



LEGAL IMPLICATIONS OF MSME REGULATION ON THE CONDITIONALLY UNCONSTITUTIONAL JOB CREATION LAW

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Abstract

Some of the provisions in MSME law have changed by the existence of UU Cipta Kerja (Indonesian Job Creation Law) which designs a competitive and advanced MSME activities. All the articles in the Job Creation Law do not only point to the interest of the elite or the capitalists, but rather offer positive simplicity, especially in making business lisenze for all MSME actors in Indonesia. This positive simplicity also covers several benefits includes easy access to to licesing, supplying, developing, financing and easy access to market. However, according to Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 (Indonesian Contitutional Court Verdict), the Job Creation Law is judged not to be in accordance with Indonesian constitution or called 'Conditionally Unconstitutional'. According to the progressive legal theory, formatting regulations by using omnibus law method does not question whether the value is good or bad, because omnibus law is a value-free method. Therefore, formatting regulations by using this method can be adopted and applicable in Indonesia which has Pancasila (Indonesian ideology) as the legal concept as long as the omnibus law itself is made in accordance with the principles contained in the 1945 Constitution of the Republic of Indonesia. This study uses doctrinal law research method and to be considered urgent and has novelty. In addition to the absence of the related research, study on the legal implications of MSME regulation

with the existence of the Indonesian Constitutional Court Verdict Number 91/PUU-XVIII/2020 can contribute both practically and theoretically. The results of this study indicate that, based on the decision of the Constitutional Court Verdict, the MSME arrangements contained in the Job Creation Law have conditionally binding legal force as long as the Job Creation Act is revised within 2 (two) years since this decision was pronounced. Therefore, the Job Creation Law will remain in effect until the formation is corrected in accordance with the grace period as determined in this decision. Likewise with the setting of MSME criteria contained in it.

Kata kunci:

UMKM; Omnibus Law;
Implikasi Hukum;
Inkonstitusional

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Abstrak

Beberapa ketentuan UU UMKM ini pernah dirubah melalui UU Cipta Kerja. UU Cipta Kerja ini menciptakan suatu kegiatan UMKM yang kompetitif dan memajukan. Seluruh pasal-pasal dalam UU Cipta Kerja tidak hanya mengarah pada kepentingan elit atau kapitalis melainkan, adanya suatu hal positif dalam pengaturan UMKM. Khususnya, izin usaha bagi UMKM di Indonesia. UU Cipta Kerja disebut memiliki beberapa manfaat yang membantu mempermudah akses perizinan, akses rantai pasok, akses pengembangan usaha, akses pembiayaan dan akses pasar. Namun, berdasarkan Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020, Mahkamah Konstitusi memutuskan bahwa UU Cipta Kerja tidak sesuai konstitusi atau inkonstitusional bersyarat. Dalam konteks teori hukum progresif, metode pembentukan undang-undang melalui metode omnibus law tidak mempermasalahkan nilai baik atau pun buruk. Karena omnibus law adalah suatu metode yang bebas nilai. Oleh karena itu metode pembentukan undang-undang dengan metode omnibus law dapat diadopsi dan cocok diterapkan dalam konsepsi negara hukum Pancasila sepanjang omnibus law itu dibuat sesuai dan tidak bertentangan dengan nilai-nilai Pancasila dan prinsip-prinsip yang termuat dalam UUD NRI 1945. Penelitian ini menggunakan metode penelitian hukum doctrinal. Penelitian ini dinilai urgensi dan memiliki kebaruan. Selain belum adanya penelitian terkait ini, penelitian mengenai implikasi

hukum pengaturan UMKM terhadap adanya Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 dapat berkontribusi baik secara praktis dan teoritis. Hasil penelitian ini menunjukkan bahwa, berdasarkan Putusan Mahkamah Konstitusi pengaturan UMKM yang terdapat pada UU Cipta Kerja mempunyai kekuatan hukum mengikat secara bersyarat sepanjang UU Cipta Kerja dilakukan perbaikan dalam waktu 2 (dua) tahun sejak putusan ini diucapkan. Maka UU Cipta Kerja masih tetap berlaku sampai dengan dilakukan perbaikan pembentukan sesuai dengan tenggang waktu sebagaimana yang telah ditentukan dalam putusan ini. Begitupula dengan pengaturan kriteria UMKM yang terdapat di dalamnya.

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PENDAHULUAN

MSME is a popular term in Indonesian society. Even so, there are still many people who have not been able to distinguish which businesses deserve to be labeled as MSME and which ones are not (Hetharie & Tulia, 2021; Betlehn & Samosir, 2018). In economic development, MSME is one of the indicators that determine the economic progress of a country because the development of MSME usually follows economic developments (Masnun, 2019). Therefore, this business becomes one of sectors that has to be developed continuously because it plays important role in supporting the economy (Hadiyati, 2021; Sudirman & Disemadi, 2021). MSME is said to has such a high resilience because it always keeps up with the times (Sihombing, 2018). As we know that the development of the era is experiencing rapid progress, and it is followed by MSME actors which are also following market demand to mantain their business even in the period of national crisis or even in global crisis (Waspiah, Rodyah, Latifiani & Arifin, 2020). MSME in Indonesia plays important role in the progress of the country's economy because it can increase job opportunities, support the economy to be more equitable, increase foreign exchange, encourage the economy in national and global economic crises, fill the needs of the appropriate targets (Taufik, 2017). The development of MSME in Indonesia can employ labors evenly throughout the country and can reduce the unemployment rate. The ability of MSME in reducing the unemployment rate means that MSME is also able to reduce the amount of poverty in Indonesia (Sitorus, 2018; Inayah, 2019). Furthermore, the existence of MSME in the society makes the society itself as consumers, meet their needs easily because MSME can be found all around us (Arliman, 2017).

Although MSME has shown its role in national scale, it still faces various obstacles and constraints, both internal and external, in terms of production and processing, marketing, human resources, design and technology, capital, and the business climate (Rusadi & Benuf, 2010). In empowering MSME, *Undang-Undang*

Nomor 20 Tahun 2008 tentang Usaha Mikro, Kecil dan Menengah (Indonesian MSME Law) was introduced as a form of legal guidelines which was prepared with the intention to empower MSME (Betlehn & Samosir, 2018). In general, the structure and material of Indonesian MSME Law contains general provisions, principles and objectives of empowerment, criteria, business climate growth, business development, financing and guarantees, partnerships, and coordination of empowerment, administrative sanctions and criminal provisions. Several provisions in this MSME Law have been amended through *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja* (Indonesian Job Creation Law).

The provisions at the preamble of the 1945 Constitution of the Republic of Indonesia emphasize to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice. These provisions are the absolute references in formatting constitutional legislation. Recently, the ratification of Indonesian Job Creation Law has become a polemic for several parties who are considered to have been harmed by the articles in the Job Creation Law, especially the laborers. Various studies confirm that several articles in the Job Creation Law are potentially unconstitutional. The constitution states that "sovereignty is in the hands of the people, and is carried out entirely by the People's Consultative Assembly of the Republic of Indonesia". However, the provisions contained in the articles in the Job Creation Law are more inclined to elitist and capitalist interests (Kharisma, 2020). However, some of the provisions in the Job Creation Law also pay attention to the business interest, one of which is MSME, and by the existence of this Job Creation Law, Indonesia can create a competitive and advancing MSME activities (Pratama, 2020). All articles in the Job Creation Law do not merely refer to the interests of the elite or capitalists, but rather offer a positive convenience on MSME activities, particularly in making MSME licenses. The Job Creation Law is said to have several benefits that help to facilitate access to licensing, supplying, developing, financing and access to market. The articles that regulate MSME have a progressive substance and make it easier for MSME actors to form their businesses into Limited Liability Companies.

In 2021, Indonesian Constitutional Court granted a number of points in the judicial review of the Job Creation Law and declared that the Job Creation Law was unconstitutional or conditionally unconstitutional through Indonesian Constitutional Court Verdict Number 91/PUU-XVIII/2020. Of the 9 judges of the Constitutional Court, 5 judges granted the petition for judicial review, while 4 judges expressed a dissenting opinion. The Indonesian Constitutional Court judges considered that the use of merging method or the omnibus law in the Job Creation Law was not clear whether the method was to make a new law or a revision. The judges of the Constitutional Court also considered that the formation of the Job Creation Law was not transparent to the public even though it had held several meetings with several parties. However, the meeting was considered not to have reached the stage of law substance. The draft of the law itself was also not easy to access by the public. In spite of that, in progressive legal theory, the omnibus law method does not question whether the value is good or bad in formatting law because it is a value-free method. Therefore, formatting regulations by using omnibus law method can be adopted and applicable in Indonesia which has

Pancasila (Indonesian ideology) as the legal concept as long as the method is applied in accordance with the principles contained in the 1945 Constitution of the Republic of Indonesia. *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan juncto Undang-Undang 15 Tahun 2019 tentang Perubahan Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan* (Indonesian Law on Formating and Amending Legislation) does not explicitly specify which method must be used in formatting a law, so that using omnibus law method in formatting laws can be carried out. Based on the description above, this study is considered urgency and has novelty. In addition to the absence of the study related to this topic, research on the legal implications of MSME regulation with the existence of Indonesian Constitutional Court Verdict Number 91/PUU-XVIII/2020 can contribute both practically and theoretically. This study is divided into two parts of discussion. First, it will examine and analyze how MSME was regulated before the Indonesian Constitutional Court Verdict Number 91; and second, will examine and analyze the legal implications of MSME regulation on Indonesian Job Creation Law which is judged as conditionally unconstitutional.

RESEARCH METHODOLOGY

Research methods are ways of thinking and acting that are well prepared to conduct and achieve a research goal, so it is impossible for a researcher to formulate, find, analyze or solve problems in a study without research methods (Arliman, 2018). The problem in choosing a method is a very significant problem in a scientific research, because the quality, value and validity of the results of the scientific research is largely determined by the method selection. Based on this explanation, what is meant by research methodology is a science that studies or discusses the methods used in an effort to find, develop and test the truth of a science in order to achieve a research goal (Tan, 2021).

This is a doctrinal legal research with a statutory approach and also a type of research with content analysis, which is simply defined as a method in collecting and analyzing the content of a "text". Text can be in the form of words, interpretation of pictures, symbols, ideas, themes and various forms of messages that can be communicated. Content analysis seeks to understand data not as a collection of physical events, but as a symbolic symptom to reveal the meaning of a text and gain an understanding of the message represented, according to the text's purpose. This legal research uses primary and secondary legal materials. Primary legal materials are legal materials or library materials that have authority and legally binding power. Secondary legal materials are all form of publications which are not official documents (Benuf & Azhar, 2020). The publications include textbooks, legal dictionaries, legal journals, and comments on court verdicts and scientific works of scholars related to this research (Benuf & Azhar, 2020).

RESULTS AND DISCUSSION

MSME Regulation Before the Constitutional Court Verdict Number 91/PUU-XVIII/2020

MSME is an integral part of the people's economy which has a strategic position to realize a more balanced, developing and fair national economic system

(Balqis & Sartono, 2019). To achieve this goal, the implementation of the national economy is emphasized to the economic system that is pro to the people's economy, equitable, reliable, fair, accountable, transparent and has competitiveness in the regional and global economic arena. In order to create economic democracy, MSME needs to be developed to increase its role and potential in realizing economic growth (Zia, 2020). MSME is productive business units that stands alone, which is carried out by individuals or business entities in all economic sectors (Kumaratih & Ispriyarso, 2020). Based on the principle, the distinction between micro, small and medium enterprises is based on the initial asset value (excluding land and buildings), the average annual turnover, or the number of permanent employees. However, the definition of MSME based on these three measuring tools differs in countries, so it is difficult to compare the importance of MSME's role among countries.

Legal guideline of MSME implementation in Indonesia is regulated in *Undang-Undang Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil dan Menengah* (Indonesian MSME Law). The regulation is intended to support national development. National development aims to realize a fair and prosperous society that is equally distributed in material and spiritual based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia. The society itself is expected to be independent, sovereign, united, and has sovereignty over the people in a safe, peaceful, orderly, and dynamic national life atmosphere, and in an independent, friendly, orderly and peaceful world social environment. National development which covers all aspects of the nation's life is jointly organized by the community and the government. The community is the main actor in the development, and the government is obliged to direct, guide, protect, and foster a supportive atmosphere. Before the existence of this MSME Law, small businesses basically had been regulated in *Undang-Undang Nomor 9 Tahun 1995 tentang Usaha Kecil* (Indonesian Small Business Law) which was ratified in Jakarta on December 26, 1995 by Suharto as President of the Republic of Indonesia at that time. This Small Business Law was drafted with the intention of empowering small businesses, but not regulating its internal mechanisms. It contains the definition and criteria of small business as well as the basis, principles and objectives. Furthermore, it also clarifies and emphasizes aspects that include fostering a conducive business climate, coaching and development, financing and guarantees, partnerships, coordination and control, as well as criminal provisions and administrative sanctions. However, on July 4, 2008 the Small Business Law was legally replaced with the MSME Law and was later declared invalid. The Indonesian MSME Law was ratified in Jakarta by Dr. H. Susilo Bambang Yudhoyono as the President of the Republic of Indonesia at that time.

There are several criteria used to define micro, small and medium enterprises according to Indonesian MSME Law. Article 1 number 1 of Indonesian MSME Law states that Micro Business is a productive business owned by individual and/or individual business entity which has all the criteria of Micro Business as regulated in this law; Article 1 number 2 of the MSME Law defines Small Business as productive economic business which stands alone, performed by individual or business entity that is not a subsidiary, branch company or part of Medium or Big Business, and meets the criteria of Small Business as regulated in this law; Article 1 number 3 of MSME Law affirms that Medium business is a productive economic

business which stands alone, performed by individual or business entity that is not directly or indirectly a subsidiary, branch company or part of Small Business and Big Business, with the amount of net worth or annual sales as regulated in this law.

To make it easier to understand the type of business that is being run, it is necessary to pay attention to the criteria first. The criteria for MSME based on the MSME Law are 1) Micro Business is defined as a productive economic businesses owned by individuals or business entities that have a net worth of Rp. 50,000,000,- and do not include buildings and land where the business is located. Annual sales of micro businesses are a maximum of Rp. 300,000,000; 2) Small Business is an independent productive economic business, owned by individuals or groups and not as a branch business entity of the main company. It is directly or indirectly a part of Medium Business as well as controlled and owned by the Medium Business itself. Businesses that meet the criteria for small businesses are those that have net worth of IDR 50,000,000 with a maximum amount of IDR 500,000,000. Annual business sales results are between Rp. 300,000,000,- up to a maximum of Rp. 2,500,000,000; 3) Medium Business a productive economic business which is not a branch or subsidiary of a central company and is a direct or indirect part of a small business or large business with a total net worth in accordance with the laws and regulations. Medium Businesses are often categorized as large businesses with the criteria that the net worth of the business owner reaches more than IDR 500,000,000 to IDR 10,000,000,000 and does not include buildings and land where the business is located. Its annual sales results reach Rp. 2,500,000,000,- to Rp. 50,000,000,000,-.

In addition to the criteria for MSME, the MSME Law also regulates the principles in MSME activities. Article 2 of the Indonesian MSME Law states that MSME is based on kinship; economic democracy; togetherness; fair efficiency; sustainable; environmental insight; independence; balance of progress; and national economic unity. These principles are explained as follows: 1) The principle of kinship, this principle underlies the efforts to empower MSME as part of the national economy which is carried out based on economic democracy, includes principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, balance of progress, and national economic unity for the welfare of all Indonesian people; 2) The principle of economic democracy, this principle requires the empowerment of MSME to be carried out as an integral part of national economic development to realize the prosperity of the people; 3) The principle of togetherness, this principle encourages the role of MSME and the Business World together in their activities to realize the welfare of the people; 4) The principle of fair efficiency, this principle underlies the implementation of MSME empowerment by prioritizing fair efficiency in an effort to create a fair, conducive and competitive business climate; 5) The principle of sustainability, this principle in a planned manner strives for the development process to run through the empowerment of MSME which is carried out continuously to form a strong and independent economy; 6) The principle of environmental insight, this principle empowers MSME while still paying attention to and prioritizing the protection and maintenance of the environment; 7) The principle of independence, this principle empowers MSME which is carried out while maintaining and prioritizing the potential, capabilities,

and independence of MSME; 8) The principle of balance of progress, this principle empowers MSME that seeks to maintain a balance of regional economic progress within the national economic unit; and 9) The principle of national economic unity, this principle empowers MSME which is part of the development of national economic unity.

It is approved that MSME plays an important role in economic development and growth, not only in developing countries, but also in developed countries (Indrawati & Rachmawati, 2021). In developed countries, MSME is very important, not only because their business groups employ the most labor compared to large businesses, but also their contribution to the formation and growth of Gross Domestic Product (GDP) is greater than the large businesses. Thus, on November 2, 2020, Joko Widodo, as the President of the Republic of Indonesia, has ratified *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja* (Indonesian Job Creation Law) which has changed several provisions in the MSME Law, it also revises at least eleven (11) areas that regulate strategic policies in general (Agustianto, 2021). The Job Creation Law aims to create the widest possible employment opportunities for the people of Indonesia equally throughout Indonesia. The ratification of this law by Indonesian House of Representatives (in Indonesia says *Dewan Perwakilan Rakyat/DPR*) and the Government has caused a lot of conflicts in society. There were many rejections against several articles in the Job Creation Law because of the shortened holidays, problems with work contracts, the absence of sanctions for employers if they pay wages below the provisions, and articles on environmental protection and management. However, employment is not the only important topic to discuss in the Job Creation Law, the regulation of MSME is also valuable to discuss. The regulation of MSME in this law is very important considering the huge number of MSME actors in Indonesia. Based on data obtained from Indonesian Central Statistics Agency (in Indonesia says *Badan Pusat Statistik/BPS*) in 2018 there were 64.2 million businesses in Indonesia, and based on data obtained from *Direktorat Jendral Kekayaan Negara* (Indonesian Directorate General of State Assets), MSME contributed 60.34 % of the total Gross Domestic Product (GDP) or around Rp. 8,400 Trillion (Albab, 2020). It is clear that, with the existence of this Job Creation Law, the Government has made various efforts to create and expand employment opportunities in order to reduce the number of unemployment, and accommodate new workers as well as encourage the development of Cooperatives and MSME with the aim of improving the national economy which will be able to improve people's welfare. Based on this Job Creation Law, the creation of job involves regulations regarding ease of establishment, member meetings, cooperative business activities, MSME criteria, a single MSME database, integrated MSME management, ease of Business Licensing, partnerships, incentives, and MSME financing.

Even though the MSME Law has been amended with the Job Creation Law, business actors still have not received explanation regarding the criteria for MSME until Government regulates it further. The Job Creation Law regulates the financing and guarantee of MSME, in the Job Creation Law it provides more firmness and obligations by the government to business actors. In the previous MSME Law, the government's obligation to provide financing and guarantees is only an ability (mogen) marked by the conjunction 'can' in the provisions of Article 21 of the MSME Law. The word 'can' reflects the flexibility for the government to carry out its

obligations or not. Thus, Article 21 of the MSME Law does not provide 'legal certainty' for business actors. In contrast to the Job Creation Law, the word 'can' is abolished so that the government has an absolute obligation to provide MSME financing which is from the provision of an annual profit share. Additionally, large national and foreign businesses also provide financing allocated to MSME in the form of loans, guarantees, grants, and other financing. Central and Local Governments according to this law take part in providing incentives in the form of ease of licensing requirements, reduced tariffs for facilities and infrastructure, and other forms of incentives to the business world that provides financing for micro and small businesses. The provisions on financing and guarantees for micro and small businesses in the Job Creation Law clearly provide certainty for the community of MSME actors and become an obligation for the government to ensure that financing for micro and small businesses runs smoothly (Albab, 2020).

Article 91 of the Job Creation Law regulates business licensing. Registration for MSME businesses can be done online or offline by attaching an Identity Card and a business certificate from the local Neighborhood Association (in Indonesia says *Rukun Tetangga/RT*). The registration is carried out through electronic business licensing to obtain a Business Identification Number (In Indonesia says *Nomor Induk Berusaha/NIB*) which is applicable to all business activities. The license also includes business licenses, Indonesian national standards certification, and halal product guarantee certification. According to Article 48 of Job Creation Law, the claim of halal product is based on the statement of MSME actors, but it certainly causes pro and con among people who are questioning whether the halal substance can be guaranteed or not, but on the other hand, this regulation make it easier for MSME to obtain permits.

The Job Creation Law gives central and local governments an obligation to provide legal assistance and assistance services for MSME, but there is no further explanation about the type of assistance that is provided, the institutions that provide legal assistance and how the mechanism is. This raises questions in the community whether all problems related to MSME can be legally assisted or only for certain problems. Therefore, there is a need for further regulation, whether later stated in a Government Regulation or other implementing regulations. This further regulation needs to be reaffirmed with implementing regulations because there are still many things that need to be further detailed, so that can reach the essence of the Job Creation Law for MSME, which is more develop and be able to compete in business world, with an easy licensing process, legal certainty, and also prioritizing superior product quality (Albab, 2020).

In line with the previous situation, on February 2, 2021, the government has completed *Peraturan Pemerintah Nomor 7 Tahun 2021 tentang Kemudahan, Perlindungan, dan Pemberdayaan Koperasi dan UMK*N (Indonesian Government Regulation concerning the Ease, Protection, and Empowerment of Cooperatives and MSME) as the implementing regulation of the Job Creation Law. This Government Regulation has finally set the criteria for MSME, because in the previous Job Creation Law, the amount of net worth from the business and the value of sales proceeds were not detailed explained.

Indonesian Government Regulation No. 7/2021 has been issued by the government along with 48 other implementing regulations of the Job Creation Law (Legal Contracts, 2021). The Regulation amends several provisions previously regulated in the MSME Law, one of them is the provision related to the criteria for MSME. The new criteria are regulated in Article 35 to Article 36 of Indonesian Government Regulation no. 7/2021. Based on the article, MSME is categorized based on 'business capital' or 'annual sales results'. The criteria for business capital are used for the establishment or MSME registration, they are 1). Micro Business has a maximum business capital of Rp. 1,000,000,000, excluding land and buildings for business premises with the maximum annual sales of Rp. 2,000,000,000; 2) Small Business has a business capital of more than Rp. 1,000,000,000, up to Rp. 5,000,000,000, excluding land and buildings for business premises with the annual sales of Rp. 2,000,000,000, up to Rp. 15,000,000,000; 3) Medium Business has a business capital of more than Rp. 5,000,000,000 up to of Rp. 10,000,000,000, excluding land and buildings for business premises with the annual sales of more than Rp. 15,000,000,000 up to Rp. 50,000,000,000. The MSME criteria in Article 6 of the MSME Law are regulated significantly different in Government Regulation no. 7/2021. For comparison, here are the differences:

Chart 1. Comparison of MSME Criteria

MSME Law	Government Regulation No. 7/2021
MSME Classification	MSME Classification
MSME is classified according to net worth and annual sales results. Net worth is the amount of assets after deducting debt or liabilities	MSME is classified according to the criteria of capital or annual sales results. Business capital is owned capital and loan capital to carry out business activities.
Net Worth/Business Capital	Net Worth/Business Capital
<ol style="list-style-type: none"> 1. Micro Business: Maximum Rp. 50,000,000; 2. Small Business: More than Rp. 50,000,000-Maximum: Rp. 500,000,000; and 3. Medium Business: More than Rp. 500,000,000-Maximum: Rp. 10,000,000,000. Excluding land and buildings for business 	<ol style="list-style-type: none"> 1. Micro Enterprises: Maximum Rp. 1,000,000,000; 2. Small Business: More than Rp.1,000,000,000,-Maximum: Rp. 5,000,000,000; and 3. Medium Enterprises: More than Rp. 5,000,000,000-Maximum: Rp. 10,000,000,000-. Excluding land and buildings for business
Annual Sales	Annual Sales
<ol style="list-style-type: none"> 1. Micro Business: Maximum Rp. 300.000.000; 2. Small Business: More than Rp. 300.000.000-Maximum: Rp. 2.500.000.000; and 	<ol style="list-style-type: none"> 1. Micro Business: Maximum Rp. 2.000.000.000; 2. Small Business: More than Rp. 2.000.000.000-Maximum: Rp. 15.000.000.000; and

3. Medium Business: More than Rp. 2.500.0000.000-Maximum: Rp. 50.000.000.000.	3. Medium Business: More than Rp. 15.000.0000.000 -Maximum: Rp. 50.000.000.000.
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Source: Processed based on the comparison of the MSME Law with Government Regulation no. 7/2021

The Omnibus Law Method and the Legal Implications of MSM Regulation on the Conditionally Unconstitutional Job Creation Law

The ratification of the Job Creation Law using the Omnibus Law as the method has become one of the controversies in 2020. Without any socialization to the public, the Law was later ratified at the Plenary Session on October 5, 2020. It created a negative stigma from many circles, the ratification was considered too hasty, not transparent and seemed to ignore democracy (Muqsith, 2020). This approval turned out great resistance among the public. A wave of actions also occurred until October 8, 2020 in several parts of Indonesia, one of which was in the capital city of Jakarta, where generally the actions were driven by workers, students, and civil coalitions. The existence of the ratification of the Job Creation Law also has the potential to reduce public trust in the government because it does not stand with the small community, especially the workers (Hepridayanti & Fauzi, 2021).

As a democratic country, Indonesia put the sovereignty in the hands of people. This is in accordance with the Article 1(2) of the 1945 Constitution of the Republic of Indonesia which states that sovereignty is in the hands of the people and carried out according to the Constitution. The implementation of the reign is indeed run by the government or bureaucracy, but sovereignty and power remain in the hands of the people. Government officers can occupy their positions because the votes from the people. The people have power, aspirations and desires, as well as the welfare of the people are the main points to be achieved and to be implemented. However, today in Indonesia, many members of the People's Representative Council ignore the democracy it self, they seem to be acting deaf in listening to the aspirations of the people. This includes the ratification of the Job Creation Law case. On the other hand, the Law amends a number of laws relating to the acceleration of investment inflows. The drafting of the Job Creation Law is the government's goal in creating job opportunities by providing convenience, providing protection and empowerment of micro, small and medium enterprises, improving the investment ecosystem and facilitating business and investment initiated by the central government as well as accelerating strategic national projects. (Khair, 2021). The Job Creation Law regulates various complex subjects, which are then combined into a legal framework. The Law took over the previous regulations because they were deemed to be corrected and perfected. The Job Creation Law is a comprehensive and fast relaxation in various fields. A common belief about the fastest way to increase productivity and competitiveness is relaxation or liberalization. Relaxation is believed to attract more investment so that can create more job opportunities (Muqsith, 2020).

Based on the description above, the second discussion in this study will analyze the legal implications of MSME on the conditionally unconstitutional Job

Creation Law based on the Constitutional Court Verdict Number 91/PUU-XVIII/2020. This verdict was read out by Anwar Usman as Chairman of the Constitutional Court on Thursday (25/11/2021). It is the first decision by the Constitutional Court to partially grant a formal judicial review. The Constitutional Court of Justice affirmed that the Job Creation Law was formally flawed and it was clearly declared as conditionally unconstitutional. The Constitutional Court stated that the establishment of the Job Creation Law was contrary to the 1945 Constitution of the Republic of Indonesia and had conditionally binding legal force as long as it was not interpreted as 'no correction was made within 2 (two) years since this decision was pronounced'. The judges also declared that the Job Creation Law remains in effect until the regulation is corrected within the period as determined in the verdict. In the 448-page verdict, the Constitutional Court ordered the legislators to make improvements within a maximum period of 2 (two) years after the decision was pronounced. If there is no corrections are made during this period, then the Job Creation Law is declared permanently unconstitutional.

Based on the analysis of the Constitutional Court Verdict Number 91, the Job Creation Law was declared unconstitutionally conditional. In this case, the Constitutional Court must balance the requirements for the formation of a law that must be met, as a formal requirement in order to obtain a law that has the element of certainty, expediency and justice. Particularly, in implementing the principle of openness, it must include maximum and more meaningful public participation, which is the embodiment of the constitutional order in Article 22A of the 1945 Constitution of the Republic of Indonesia. Thus, the Constitutional Court provides an opportunity for legislators to revise the Job Creation Law based on the appropriate procedures, using omnibus law method. The method itself also has to be definite, suitable with the standard and also comply with the principle requirements that have been determined.

It is understandable that the issue of "regulatory obesity" and the overlap between laws are the reason the government uses the omnibus law method which aims to accelerate investment and expand employment opportunities in Indonesia. Omnibus law has different definitions, both from the definition from each country and legal dictionaries or legal academics (Hepridayanti, & Fauzi, 2021). Omnibus word comes from the Latin which means "for all / for everything" so that the omnibus law method is interpreted as one (new) law that contains or regulates various kinds of materials and subjects to simplify various laws that are still in effect. The term omnibus law or omnibus bill or omnibus legislation actually refers to the method, technique, or method of drafting or formulating legislation that develops in countries that adhere to the Common Law system. Several countries that have implemented the omnibus method include the UK, the United States, Canada, Ireland, Australia, and Philippines. Literally, "omnibus" is interpreted as 'relating to or dealing with numerous objects or items at once; including many things or having various purposes'; 'A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provision'; and 'A bill that deals with all proposals relating to a particular subject, such as an "omnibus judgment bill" covering all proposals for new judgeships or an "omnibus crime bill" dealing with different subjects such as new crimes and grants to states for crime control'. Thus, the material of a law is not

limited to the title of the law itself as what has been practicing in Indonesia so far, but can also reach the materials contained in various other laws which in their implementation in the field are directly or indirectly related to each other. In the opinion of constitutional law experts, one of them is Fahri Bachmid, omnibus law is a legal product concept that has the function of integrating various materials, subjects, themes, and laws and regulations in various fields into a large and comprehensive legal product (Hepridayanti, 2008). & Fauzi, 2021). Then according to Bivitri Savitri, omnibus law is defined as a law made to target major issues that exist in a country. Apart from targeting major issues, the aim is to revoke or amend several laws (Fitryantica, 2019).

Law is a fully dynamic institution. Therefore, law is strongly influenced by the development of people's lives, the law must also be able to regulate the development of the needs of the community, that is why the law must be dynamic and progressive. Law as a progressive institution is not only needed in the present era, but also in the future. History has proven that the emergence of various approaches and methods in law has made law not stagnant and stopped, but continues to grow, change and develop to adapt and be responsive to the development of the needs of society and its era. Legal changes to adapt and transform according to the development and needs of society is a necessity. This is to avoid the assumption that the law is merely a historical monument which ultimately fails to regulate effectively and efficiently. Legislation in Indonesia currently has many problems, including the large number of laws and regulations (overregulated), the many overlapping laws and regulations, and disharmony between regulations and the technical complexity of making laws and regulations. This is what underlies the need for the application of the omnibus law method in solving these legislative problems.

The main characteristic in using the omnibus law method to formulate legislation is multi-sectoral (clusters) and involves many articles or regulations with the same theme or at least still having a close correlation. This characteristic gives several advantages such as simplifying the number of overlapping laws and regulations (overregulated), accelerating the legislative process which usually takes a very long time, and encouraging harmonization and synchronization of all laws and regulations. Whereas in the context of 'progressive legal theory', the method of law formation through the omnibus law method does not question whether the value is good or bad, because omnibus law is a value-free method. It is known that progressive legal theory does not only consider a law from the perspective of positivism but also consider a law as the social reality, not merely as a product of power, but as a social product, consider law not in a vacuum, but in real life reality, if normative law tends to pay attention to 'Quid Juris' (Normative, Sollen), then progressive legal theory tends to consider the Quid Facti/Natural (Empirical/Sein) (Sukananda, 2018).

The method of formatting law using the omnibus law method can be adopted and is suitable to be applied in *Pancasila* (Indonesian ideology) legal state as long as the omnibus law is made in accordance with and does not conflict the values of *Pancasila* itself and the principles contained in the 1945 Constitution of the Republic of Indonesia. Moreover, *Undang-Undang Nomor 15 Tahun 2019 tentang Perubahan*

Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (Indonesian Law Formatting Regulation) does not explicitly specify the method that must be used in the formatting a law, so forming laws using omnibus law method can be carried out. Therefore, the omnibus law method in the law-making process is a legal breakthrough that can be done because there are no explicit provisions in Indonesian Law Formatting Regulation) that allow or prohibit it. Even though without any amendments to the law, using the omnibus law method is permissible and not prohibited. Apart from the absence of prohibitions, legal approaches that are 'positive legalistic' and 'linear' are very difficult and always left behind to answer legal issues developed in a changing society, therefore a new legal approach that is 'out of the box' is very relevant to be used in anticipating changes. The progressive legal approach contains the spirit of breaking away from conventional legal traditions.

Regardless of the method used in formatting Indonesian Job Creation Law, based on the Constitutional Court Verdict Number 91/PUU-XVIII/2020, the formation of the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and the regulation of MSME has conditionally binding legal force as long as the Job Creation Law is amended within 2 (two) years since this verdict was pronounced. Therefore, the Job Creation Law will remain in effect until the formation is corrected within the determined period, as well as the formation of MSME criteria contained in it. However, if within 2 (two) years, the legislators are unable to complete the revision of the Job Creation Law, then the law or articles or material contents of the law that have been revoked or amended with the Job Creation Law become similar to the existing MSME criteria. The MSME Law is declared to be valid again.

CONCLUSION

Micro, Small and Medium Enterprises (MSME) has shown its role in the national economy, but still faces various obstacles and constraints, both internal and external, in terms of production and processing, marketing, human resources, design and technology, capital, and the business climate. The regulation of MSME in Indonesia is contained in the MSME Law. There are several provisions contained in this Law which have been amended by the Job Creation Law. The Job Creation Law does not only discuss about manpower, but also the criteria for MSME. To support the implementation of the Job Creation Law in the community, the government has completed the Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and MSME, as one of the implementing regulations of the Job Creation Law. This Government Regulation has regulated the criteria for MSME, considering that they were not detailed set in the Job Creation Law, regarding the amount of net worth from businesses and the value of sales proceeds.

The ratification of Indonesian Job Creation Law using the Omnibus Law as the method of its formation has become one of the controversies in 2020 to today. The controversy led to the declaration of the Job Creation Law as a formally flawed regulation. The Constitutional Court declared that the Job Creation Law was conditionally unconstitutional based on the Constitutional Court Verdict Number 91/PUU-XVIII/2020. Thus, the MSME provisions contained in the Job Creation Law

have conditionally binding legal force as long as the Job Creation Law is revised within 2 (two) years since this decision was pronounced. Therefore, the Job Creation Law will remain in effect until the formation is corrected within the period that has been determined in this verdict, as well as the criteria for MSME contained in it. The main characteristic of the use of omnibus law method in formatting legislation is multi-sectoral (clusters) and involves many articles or regulations with the same theme or at least still having a close correlation. These characteristics of the omnibus law method give advantages to simplify the number of overlapping laws and regulations (overregulated), accelerate the legislative process which usually takes a very long time, and encourage harmonization and synchronization of all laws and regulations. Whereas, according to the progressive legal theory, the method of law formation through the omnibus law method does not question whether the value is good or bad, because omnibus law is a value-free method.

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