior and structure of the market sometimes No can predictable , so No seldom perpetrator business raises cheating , causing restrictions part or a number of perpetrator business loss even dead (Rokan, 2012) .

In enforcement law competition business in Indonesia basically Still there is something problem , in particular to perpetrator business small . Chance try for perpetrator business small lately This the more narrow , because possible activities \_ done perpetrator business small taken replaced by business big . Big effort with capital strength and management strong effort \_ has succeed penetrate network business from upstream downstream , so business small difficult growing and frequent face constraint in operate his efforts . While the Business Competition Law has not Enough effective in maintain competition \_ Healthy still walk (Yusri, 2014) . because \_ it is needed effort empowerment to perpetrator business small Good through gift protection law , as well through enhancement aspect capital , market freedom and control technology by government , business and society with change orientation basic political economy (Hafni & Rozali, 2015) .

As for the desired goal achieved in study This is For analyze form protection law to business small in Indonesia and know development business through partnership towards MSMEs in Indonesia.

## RESEARCH METHODS

Type study law used that is study law normative or as it is also known with study law doctrinal. Study law doctrinal is object research the study is document regulation legislation and materials library. Furthermore in study this, researcher using 2 ( two ) types approach ie approach legislation ( statute *approach* ) and approaches conceptual ( *conceptual approach* ) Approach legislation done with method study various type regulation related laws with issue moderate law discussed . this done remember thing you want researched by researchers is about implication law to MSME exception in Law no. 5 of 1999. Meanwhile approach conceptual done with method study doctrines in knowledge law, which is understanding will doctrines the can made base For build argument law To use solve issue moderate law discussed. In case this approach conceptual the can form doctrine about certainty law, and justice, as well other doctrine contained within knowledge related laws with the discussion to be researched.

## RESULTS AND DISCUSSION

### Form Legal Protection for Small Businesses in Indonesia

In principle, competition business No can regardless from role perpetrator business For create market economy . Perpetrator business become subject main in competition effort. Amount perpetrator business in Indonesia very much , in particular perpetrators of Micro , Small and Medium Enterprises ( hereinafter called SMEs). Meanwhile , the market economy can formed when everyone or \_ perpetrator business have right For sell goods or services , to who , how much the amount as well as How method produce it . Perpetrator business One with perpetrator another effort must capable compete in a manner Healthy so that created competition healthy business ( *fair competition* ) .

The development of SMEs has role important in economy national (Ariani & Utomo, 2017) . the MSMEs Alone arranged in Constitution Number 20 of 2008 concerning Micro, Small and Medium Enterprises ( hereinafter called the MSME Law) which has been held through Regulation Government Number 17 of 2013 concerning Implementation Constitution Number 20 of 2008 concerning Micro , Small and Medium Enterprises . MSMEs are business economy standing productive \_ themselves , which are carried out by individuals or other business entities \_ is child company or No branch company Where business the with workers 1-4 people have riches clean not enough from IDR 50 million No including land and buildings and own results sale not enough from IDR 300 million (Kurniawan & Azhar, 2021) .

MSMEs in Indonesia have great potential \_ For developed because of the broad market , materials easy standard \_ got as well as source Power big human \_ is variable supporters development from business small the will but need scrutinized a number of matter along development such as development business must followed with management good management , good planning \_ \_ will minimize failure , mastery knowledge knowledge will support continuity

business such , manage system efficient and effective production , as well do breakthroughs and innovations that make differentiator from competitor is step going to success in manage business the .

The most difficult obstacle faced businessman small is concerns capital, management finance company, access marketing, as well focus multi business venture. MSME problems regarding a number problem , like inequality structural in allocation and control source power , indecisiveness the state's support for efforts development economy people in policies and development of industrialization strategies , market structures that are oligopolist , relative performance limited to the classics ( source Power man or HR, capital and access to institutional finance , technology, management, marketing and information ), occurrence distortion and inconsistency related policies effort development (Arliman, 2017) .

SMEs have role important in development and growth economics, no only in moderate countries developing, but also in developed countries. MSMEs are group perpetrator economy biggest in Indonesian economy and proven become valve safety economy national in times of crisis, as well become dynamist growth economy post crisis economy. kindly real SMEs or often also called UKM (Small and Medium Enterprises). sector the biggest effort contribution to development national. because it, government give treatment special to MSMEs. In the Article 50 letter h Law no. 5 of 1999 exists explanation exists treatment special for perpetrator belonging business in business small at its core state that prohibitions and sanctions in Law no. 5 of 1999 no apply for perpetrator business small.

The reason why MSMEs are excluded from Law no. 5 of 1999 among them as following: First, SMEs are not own strong ability For compete with perpetrator business big. Second, weak MSME capital and capabilities source Power their human resources are very limited (Margono, 2009) . Third, the velocity of money in the business small relatively slow in activity competitive business strict compared to business big. There are exceptions the expected can bring impact positive in enhancement economy people like chase left behind in MSMEs competition business and free market (Baswir, 2000) .

kindly philosophical, setting about exception to perpetrator business micro and actor business small as arranged in Law no. 5 of 1999 is something form protection provided by law \_ to business micro and business small. Protection provided by law the intended For protect business small from behavior competition No healthy by the offender \_ more effort big. Purpose of protection This is For fulfil principle equality *level playing field*.

In addition, the protection provided by Law no. 5 of 1999 is also exists from implementation democracy existing economy \_ in Article 33 of the 1945 Constitution and also the principles and objectives of Law no. 5 of 1999 which among other things contains principle fairness, togetherness, and fairness. circumstances This Of course can push creation chance try for every inner citizen \_ atmosphere fair and reasonable competition, so \_ No raises exists concentration strength economics for actors business certain just. Protection law That Of course just can give opportunity for perpetrator business small For can advance and develop activity the effort he made.

UU no. 5 of 1999 is urgently needed because group businessman big Can just embed influence to party ruler else, so happen collaboration abuse power between businessmen and rulers. Businessman big try form conglomerate For control market share as much as possible. Access to markets and capital frequently become closed for MSMEs. Market openness with abolish treatment discrimination, favoritism and giving concessions to entrepreneurs big, is part from policy competition must effort \_ developed .

### **Draft MSME Partnership in Business Competition Law in Indonesia**

Business competition basically \_ always associated with competition in market- based economy , where company or seller or perpetrator business in a manner free make an effort For get customer or consumer To use reach objective business or company certain establishments , for example For look for profit profusely or For expand market share or also for \_ enlarge turnover sale on product goods and services (Kagramanto, 2008) . because \_ that , Indonesia

also regulates in a manner special relevant regulations \_ with competition effort so that entrepreneurs No each other harm .

kindly juridical constitutional, Article 33 of the 1945 Constitution which is base reference normative compile policy economy national explained that objective development economy is based on characteristic democracy citizenship with social justice for whole Indonesian people through approach welfare and market mechanisms.

Policies and settings law competition business based to provision in Article 33 of the 1945 Constitution , which mandates out of place exists bad monopoly society and competition effort that is not Healthy (Usman, 2022) . kindly No direct thinking about democracy economy has listed in Article 33 of the 1945 Constitution, where democracy own characteristic characteristic of the embodiment process embodied by all member public For interest whole society, and should subserve to well-being whole people.

In making sure activity business can walk with Good so needed rule as umbrella law activity business in the field economy as there is in the Invite Invite Number 5 of 1999 concerning Prohibition Monopolistic Practices and Unfair Business Competition ( next called Law No. 5 of 1999).

UU no. 5 of 1999 is law competition possible business interpreted as governing law all something related with competition effort. Laws are needed For arrange life public in all aspects and roles in development economy especially in effort achievement efficiency economy For realize well-being social.

one \_ thing to want achieved with the promulgation of Law no. 5 Year 1999 is For give protection law towards MSMEs and developing MSMEs through partnership programs (Sulasno, 2022) . Partnership according to Article 1 point 13 of Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises is cooperation in linkages effort, fine direct nor No direct , top base principle each other requires , believes in , strengthens and benefits that involve Micro , Small and Medium Enterprises actors with Big Business. Implementation partnership can done between SMEs and partnerships between SMEs and businesses big. Article 36 paragraph (1) Law no. 20 of 2008 determines that position the law of the parties equal meaning connection between business big and hard small prevent doing implementation partnership is horizontal relationship is not vertical.

because that's the perpetrators running business partnership must notice aspects stated partnership in Article 11 of Law no. 20 of 2008 among them connection each other profitable in implementation transaction business between SMEs and businesses big, formation market structure for ensure competition healthy business as well as protect consumer. Besides setting about understanding as well as necessary aspects noticed by the offender business in implementation partnership, Law no. 20 of 2008 also regulates about forms implementation regulated prohibited partnerships in Article 35 paragraph (1) and paragraph (2) of Law no. 20 of 2008 which can interpreted that business big and hard medium forbidden mastering SMEs as partners his efforts in implementation partnership. In addition, in Article 36 paragraph (2) of Law no. 20 of 2008 stated that implementation partnership supervised by an institution established and in charge For supervise competition business as arranged in regulation legislation. which is implicit pointing Commission Supervisor of Business Competition (KPPU) as supervising agency implementation partnership.

Although thus, form protection towards MSMEs in implementation partnership No arranged in a manner implicit in Law no. 5 of 1999, however based on principle balance interest in article 2 of Law no. 5 of 1999, which means in implementation MSME and Large Enterprise partnerships have chance try the same so that position bid business more big \_ tall compared to MSMEs No resulted emergence competition business No healthy . Exception to MSMEs with capital and assets limit is also set in Law no. 5 of 1999.

Article 31 paragraph (1) Regulations Government No. 17 of 2013 concerning Implementation Law No. 8 of 2008 concerning the next Micro , Small and Medium Enterprises called PP No. 17 of 2013 by way of clear mention that KPPU as authorized institution \_ do supervisor related implementation partnership . Furthermore, in Article 31 paragraph 3 PP No. 17 of 2013 provides authority to KPPU for emit regulation To use set procedures \_ supervision



partnership. In 2015, KPPU issued KPPU Regulation No. 1 of 2015 concerning Handling Procedures Case Implementation Partnership. Supervision to implementation partnership aim For prevent happening abuse position bargain that causes decline the ability of SMEs in compete as well as prevent exploitation for SMEs that are used For reduce level competition in the product market (Lubis, 2017) .

In Article 1 point 8 of the Regulations Government Number 17 of 2013 states that KPPU is commission as meant in Business Competition Law. Then in Article 31 by way of explicit arrange that KPPU did supervision implementation partnership in accordance with provision regulation legislation with can coordinate with agency related, as well provision regarding procedures supervision, incl form enforcement law, regulated with Regulation Commission. KPPU's mission to enforce justice to abuse position bargaining (abuse of bargaining position) will focus to MSME protection mastery business big as partners his efforts in implementation connection partnership.

Regulation Government Number 17 of 2013 concerning Implementation Constitution Number 20 of 2008 concerning MSMEs gives KPPU authority For do supervision to partnership that matter because that 99.99% of perpetrators business in Indonesia is classified in group perpetrator micro , small and medium (KPPU, n.d.) . Supervision partnership the done For guard climate effort and protect market structure of group doing business market domination and inside implementation partnership need exists role important from Commission Business Competition Supervisor for give protection for MSMEs.

According to provision Article 1 point 13 Law No.20 of 2008 concerning Micro, Small and Medium Enterprises (UMUM UMKM), partnerships is cooperation in linkages effort, fine direct nor No direct, top base principle each other require, believe in, reinforce, and benefit that it involves MSME actors with Big Enterprises. In execution partnership, parties have position law equal & against they apply Indonesian law as well based on principle each other need, trust, strengthen, and benefit.

However, in application principles partnership there is a number of constraints. One of them is exists gap in position bid between SMEs and perpetrator more effort big. Position Bargaining (Bargaining Position) is something form injustice Where there is one party that has strength For utilise position That For obtain profit in a manner No reasonable from other parties have position weak bargain (Hadi, 2017) . In context this, MSMEs have position bargain more low compared to with perpetrator business partners his. According to Kurnia Toha, position bargain more dominant Can just used perpetrator business big For impose will or interests to MSME actors (Bahri, 2019) . In the end weak side position he offered accept content contract partnership with forced (taken for granted), because If bid use alternative other will potentially cause loss opportunity For obtain what is needed. because \_ it , deep matter happen imbalance eliciting position disturbance to content contract needed intervention authority certain (government) (Hernoko, 2010) . Here it is appear role Commission Supervisor of Business Competition (KPPU) for supervise implementation partnership For provide a sense of trust, advantage, and reinforcement cooperation between the partnering parties.

this time actually has there is KPPU Regulation No.4 of 2019 concerning Supervision and Handling Procedures Case Partnership. Provision Article 7 regulates that guess beginning violation implementation partnership can sourced from KPPU's reports and initiatives. Report made in a manner written by everyone who knows or suspect has happen violation implementation partnership. Whereas KPPU's initiative is carried out through study data- driven initiatives as well information exists guess violation implementation partnership. Data as well information the obtained by KPPU from results control, results studies, findings in the process of inspection, results meeting hear opinion, results coordination with agency related, reports that are not complete, news in the media, and other sources that can be held accountable.

However Still there is lack in KPPU Regulation No.4/2019 namely No he arranged effort preventive To use prevent violation partnership. However, enforcement law preventive important as effort prevent not happen violation

or deviation provision existing partnerships. Weakness other is inclined oversight done case by case without using a scalable database easy national accessed. Apart from that, the drawbacks other is No there is provision governing concrete \_ about obligation agreement partnership made in a manner written. this \_ potentially big raises intentional perpetrator business violate obligation the.

Although Article 34 paragraph (1) UU UMKM Jo. Article 117 PP No.7/2021 regulates that partnership must poured in agreement written, however No there is consequence on violation the. In fact, Article 31 paragraph (6) of KPPU Regulation No. 1 of 2015 (which has revoked) set that to agreement partnerships that don't poured in a manner written, KPPU can recommend to appropriate technical agency with provision regulation legislation For do coaching partnership and its registration. So, for minimize violation on obligation drafting agreement partnership in a manner written, yes applied penalty or consequence to violation the. one alternative is If agreement partnership No made in a manner written, then penalty on violation partnership will aggravated.

## CONCLUSION

Based on description as has been described above , then can taken conclusion that protection law to perpetrator business small in competition business in Indonesia is exists from implementation democracy containing economy principle fairness , togetherness and fairness For push creation chance try for every inner citizen atmosphere fair and reasonable competition so as not to raises concentration strength economics for actors business certain course , but give opportunity to perpetrator business small For can advance and develop activity his efforts . Exception to perpetrator business small from prohibition law practice monopoly and competition business No healthy, in fact can hinder creativity perpetrator effort, grow anti competitive culture, and behavior competition effort that is not healthy ( cheating ) among perpetrator business small . it cause in the end perpetrator business small the will own Power weak competition. Temporary it is in the era of globalization economy moment this power competitive perpetrator business that's what matters the most ability For still exist. Hence, the exception to perpetrator business small in law competition business in Indonesia already No relevant Again with demands globalization economy. Writer recommend need done study repeat to provision exception for perpetrator business small according to Constitution Number 5 of 1999, and included in the amendment agenda Constitution the as necessary provisions changed.

Draft Partnership arranged in the actual UMKM Law as A mutual cooperation \_ profitable based on agreement. In practice remember No There is must agreement partnership For made in a manner authentic cause only made below hands. In context partnership between perpetrator business small, micro and medium when indicated happening competition unhealthy business, then KPPU has the authority For supervise agreement the for example when happen dependence and mastery perpetrator business medium to perpetrator business small and micro As for suggestions regarding with competition business in Indonesia is society that does effort , fine business big , small , and micro should No do violating action Constitution Because harm other entrepreneurs and stuff the can hinder even distribution economy for society . The Government and the People's Representative Council of the Republic of Indonesia should do renewal to arrangement competition business in Indonesia, remember developments in time and technology moment This Already the more fast.

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