



Indonesian Law Journal

TOPIC OF THIS EDITION

LEGAL ASPECT AND POLICIES FOR SME's AFTER THE OMNIBUS LAW - CHALLENGES
IN REGIONAL FREE TRADE

Enforcing Omnibus Law: Formalizing
Micro, Small, and Medium Enterprises
in Indonesia Using Behavioural Science

Fahrurozi Muhammad

Implications of Job Creation Law
to The Establishment of Village-Owned
Enterprises as a Legal Entity

Bryan Eduardus Christiano

Legal Aspects and Policies for Indonesian
SMEs After The Omnibus Law-Challenges
in The Regional Free Trade

Juvelin Rezara

The Utilization of Soft Law in Promoting
Digital-Based Platform to Strengthen
Indonesia's Halal Industry And SMEs

Purna Cita Nugraha

The Role of Law for Small Medium
Enterprises (SME's) Protections Faces
The Challenges of Regional
Comprehensive Economic Partnership
(RCEP) in Indonesia

Marcellino Gonzales

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We thank God Almighty for publishing the Indonesian Law Journal (ILJ) Volume 14, No. 2 of 2021. The ILJ is a peer-reviewed journal published in English and intended to disseminate scientific articles and analyze legal issues from academics, researchers, observers, practitioners, and all patrons in Indonesia. As one of the scientific journals in law published by the National Law Development Agency – Ministry of Law and Human Rights of Republic Indonesia, the ILJ provides a forum for legal ideas to respond to legal problems in recent times. The ILJ is in line with the function of the National Law Development Agency, which is to develop and foster national law in Indonesia.

Trading activities experience swift movements from time to time. Regional free trade aims to gain direct benefits and increase economic growth on a regional scale by further developing and increasing progress. One of the Governments strategies to encourage economic growth is to carry out regulatory reforms in the licensing business sector through the empowerment of Micro, Small, and Medium Enterprises (SMEs). The empowerment of SMEs in globalization and high competition has forced SMEs to face global challenges, such as increasing product and service innovation, developing human resources and technology, and expanding the marketing area. In addition, MSMEs can be the community's choice to do business, earn income, and create new jobs for the community.

Of course, in encouraging economic growth, deregulation or regulatory arrangements are needed for provisions regarding business licensing, investment requirements, employment, SMEs, including cooperatives, land acquisition, development of economic zones, implementation of government projects, as well as provisions regarding administration. Government and the imposition of criminal sanctions regulated in various laws.

In structuring regulations, a new legislative technique, namely the Omnibus Law technique, is also applied. The Omnibus Law reflects an integration, codification of regulations whose ultimate goal is to streamline the application of these regulations. Omnibus Law is a method for making a regulation or a law consisting of many subjects or basic materials for specific purposes to deviate from a regulatory norm. The Omnibus Law reflects an integration, codification of regulations whose ultimate goal is to streamline the application of these regulations.

Therefore, the ILJ Volume 14 No. 2 of 2021 has the theme “**Legal Aspect and Policies for SME's After the Omnibus Law – Challenges in the Regional Free Trade**”. In ILJ

Volume 14 No. 2 of 2021, 5 (five) writers with various backgrounds discuss this matter. Start with the article of Fahrurozi Muhammad, which raised the title related to “Enforcing Omnibus Law: Formalizing Micro, Small, and Medium Enterprises in Indonesia Using Behavioural Science”. In his article, the author tries to explain the urgency of SMEs in facing obstacles to maintaining their business.

The following article written by Bryan Eduardus Christiano is “Village Owned Enterprises as A Legal Entity After the Job Creation Law: Establishment and Implication”. This article analyzes the impact of the provisions of Law Number 11 of 2020 on the competitiveness of Village Owned Enterprise in facing the era of the ASEAN Economic Community, which demands great economic competitiveness.

The third article written by Juvelin Rezara is “Legal Aspects and Policies for Indonesian SMEs After the Omnibus Law-Challenges in The Regional Free Trade”. In this article, the author analyzes the Challenges of legal policies for SMEs to evoke a clear understanding for incoming improvement.

The fourth article, related to “The Utilization of Soft Law in Promoting Digital-Based Platform to Strengthen Indonesia’s Halal Industry and SMEs”, was written by Purna Cita Nugraha. This paper aims to investigate the relevance of the utilization of soft law in promoting digital-based services to accelerate Indonesia’s Halal Industry and SMEs. This paper demonstrates how to link digital diplomacy with promoting Indonesia’s Halal Industry and SMEs. The paper also suggests several initiatives to utilize digital platforms to promote the halal industry in Indonesia.

Furthermore, there is an article related to “The Role of Law for Small Medium Enterprises (SME’s) Protections Faces the Challenge of Regional Comprehensive Economic Partnership (RCEP) in Indonesia” written by Marcellino Gonzales. In his writing, the author examines the impacts on the RCEP implementation and specifically how Indonesia’s legal instrument readiness to protect their national interests, especially for the Small Medium Enterprises, faces the challenges RCEP.

So this is the entire article published in the ILJ Volume 14 No. 2 of 2021. We would like to express our gratitude and most profound appreciation to all contributors, Editorial team members, Reviewers, and Mitra Bestari for their progressive contribution and excellence to the ILJ this edition. We hope that this fine collection of articles will be a valuable resource for legal practitioners, readers, and researchers and will stimulate further research into the vibrant area of law and social sciences and contribute to the development of national law in the future.

Editor of Indonesian Law Journal

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EDITORIAL BOARD	v
FROM EDITOR'S DESK	vii
CONTENTS	ix
ENFORCING OMNIBUS LAW: FORMALIZING MICRO, SMALL, AND MEDIUM ENTERPRISES IN INDONESIA USING BEHAVIOURAL SCIENCE Fahrurozi Muhammad	95
IMPLICATIONS OF JOB CREATION LAW TO THE ESTABLISHMENT OF VILLAGE-OWNED ENTERPRISES AS A LEGAL ENTITY Bryan Eduardus Christiano	119
LEGAL ASPECTS AND POLICIES FOR INDONESIAN SMEs AFTER THE OMNIBUS LAW-CHALLENGES IN THE REGIONAL FREE TRADE Juvelin Rezara	137
THE UTILIZATION OF SOFT LAW IN PROMOTING DIGITAL-BASED PLATFORM TO STRENGTHEN INDONESIA'S HALAL INDUSTRY AND SMEs Purna Cita Nugraha	157
THE ROLE OF LAW FOR SMALL MEDIUM ENTERPRISES (SME's) PROTECTIONS FACES THE CHALLENGES OF REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP) IN INDONESIA Marcellino Gonzales	173
AUTHOR GUIDELINES	197

ENFORCING OMNIBUS LAW: FORMALIZING MICRO, SMALL, AND MEDIUM ENTERPRISES IN INDONESIA USING BEHAVIOURAL SCIENCE

FAHRUROZI MUHAMMAD

The Ministry of Law and Human Rights

H.R. Rasuna Said St. Kav X6/6-7 Kuningan, Jakarta Selatan, DKI Jakarta

E-mail: fahrurozi25@gmail.com

ABSTRACT

Micro, small, and medium enterprises (MSMEs) play a significant role in creating approximately 90% of businesses worldwide. Indonesia has also been dependent on the MSMEs. However, MSMEs have been dealing with obstacles to maintain their sustainability. Their lack of formality results in their inability to keep their business, obtain funding, and low productivity. The government responds to this problem by enacting Law No. 11 of 2020 on Job Creation. This paper examines the importance of MSMEs' formalization, which is limited to registering their business or securing their entity in this case. This paper uses the normative juridical method, which shows that the government needs to use behavioural science as a new approach to implementing the Job Creation Law successfully by using nudge, which is a strategy to boost formalization that relies on simplifying procedures, delivering information that focuses on promoting the benefit, and utilizing social influence to encourage people to formalize.

Keywords: MSMEs, Formalization, Behavioural Science.

A. Introduction

Micro, Small, and Medium Enterprises (MSMEs) have long been contributing to global economy. The problem, however, is that they have an issue maintaining its continuity. The business can fluctuate quickly due to its informality, and they appear to be comfortable to remain informal. MSMEs will be encouraged to formalize their business if they discern

its advantages. The formalization mechanism is designed as quickly as possible to the point it does not feel like they deliberately formalize it.

MSMEs are important in bolstering up the global economy. According to World Bank, about 90% of businesses worldwide are MSMEs, and they contribute to absorbing more than 50% labor force in 2020.¹ This number is limited only to

1 The World Bank, "Small and Medium Enterprises (SMES) Finance: Improving SMEs' access to finance and finding innovative solutions to unlock sources of capital." The World Bank Group <https://www.worldbank.org>.

formal MSMEs, excluding the actual contribution from informal MSMEs. The potential of informal MSMEs is relatively unknown, but we can safely assume that they significantly contribute to the world economy. Especially in developing countries.²

Indonesia in recent decades has also been dependent on the MSMEs sector.³ MSMEs are an integral part of Indonesia's economic democracy.⁴ The influential role of MSMEs in the domestic economy was recognized, especially since the 1997 national crisis. During the monetary crisis in 1998, MSMEs are miraculously showing their resilience

to survive since many large businesses were too dependent on foreign loans.⁵ In 2017, Taufik claimed that MSMEs have a strategic role in Indonesia's economic structure since approximately 99,9% of the business unit in Indonesia were MSMEs.⁶

There are different classifications of MSMEs in every country. For example, in the EU, the type of MSMEs is determined by labor, annual turnover, or annual balance sheet.⁷ Meanwhile, Indonesia classifies the MSMEs category using net worth excluding land and property owned and yearly turnover.⁸

Table 1: MSMEs Criteria In EU

Category	Number	Annual Turnover	Annual Balance Sheet
Micro	< 10	≤ € 2 m	≤ € 2 m
Small	< 50	≤ € 10 m	≤ € 10 m
Medium	< 250	≤ € 50 m	≤ € 43 m

(Source: European Commission "Entrepreneurship and SMEs: SMEs Definition," EU Internal Market, Industry, Entrepreneurship and SMEs, https://ec.europa.eu/growth/smes/sme-definition_en accessed 21 May 2021)

org/en/topic/smefinance (Accessed 1 May 2021).

2 *Ibid.*

3 Fahrurrozi Muhammad, "Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal". *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 7 (3) (2018): 445-464.

4 Bank Indonesia, "Kajian Inkubator Bisnis dalam rangka Pengembangan UMKM", Kajian dan Publikasi Sektor Riil Bank Indonesia, <http://www.bi.go.id/id/umkm/penelitian/nasional/kajian/Pages/riil6.aspx>. (Accessed 1 May 2021).

5 *Ibid.*

6 Ade Irawan Taufik, "Evaluasi Regulasi Dalam Menciptakan Kemudahan Berusaha Bagi UMKM", *Jurnal Rechtsvinding*, 6 (3) (2017): 369-385.

7 EU Internal Market, Industry, Entrepreneurship and SMEs, "Entrepreneurship and SMEs," *Ibid.*

8 Government Regulation No. 7 of 2021 on Ease, Protection, and Empowerment Cooperation and Micro, Small, and Medium Enterprises. Article 35.

Table 2: MSMEs Criteria In Indonesia

Category	Net Worth	Annual Turnover
Micro	≤ IDR 1.000.000.000	≤ IDR 2.000.000.000
Small	IDR 1.000.000.000 – IDR 5.000.000.000	IDR 2.000.000.000 – IDR 15.000.000.000
Medium	IDR 5.000.000.000 – IDR 10.000.000.000	IDR 15.000.000.000 – IDR 50.000.000.000

(Source: Government Regulation No. 7 of 2021 on Ease, Protection, and Empowerment Cooperation and Micro, Small, and Medium Enterprises. Article 35)

Despite the differences in determining the criteria of MSMEs, they are defined mainly by the amount of capital, asset, or profit.⁹ And while that difference in measures exists, it is not statistically significant in terms of how MSMEs in different countries manage their business.¹⁰

OECD classifies MSMEs and entrepreneurship as similar entities. They share the same purposes: supporting economic growth, creating jobs, and being responsible for social integration.¹¹ European Union, meanwhile, claims

the existence of MSMEs can be an effective way to boost entrepreneurship. MSMEs are different from old-fashioned entrepreneurship patterns.¹² For example, young people are keen to establish a ‘startup’ business without having any capital, experience, or even skillset on the company they are about to run.¹³ Also, the existence of crowdfunding helps MSMEs a lot these days.¹⁴ Unlike old-fashioned entrepreneurship, you do not need specific skills, capital, or products ready to offer.

- 9 There is also an opinion that suggests MSMEs can be classified by the number of employees. However, it is really important to see the bigger picture in defining MSMEs. With the emergence of artificial intelligence and other advanced technology, it is possible for a single person to run a business alone but has profit or asset that goes beyond MSMEs ceiling. Muhammad, “Mendukung Kemudahan”.
- 10 Oya Pinar Ardic, Nataliya Mylenko, Valentina Saltane, “Small and Medium Enterprises: A Cross-Country Analysis with a New Data Set,” The World Bank Policy Research Working Paper 5538, <http://documents1.worldbank.org/curated/en/967301468339577330/pdf/WPS5538.pdf> (Accessed 1 May 2021).
- 11 OECD, “OECD Studies on SMEs and Entrepreneurship”, OECD iLibrary, https://www.oecd-ilibrary.org/industry-and-services/sme-and-entrepreneurship-policy-in-israel-2016_9789264262324-en (Accessed 1 May 2021).
- 12 Growth: Internal Market, Industry, Entrepreneurship and SMEs, “Promoting entrepreneurship” European Union, https://ec.europa.eu/growth/smes/promoting-entrepreneurship_en (Accessed 1 May 2021).
- 13 Stephanie Burns, “No Business? You Can Still Start A Successful Company,” Forbes, <https://www.forbes.com/sites/stephanieburns/2020/04/10/no-business-experience-you-can-still-start-a-successful-company/?sh=1f260f26f5> (Accessed 1 May 2021).
- 14 Alma Pekmezovic and Gordon Walker, “The Global Significance of Crowdfunding: Solving the SME Funding Problem and Democratizing Access to Capital (2016). *Wm. and Mary Bus. L. Rev.* 7 (2016): 347., <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wmaybur7and div=14and id=and page=> (Accessed 2 May 2021).

The rise of many “unicorns,” even “decacorns” that came from small-scale businesses first, is not an easy task. Many MSMEs who started from scratch, despite their promising potential, failed to live up to expectations.¹⁵ Hence, in promoting entrepreneurship one must be fully aware of the importance of smaller-scale business characteristics in MSMEs. As such, the effort will not be only limited to helping them sell their products or services but effectively giving them protection by understanding their risks.¹⁶

This paper focuses on the urgency of formalizing MSMEs. However, formalization has various definitions, such as establishing the firm, registering taxpayer numbers, opening a bank account, and obtaining licenses. According to the World Bank EoDB report, in 2020, Indonesia has at least 11 procedures to start a business formally.¹⁷ In this paper, I narrow the definition of formalization

into its first official registration through government agencies.¹⁸

The enactment of Law No. 11 of 2020 on Job Creation or known as ‘Omnibus Law’ makes it essential to use behavioural science as the primary weapon to persuade MSMEs to formalize their business voluntarily. To achieve this, traditional regulatory tools which focus on command-and-control mechanisms, such as coercion, bans, authorizations, punishment, are not relevant.¹⁹ Rangone says that voluntary compliance is the key to motivate people to obey the rules while not necessarily dismissing the traditional tools.²⁰ This paper analyzes key strategies to successfully achieving formalization as per *Omnibus Law* objectives.

B. Research Method

This paper uses the normative juridical method, which focuses on secondary

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- 15 Denise Lee Yohn, “Why Startups Fail,” *Forbes*, <https://www.forbes.com/sites/denisejohn/2019/05/01/why-start-ups-fail/?sh=4f5df53e28a5> (Accessed 2 May 2021). See also Ranjay Gulati and Vasundhara Sawhney, “Why Your Startup Won’t Last,” <https://hbr.org/2019/12/why-your-startup-wont-last> (Accessed 2 May 2021).
 - 16 Jörg Freiling, “SME Management - What Can We Learn from Entrepreneurship Theory?” Available at SSRN: <https://ssrn.com/abstract=984658> or <http://dx.doi.org/10.2139/ssrn.984658> (Accessed 2 May 2021).
 - 17 “Ease of Doing Business in Indonesia,” The World Bank Group, <https://www.doingbusiness.org/en/data/exploreconomies/indonesia> (Accessed 2 May 2021).
 - 18 For example, Limited Liability Company (*Perseroan Terbatas*), Limited Partnership (*Persekutuan Komanditer*), Firm Partnership (*Persekutuan Firma*), and Partnership (*Persekutuan Perdata*) are officially registered after their Deed of Establishment is issued by The Ministry of Law and Human Rights. Although in Indonesian private law, Partnership exists after two founders agree to create it. However, this type of formal registration does not make a company can just instantly run its business. It needs to obtain other business permits such as Certificate of Company Domicile by the Municipal Government, Single Business Number by Online Single Submission, and Taxpayer Numbers by Tax Office. *Ibid*.
 - 19 Alberto Alemanno and Alessandro Spina, “Nudging legally: On the checks and balances of behavioural regulation.” *International Journal of Constitutional Law*, 12(2) (2014), 429–456. doi:10.1093/icon/mou033 (Accessed 2 May 2021).
 - 20 Nicoletta Rangone. “Making Law Effective: Behavioural Insights into Compliance”, *European Journal of Risk Regulation*, 9(3) (2018), 483–501. doi:10.1017/err.2018.51 (Accessed 2 May 2021).

data.²¹ The primary sources of the data in this paper are regulations and other scientific research. The type of research in this paper is qualitative research with a descriptive approach.²² The theory is the behavioural science theorem, particularly the choice architecture and nudge, which was made famous by Richard Thaler and Cass Sunstein. This paper believes that choice architecture and nudge approach can optimize the compliance of Law No. 11 of 2020 on Job Creation, especially in bolstering up MSMEs formalization.

C. Discussions

The protection of MSMEs is a crucial aspect of formalization.²³ Despite their positive contributions and potentials to the economy, they still have a lot of weaknesses. National Development Planning Agency (BAPPENAS) highlights several main problems of MSMEs. First, the low quality of their work owing to low productivity. The main reason for this was the lack of competence in various aspects, such as managerial skills,

technology mastery, and marketing knowledge. Second, limited access to productive resources, particularly capital, technology, information, and markets. Informality caused difficulty in entering the market and expanding their business, classifying them as 'high risk' entities. Hence, banks would not be confident to give them a loan. Third, the unhealthy business climate. In 2013, business permits were far more complex than now, making MSMEs spend a lot of money to obtain those permission. Not to mention the lack of coordination between government agencies caused uncertainty in many ways.²⁴

MSMEs are also vulnerable in certain conditions. The covid-19 outbreak, for example, unlike other previous financial crises, destroyed MSMEs.²⁵ More than 60 million MSMEs in Indonesia were unable to recover through government financing or bank loans, as there are only 12% of them have access to government funding programs.²⁶ In conclusion, about 88% of MSMEs in Indonesia have been unable to get government assistance.²⁷

21 Sri Mamudji *et al.*, *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), Page 6.

22 *Ibid*, Page 4.

23 ASEAN, "Formalisation of Micro Enterprises in ASEAN," ASEAN Policy Insight, <https://asean.org/storage/2012/05/Formalisation-of-Micro-Enterprises-in-ASEAN-POLICY-INSIGHT-2020-final-3.pdf> (Accessed 2 May 2021).

24 "Empowerment of Cooperatives and Micro, Small, and Medium Enterprise," National Development Planning Agency (BAPPENAS), <https://www.bappenas.go.id/files/8913/4986/4554/chapter-20-empowerment-of-cooperatives-and-micro-small-and-medium-enterprise.pdf> (Accessed 2 May 2021).

25 ASEAN, "Formalisation of Micro Enterprises".

26 Esther Samboh, "Bailing out SMEs is not enough. Boosting demand is more important" The Jakarta Post, <https://www.thejakartapost.com/academia/2020/07/17/smes-bailout-not-enough-demand-is-key.html> (Accessed 2 May 2021).

27 However, it is worth pointing out that one of the government assistances for MSMEs, such as Direct-

Since President Joko Widodo started his first term in 2014, one of his main objectives was to improve Indonesia's MSMEs environment. He saw MSMEs as a way of creating jobs or reducing unemployment, but he also wanted MSMEs as a critical cog in helping the export rate from Indonesia.²⁸ He asked his cabinet to get Indonesia into the Top 40 rank of Ease of Doing Business (EoDB) to achieve his ambition.²⁹

The performance of Indonesia in EoDB since President Joko Widodo took over his presidency has produced mixed results so far. On the one hand, to climb up 47 positions from 73rd into 120th shows the promising output.³⁰ On the other hand, Indonesia's performance is still way off

the target from the Top 40 as Joko Widodo had hoped. In addition, Indonesia is still behind other major ASEAN countries in the past five years. In response, President Joko Widodo and the legislators (Dewan Perwakilan Rakyat) decided to enact Law No. 11 of 2020 on Job Creation.³¹ This law amends many business regulations and abolishes many provisions, hoping that it will improve Indonesia's position on EoDB rank significantly and support MSMEs in a broader sense.

1. Formalization Matters

This paper firmly believes that MSMEs' informality has a lot of disadvantages. Loayza et al. argue that informality is businesses, workers, and

Cash-Assistance (*Bantuan Langsung Tunai*), requires several administrative requirements to avoid any kind of fraud or giving money to the wrong people. PR Team Depok, "Kesalahan Utama sehingga Gagal Dapatkan BLT UMKM Rp2,4 Juta," *Pikiran Rakyat Depok*, <https://depok.pikiran-rakyat.com/ekonomi/pr-091224988/kesalahan-utama-sehingga-gagal-dapatkan-blt-umkm-rp24-juta> (Accessed 2 May 2021).

- 28 Sapto Andika Candra, "Jokowi: Permudah Akses Ekspor Untuk UMKM", *Republika*, <https://republika.co.id/berita/qktbhw383/jokowi-permudah-akses-ekspor-untuk-umkm> (Accessed 2 May 2021).
- 29 EoDB is a program by the World Bank Group which measure how easy it is to conduct a business in 190 economies, using 10 indicators. The 10 indicators of EoDB are starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency. High EoDB ranking means the regulatory environment in the country is more conducive to the starting and operation of a local firm. EoDB is exclusively focusing on how local firms operate their business, especially for MSMEs. This means EoDB has nothing to do with foreign investment directly. Hence, EoDB is a really pivotal program to boost MSMEs in Indonesia. Doing Business Team, "Doing Business 2020: Comparing Business Regulation in 190 Economies," The World Bank Group, <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020> (Accessed 2 May 2021). See also Adrian Wail Akhlaq, "Indonesia remains at 73rd in World Bank's Ease of Doing Business rankings," *The Jakarta Post*, <https://www.thejakartapost.com/news/2019/10/24/indonesia-remains-at-73rd-in-world-banks-ease-of-doing-business-rankings.html> (Accessed 2 May 2021).
- 30 Indonesia's position on EoDB rank since Joko Widodo appointed as President: 120th in 2015, 109th in 2016, 91st in 2017, 72nd in 2018, 73rd in 2019, and 73rd in 2020. Doing Business Team, "Historical Data Sets and Trends Data," The World Bank Group, <https://www.doingbusiness.org/en/custom-query> (Accessed 2 May 2021).
- 31 Cantika Adinda Putri and Herdaru P., "Tok! DPR Sahkan RUU Omnibus Law Cipta Kerja Jadi UU," *CNBC Indonesia*, <https://www.cnbcindonesia.com/news/20201005143138-4-191978/tok-dpr-sahkan-ruu-omnibus-law-cipta-kerja-jokowi-jadi-uu> (Accessed 2 May 2021).

activities outside the legal framework.³² Feige adds that informality includes industries that produce legal goods and services but are not compliant with labour, fiscal, and other administrative laws and regulations.³³

Rand and Torm believe that informal business is generally associated with low profits and productivity, limited credit access, absence of official employment contracts, and workers' little or no social security.³⁴ Contrary to being informal, McKenzie and Sakho suggest that operating formally has a lot of advantages.³⁵ It includes better access to credit, infrastructure, other productive public goods, and a broader customer base.³⁶

By being formal, the MSMEs will have more robust access to finance and higher profit. The benefit of formalization

to the government is in increasing state revenue. Boly finds a significant increase in the amount and likelihood of tax payments, both short and long term, after MSMEs getting formal status.³⁷ These results driven in a substantial rise in paying other taxes, such as license fees, import and export taxes, and property taxes.³⁸

International Labour Organization (ILO) has been campaigning for MSMEs formalization in ILO Recommendation No. 204 concerning the Transition from the Informal to the Formal Economy.³⁹ ILO believes that initiatives will create more and better jobs, reduce poverty and address the marginalization of those especially vulnerable to the most severe decent work deficits in the informal economy.⁴⁰ It will also help to provide them with better working conditions.⁴¹

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- 32 Norman V. Loayza, Luis Servén, and Naotaka Sugawara, "Informality in Latin America and the Caribbean," The World Bank Group. <https://openknowledge.worldbank.org/bitstream/handle/10986/4083/WPS4888.pdf?sequence=1&isAllowed=y> (Accessed 2 May 2021).
- 33 Edgar Feige, "Reflections on the meaning and measurement of Unobserved Economies: What do we really know about the "Shadow Economy"?" (Paper at the 4th Shadow Economy Conference, Tax Administration Research Center (TARC), University of Exeter, UK, 24 July 2015).
- 34 John Rand and Nina Torm, "The Benefits of Formalization: Evidence from Vietnamese Manufacturing SMEs," *World Development*, Vol. 40, No. 5, pp. 983-998, (2012), <https://doi.org/10.1016/j.worlddev.2011.09.004> (Accessed 3 May 2021).
- 35 David McKenzie and Yaye Seynabou Sakho, "Does It Pay Firms To Register For Taxes? The Impact Of Formality On Firm Profitability," *Journal Of Development Economics* 91 (1): 15-24. <http://doi:10.1016/j.jdeveco.2009.02.003>. (Accessed 4 May 2021).
- 36 *Ibid.*
- 37 Amadou Boly, "The Effects of Formalization on Small and Medium-Sized Enterprise Tax Payments: Panel Evidence from Vietnam," *Asian Development Review*, 37(1), 140-158. doi:10.1162/adev_a_00144 (Accessed 4 May 2021).
- 38 *Ibid.*
- 39 "Enterprise Formalization," International Labor Organization, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_544828.pdf (Accessed 4 May 2021).
- 40 *Ibid.*
- 41 However, Diaz et al. do not necessarily believe that enterprise formalization will always go hand in hand

ASEAN also considers MSMEs formalization as a fundamental aspect to improve their quality.⁴² However, ASEAN goes too far by recommending informal MSMEs to be punished if they do not register their business formally.⁴³ This opinion is the notion I strongly disagree with, as to punish them is entirely against the idea of supporting MSMEs and people's wealth, especially in times of Covid-19 outbreak, when they need more help to maintain their business. Besides, prompting punishment to micro-enterprise will not enforce their discipline but potentially deter their willingness to do business.

MSMEs' size makes it more challenging for them to face costs for the prevention of a pandemic. They also have other problems, such as underutilized labor and capital. They need to adjust their business processes since there is a drastic decrease in demand and revenue caused by consumers' loss of income, fear of infection, and heightened uncertainty.⁴⁴ Without formality, the government will find it harder to assist informal MSMEs

struggling, including access to finance, legal protection, and social safety nets for the business and its workers.⁴⁵

To make MSMEs comply with the regulatory framework regarding formalization, the government must first understand why many MSMEs remain informal. Dabbla-Norris, et al. claim that informality is an involuntary condition brought by excessive regulation and the legal system's weaknesses.⁴⁶ Mukorera adds that the willingness or unwillingness to formalize MSMEs is massively related to institutional imperfections associated with the registration process, lack of access to technology, market, and financial constraints, and lack of entrepreneurial and management skills.⁴⁷

This understanding leads to almost every country, triggered mainly by EoDB ranking, reform its business procedure by reducing cost, strategies, and time to obtain permits, approval, and license to start their business. Law No. 11 of 2020 on Job Creation is the pinnacle of what the President's administration has

with labor formality, and vice versa. Juan Jose Diaz et al., "Pathways to Formalization: Going Beyond the Formality Dichotomy," The World Bank Group, <http://documents1.worldbank.org/curated/en/528901534251354144/pdf/WPS8551.pdf> (Accessed 4 May 2021).

42 ASEAN, "Formalisation of Micro Enterprises".

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

46 Era Dabla-Norris, Mark Gradstein, and Gabriela Inchauste, "What Causes Firms To Hide Output? The Determinants Of Informality". *Journal Of Development Economics* 2008).27-1 :(2-1) 85) https://econpapers.repec.org/article/eedeveco/v_3a85_3ay_3a2008_3ai_3a1-2_3ap_3a1-27.htm. (Accessed 4 May 2021).

47 S.Z.E. Mukorera, "Willingness To Formalize: A Case Study Of The Informal Micro And Small-Scale Enterprises In Zimbabwe," *Journal of Developmental Entrepreneurship*, 24(01), 1950001. (2019) doi:10.1142/s1084946719500018 (Accessed 4 May 2021).

done in the last five years.⁴⁸ However, it remains to see whether it will finally improve Indonesia's position in EoDB or have the desired outcomes.⁴⁹

Law No. 11 of 2020 on Job Creation may finally remove many obstacles for MSMEs to formalize their business. The government and legislators believe the extreme simplification of the business procedure will lead to increasing numbers of MSMEs, hence creating more jobs and escaping Indonesia from the middle-income trap.⁵⁰

This optimistic mindset is akin to De Soto's belief that these informal businesses operate outside these confusing laws that entail such high costs and complex regulations.⁵¹ Bruhn and McKenzie, however, find that global effort to push MSMEs to formalize their business by drastically removing the obstacles primarily only results in a

modest increase in the number of legal firms.⁵² According to them, most informal interactions do not sense the benefit of formalizing.⁵³ De Mel, McKenzie, and Woodruff suggest that remaining unofficial is often a conscious choice by MSMEs.⁵⁴

2. Behavioural Science as Legal Approach

Bolton states that behavioural science consists of 2 understandings: the behaviour of organisms regarding interhuman stimuli and the conduct of social systems.⁵⁵ Meanwhile, Kappes argues that behavioural science is a term that includes research and methods from several other disciplines from psychology, neuroscience, sociology, behavioural economics, and other fields mixed.⁵⁶ This paper discusses behavioural science as the social study of human behaviour

48 The Law on Job Creation extraordinarily affects 79 existing laws (Undang-Undang), with 52 laws on business license or permit matter being reformed. Also, approximately 1.203 articles from previous laws are amended or removed proportionally to ease MSMEs in running their business. PR Team The Coordinating Ministry of Economics Affairs, "Seputar RUU Cipta Kerja," The Coordinating Ministry of Economics Affairs, <https://ekon.go.id/info-sektoral/15/7/infografis-seputar-ruu-cipta-kerja> (Accessed 4 May 2021).

49 Susi Dwi Harijanti, "Efek Metode Omnibus Law Dalam Undang-Undang Cipta Kerja: Simplifikasi atau Hyper Regulasi?" (The Paper presented on Side Effect of The Omnibus Law Method on Law No. 11 of 2020 on Job Creation, Faculty of Law Universitas Indonesia, 27 March 2021)

50 Cantika Adinda Putri, "Sri Mulyani Buka-Bukaan Soal Manfaat Omnibus Law Bagi Ekonomi" CNBC Indonesia, <https://www.cnbcindonesia.com/news/20201013092856-4-193845/sri-mulyani-buka-bukaan-soal-manfaat-omnibus-law-bagi-ekonomi> (Accessed 4 May 2021).

51 Hernando De Soto, *The Other Path*. (New York: Harper and Row Publishers, 1986). Page 19.

52 Miriam Bruhn and David McKenzie, "Entry Regulation and Formalization of Microenterprises in Developing Countries," Policy Research Working Papers, The World Bank Group, No. 6507 (2013). <https://doi.org/10.1596/1813-9450-6507> (Accessed 5 May 2021).

53 *Ibid.*

54 William Maloney, "Informality revisited," *World Development*, 32(7) (2004): 1159-1178.

55 Charles D. Bolton, "Is Sociology a Behavioural Science?" *The Pacific Sociological Review*, vol. 6, no. 1, 1963, pp. 3-9. *JSTOR*, www.jstor.org/stable/1388293 (Accessed 9 April 2021)

56 Heather Kappes "What Is Behavioural Science at the LSE?" LSE Behavioural Science, 24 May 2016, blogs.lse.ac.uk/behaviouralscience/2016/05/24/what-is-behavioural-science-at-the-lse/. (Accessed 9 April 2021)

that impacts decisions, interactions, and actions.

The term 'behavioural science' gathered its first popularity in 1950.⁵⁷ In 2011, behavioural science got into the spotlight again by Kahneman with his 'Thinking, Fast, and Slow' book.⁵⁸ Behavioural science is a relatively new approach in Indonesian policy-making, let alone in regulation. However, it has been used worldwide, especially in developed countries.⁵⁹

When applied to law, it differs from the traditional regulatory approach and is considered an alternative.⁶⁰ Grundstein thinks that the primary utility of behavioural science if applied to law is its possibility to be applied to legal thinking.⁶¹ Rangone believes that the introduction of behavioural science in the regulatory

making is primarily to achieve the effectiveness of the regulation itself.⁶² It is essential since it targets evidence-based, plain, understandable, and accepted rules.⁶³ Benartzi adds that behavioural findings suggest the possibility of low-cost but has high-impact interventions.⁶⁴ However, Grundstein also alerts us that behavioural science cannot solve every legal problem.⁶⁵

Sunstein argues that behavioural findings have been used in regulatory making in the United States under Executive Order 13563 regarding Improving Regulation and Regulatory Review (2011).⁶⁶ In Section 4, it says:

"Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory

57 Bolton, "Is Sociology a Behavioural Science?"

58 In his book, Kahneman tells that when human beings make a choice, it is riddled with behavioural fallacies, which often leads to an irrational choice. Kahneman highlights that the human brain consists of 2 systems when making decisions: System 1 where the brain works automatic, intuitive, and unconscious. It works spontaneously and requires little energy or attention, but it is often to be biased. Meanwhile, system 2 is slow, controlled, and analytical thinking. Unlike system 1, it requires energy and attention to think through all the choices. It reduces bias, yet it is often to be irrational. Daniel Kahneman, *Thinking, Fast And Slow* (New York: Macmillan, 2011). See also: Marek Kohn, "Thinking, Fast and Slow, By Daniel Kahneman," *The Independent*, <https://www.independent.co.uk/arts-entertainment/books/reviews/thinking-fast-and-slow-daniel-kahneman-6263560.html> (Accessed 9 April 2021)

59 The Mind, Behaviour, and Development Unit (eMBeD), "Behavioural Science Around The World: Profiles of 10 Countries," *The World Bank Group* <http://documents1.worldbank.org/curated/en/710771543609067500/pdf/132610-REVISED-00-COUNTRY-PROFILES-dig.pdf> (Accessed 9 April 2021)

60 Glen Hepburn, "Alternative To Traditional Regulation," *OECD* <https://www.oecd.org/gov/regulatory-policy/42245468.pdf> (Accessed 9 April 2021)

61 Nathan D. Grundstein, "The Relevance of Behavioural Science For Law," *Case Western Reserve Law Review*. 19 87 : (1967).

62 Rangone. "Making Law Effective:"

63 *Ibid.*

64 Shlomo Benartzi, et al., "Should governments invest more in nudging?," *Psychological science* 28, no. 8 1055-1041 : (2017).

65 Grundstein, "The Relevance of Behavioural"

66 Cass R. Sunstein, *Simpler* (New York: Simon and Schuster: 2013). Page 16.

approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.”⁶⁷

The phrase “...reduce burdens and maintain flexibility and freedom of choice for the public” is the key to implementing the law using behavioural science. Moreover, Executive Order 13707 regarding Using Behavioural Science Insights to Better Serve the American People (2015) is even more explicit, as you can see from its title.⁶⁸

One of the most known regulations constructed using behavioural science was the Affordable Care Act (2010), known as Obama Care.⁶⁹ This regulation was enacted even before those 2 Executive Orders, suggesting that behavioural science was already accepted as a method in the regulatory making and has had an essential role in constructing important laws ever since.⁷⁰

Those Executive Orders are an obvious example that Indonesian legislators can learn from the United States. Both instruments focused on giving a choice to the people rather than using force. The legislators can also implement behavioural science across many regulations in every aspect of governance in Indonesia. Not only rules concerning public service *per se*, but also for other issues as well, including but not limited to economic growth, healthcare, and criminal justice.⁷¹ Moreover, behavioural science is profoundly used in many sectors to combat the Covid-19 pandemic,⁷² as not everyone, especially the private sectors, has the authority and resources to enforce their rules.

a. Realigning People’s Choice with Nudge

One of the most potent tools in behavioural science is ‘nudge.’ This ‘Nudge’ or ‘nudge theory’ was presented by Thaler and Sunstein in 2008.⁷³ A nudge

67 Office of the Press Secretary, “ Executive Order 13563 - Improving Regulation and Regulatory Review,” The White House <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review> (Accessed 10 April 2021)

68 Office of the Press Secretary, “ Executive Order 13707 - Using Behavioural Science Insights to Better Serve the American People,” The White House <https://obamawhitehouse.archives.gov/the-press-office/2015/09/15/executive-order-using-behavioural-science-insights-better-serve-american> (Accessed 10 April 2021)

69 Cass R. Sunstein, *Simpler*

70 Cass R. Sunstein, *Behavioural Science and Public Policy*. (Cambridge: Cambridge University Press, 2020). Page 13

71 *Ibid.*

72 *Ibid.* Page 22.

73 In his review, Leonard says Nudge is a manifesto for the new paternalism. He considers the book as well written, witty to the point of being charming, consistently interesting, disarmingly self-referential, and loaded with crisp summaries of the psychology literature on human fallibility. Thomas C. Leonard, “Richard H. Thaler, Cass R. Sunstein, Nudge: Improving Decisions About Health, Wealth, and Happiness.” *Constitutional*

is an intervention that affects people's behaviour while fully maintaining their freedom of choice.⁷⁴ Nudge is about how people make choices and how people can make better decisions on many things.⁷⁵

The idea of nudge is vital because people, whenever presented with options, often choose poorly.⁷⁶ Besides, no choice is ever neutrally presented, and people are susceptible to biases that can lead to poor decisions. By knowing how people think and behave, the government can use sensible "choice architecture"⁷⁷ to nudge people toward the best decisions for themselves, their families, and society without restricting our freedom of choice.⁷⁸

The critical element of nudge is that it does not coerce people to do certain things, and it is easy to choose other options (opt-out). For example, the distanced queue marker during the Covid-19 pandemic is a form of a

nudge, so people will follow physical distancing rules, even though they can stand everywhere beyond that marker.⁷⁹ There is no punishment if people decide to stand outside of it. This marker is the proper use of nudge because that marker aims to protect people from Covid-19 infection. The essence of nudge is to intervene with people to make better decisions objectively. Nudge is contrast with oppressive order, and it is a practical way to 'softly' tell people what to do without telling them what to do. In the end, the choice is theirs.⁸⁰

b. Shove as an Additional Tool

Another tool of behavioural science is a key to regulatory reform called 'shove.' As its name suggested, a shove is more complicated or more forceful than a nudge,⁸¹ but it shares the same basic principle of influencing people's choice

Political Economy 19.4 (2008): 356–360.

74 Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008)

75 *Ibid.*

76 *Ibid.*

77 Choice architecture is a method to of creating situations where people presented with options while maintaining their right to choose, but that options are presented in certain way to nudge people to make certain choices. *Ibid.*

78 *Ibid.*

79 Cass R. Sunstein, *Behavioural Science and Public Policy*.

80 Another example of nudge is the table manner rules where the utensils are placed accordingly. They put the knife and spoon on the right plate so people will use it with their right hand, and the fork on the left so people will use their left hand. But people actually can reject this idea easily and do the complete opposite, despite it seems inappropriate. This is a fine example of nudging even long before the publication of nudge theory, which has existed since the 18th century. Virginia Clark, "The ritual of table setting: its historical significance and cultural importance," House and Garden <https://www.houseandgarden.co.uk/gallery/table-setting> (Accessed 11 April 2021).

81 Adam Oliver, "Nudging, Shoving And Budging: Behavioural Economic-Informed Policy," *Public Administration*, 93 (3) (2015). pp. 700-714.

using the intervention.⁸² For example, if a nudge is about giving information and giving direction to do something, a shove is more blatant by giving the threatening message that you will get the consequences if you do not do this. Conly states that shoving sometimes can limit people's choices using coercive measures and bans for their excellence.⁸³ In this regard, the shove is different from nudging, which always campaigning for freedom of choice.

Conly states a shove is necessary because, in the end, people make bad choices, and a nudge is not enough.⁸⁴ Conly thinks that mandates are necessary and desirable because people make mistakes.⁸⁵ A shove shares similar values with traditional legal tools. As suggested by Sunstein, some issues such as violent crimes and tax compliance, for example, cannot be solved using nudges.⁸⁶

The UK Behavioural Insight Team (UK) also considers the effectiveness of shove. They believe that both nudge and shove can be effective.⁸⁷ However, they fully understand that they both often have

different cost-benefit profiles.⁸⁸ A nudge tends to be simple, cheap to implement, but has minor effects. In contrast, a shove tends to be complicated, expensive, and has more potential effects while also carrying more significant risks of failure.⁸⁹ Sunstein might agree with the statement that nudge is cheaper, but he will reject the notion that nudge can only have a negligible effect, as he believes nudge can have a higher benefit than a shove.⁹⁰

The BIT uses shove in their behaviourally-based policies, and Sunstein also agrees that shove is vital in certain aspects. However, Ubel states that a shove is not always the necessary answer when a nudge does not work.⁹¹ Besides, shove is a common practice in Indonesian regulations, which means that when a law that uses a deterrence approach fails to regulate as its wish, it shows the weakness of shove. The high number of traffic violations in Indonesia is an example of the failure of shove.

82 *Ibid.*

83 Sarah Conly, *Against Autonomy: Justifying Coercive Paternalism* (Cambridge: Cambridge University Press, 2013). Page 8.

84 *Ibid.*

85 *Ibid.*

86 Cass R. Sunstein, *Behavioural Science and Public Policy*.

87 Matt Barnard, "What's Better? A Nudge or A Shove?" UK Behavioural Insight Team <https://www.bi.team/blogs/whats-better-a-nudge-or-a-shove/> (Accessed 12 April 2021)

88 *Ibid.*

89 *Ibid.*

90 Cass R. Sunstein, *Behavioural Science and Public Policy*.

91 Peter Ubel, "Behavioural Economic Interventions - It's Not A Choice Between Nudges And Shoves," Forbes <https://www.forbes.com/sites/peterubel/2019/09/16/behavioural-economic-interventions-its-not-a-choice-between-nudges-and-shoves/?sh=47bbaef01abb> (Accessed 12 April 2021)

3. Key Strategies

Regarding MSMEs' decision to remain informal or choose to become formal, the government must understand the cognitive aspect in determining whether the MSMEs think they should be formalized or not. Their conscious decision to remain informal is resulted by their mental process, which influences the decision. As stated above, formal business is much better than informal, and the government must arrange regulation with strategies to convince them or 'intervene' their choice.⁹²

a. Removing Unimportant Procedures with Simplification

It is still necessary to reduce and remove unnecessary steps to formalization. The government must make it easy, quick, and affordable to get formal status, especially those who do not deliberately avoid formalization.⁹³ As suggested by De Soto, some MSMEs may

become reluctant to be formalized thanks to complex administrative procedures and associated costs.

Law No. 11 of 2020 on Job Creation, that removes many business licenses, is a form of simplification. However, simplifying is not limited to reducing procedure, because with the rise of online public service platforms across agencies, the system integration becomes critical in this aspect, especially with the private sector. Many people become MSMEs simply by opening an online marketplace account (online shop) and selling their stuff⁹⁴. Especially with the Covid-19 protocol that limiting people to meet up and have transactions face to face, the rise of online sellers is increasing.⁹⁵ The reason is, starting a business using online platforms such as Tokopedia, Shopee, and other national or even international platforms is very simple and can be used within minutes without hassle.⁹⁶

The government must work together with these private sectors when people

92 WHO Technical Advisory Group On Behavioural Insights And Sciences For Health, "Behavioural considerations for acceptance and uptake of COVID-19 Vaccines," World Health Organization. <https://apps.who.int/iris/handle/10665/337335> (Accessed 13 April 2021)

93 *Ibid.*

94 *Ibid.*

95 Survei Angkatan Kerja Nasional (Sakernas) 2019, menunjukkan jumlah penjual barang melalui internet mencapai 15 juta orang atau 12 persen dari total pekerja Indonesia secara keseluruhan. See Islahuddin and Nanang Syaifudin, "Pedagang online panen di masa Korona" Lokadata.ID <https://lokadata.id/artikel/pedagang-online-panen-di-masa-korona> (Accessed 13 April 2021). See also Emir Yanwardhana, "Pandemi Bikin Banyak Orang Mendadak Jadi Pedagang Online," CNBC Indonesia <https://www.cnbcindonesia.com/news/20210305160333-4-228169/pandemi-bikin-banyak-orang-mendadak-jadi-pedagang-online> (Accessed 13 April 2021)

96 I checked and observed the procedures to start selling at Indonesia's most famous online marketplaces namely "Tokopedia" and "Shopee". From my observation, it is obvious that to start selling at both marketplaces are easy, quick, and very simple. See "Mulai Berjualan," Tokopedia <https://seller.tokopedia.com/edu/mulai-berjualan/> (Accessed 13 April 2021), see also "Seller Education Hub," Shopee <https://seller.shopee.co.id/edu/article/464> (Accessed 13 April 2021)

start opening their marketplace accounts. They are being formalized by default and registered as a business entity.⁹⁷ That way, these MSMEs will automatically become formal once they open their online account.

The government also still needs to accommodate the technology illiterate people. Therefore, it is also essential to consider other factors such as 'when' and 'where' to formalize. As millennials mostly dominate the internet,⁹⁸ the older generation, especially those who live in areas with poor internet signal strength, are having difficulties accessing the website. The use of internet is why the government must respond by physically providing formalization access, either using booth, or standing in readily accessible and convenient locations near MSMEs activity. This accessibility does not mean the formalization process is back to manual format, but there are officers employed there to assist those MSMEs in formalizing themselves or guiding them.

b. Delivering Effective Information

To maximize simplification, the government must give clear information, especially the advantages of formalization to MSMEs. The government needs to increase individual motivation through open and transparent dialogues, communication about the advantages of formality, and the risks of informality. They also need to highlight the security aspect of being formal and assure the government's potential assistance or support, especially during the pandemic.

Some MSMEs may be hesitant toward formality because they believe that the process is complicated, expensive, and even involved bribery.⁹⁹ They also believe that their current informal state is better, safer, and they do not need to burden themselves with corporate administrative tools such as a balance sheet.¹⁰⁰

The information published by the government must also picture several vital aspects: the data is timely given, easy to understand, the information is relevant to what they are supposed to do, how they are supposed to do it, and how

97 'Default' in this case is a powerful tool of nudge. For example, when people buy a new cellphone they tend not to change majority of its settings including wallpaper, ringtones, and other appearances. Thaler and Sunstein, *Nudge*.

98 See "Statistik Telekomunikasi Indonesia 2018" Biro Pusat Statistik Indonesia <https://www.bps.go.id/publication/2019/12/02/6799f23db22e9bdcf52c8e03/statistik-telekomunikasi-indonesia-2018.html> (Accessed 14 April 2021). See also "BPS Sebut Indeks Pembangunan Teknologi RI Rendah," CNN Indonesia <https://www.cnnindonesia.com/ekonomi/20181217131013-92-354254/bps-sebut-indeks-pembangunan-teknologi-ri-rendah> (Accessed 14 April 2021)

99 De Soto, *The Other Path*.

100 Rahul Kumawat, "Making Balance Sheet Needs Expertise And Takes Time," India Times <https://economictimes.indiatimes.com/small-biz/sme-sector/it-matters-why-the-balance-sheet-is-important-for-smes/articleshow/56351603.cms?from=mdr> (Accessed 14 April 2021)

they might benefit. The information must also address the right target and use the appropriate strategy.¹⁰¹ For example, if the government wants to inform older generations who are unfamiliar with technology, the online campaign is not the correct way to tell them. Also, the public campaign on expensive places like hotels, and restaurants, do not suit Micro-Entrepreneurs with low income who are not profoundly familiar with those places.

c. Social Influences to Imitate Behaviour

There is a high probability that people will follow other people's behaviour. This theory is known as Social Learning Theory, presented by Albert Bandura.¹⁰² According to Bandura, people perform their behaviour after observing, modelling, and imitating the behaviours, attitudes, and emotional reactions.¹⁰³ In short, people have a strong tendency to follow other people's behaviour. The government can put its influence on this.

The government must be fully aware of this social influence and use it properly and ethically. Many entrepreneurs will

follow if a trusted figure or community does the formalization. Prominent MSMEs figures or communities must set an example of formalizing their business. Hence, more MSMEs will follow this action. This influence is also effective in speeding up Covid-19 vaccination in Indonesia, and it is proven to be fruitful.¹⁰⁴

To successfully implementing those key strategies, the government must also consider the availability of resources in the first place. Indeed, nudging is affordable than shoving or other traditional law tools. However, still, it needs time, effort, and energy to work swiftly. The government must focus on informing benefits, advantages, and incentives of formalization, not using threatening or coercive messages.

This paper completely dismisses the idea of using force or punishment when it comes to MSMEs' formalization. Because basically, they are susceptible to financial loss and failure. Threatening them with criminal punishment would cause them more hesitant to conduct any kind of business because of the potential sanction. This would have a detrimental

101 S.F. Slater, G.T.M. Hult, and E.M. Olson, "On the importance of matching strategic behaviour and target market selection to business strategy in high-tech markets," *J. of the Acad. Mark. Sci.* **35**, 5–17 (2007). <https://doi.org/10.1007/s11747-006-0002-4> (Accessed 15 April 2021)

102 Albert Bandura "Social-learning theory of identificatory processes." *Handbook of socialization theory and research* 213 (1969): 262

103 *Ibid.*

104 To encourage people to use vaccine, the government need to harness social influences from trusted community figures. Showing that health professionals, politicians are being vaccinated can lead to greater acceptance and uptake by the general population. Amplifying endorsements from trusted community members can also help. See: WHO Technical Advisory Group On Behavioural Insights And Sciences For Health, "Behavioural Considerations".

effect on Indonesia's economy which heavily relies on MSMEs. In addition, with more than 90% informality, the resources to enforce mandatory formality will be massive. However, for other aspects of business such as tax avoidance, environmental issue, fraud, and other crimes (not a small one) committed by MSMEs can use shove as an alternative to nudge. As Rangone says, the behavioural approach in the regulatory making, or cognitive-based regulation, should mix traditional and new tools to make it more compliant with the law, provide better justice, and protect society.¹⁰⁵

D. Conclusion

Operating formally has a lot of advantages for MSMEs. It provides better access to credit, infrastructure, and other productive public goods and a broader market. Therefore, from the employment perspective, the formalization of MSMEs will have a lot of benefits as well. Meanwhile, MSMEs' informality is not only an involuntary situation where MSMEs are having difficulty formalizing due to excessive regulations, complex procedures, time-consuming, and expensive costs; remaining unofficial is often a cognitive-based and conscious choice. Most informal businesses do not sense the benefit of formality.

Law No. 11 of 2020 on Job Creation can use a behavioural approach to enforce

its implementation. It is still necessary to reduce and remove unimportant procedures of formalization. The process to become formal must be easy, quick, and affordable. It is also essential to create an integrated system between government agencies and private sectors to avoid repetitive processes. The government must inform MSMEs of the advantages of formality and the risks of informality since many MSMEs may be hesitant toward being formal because they believe the process is complicated and costly. The government must also engage with prominent MSMEs figures to perform the formalization of their business. Hence, more MSMEs will follow this action.

105 Rangone. "Making Law Effective:"

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Curriculum Vitae of the Author

Fahrurozi is a legislative drafter at Directorate General for Legal Administrative Affairs, the Ministry of Law and Human Rights Republic of Indonesia. He is actively involved in creating various regulations from economic, public, private, to international matters related to the task and function of his unit. Besides working as a civil servant, Fahrurozi also actively gives lectures in several universities, speaks in multiple events, and writes in various mass media. Graduated from the Faculty of Law Universitas Indonesia with bachelor and master's degrees, he is also a co-founder of Governance and Law Society (GoALS).

IMPLICATIONS OF JOB CREATION LAW TO THE ESTABLISHMENT OF VILLAGE-OWNED ENTERPRISES AS A LEGAL ENTITY

Bryan Eduardus Christiano

Faculty of Law, Universitas Indonesia

Jalan Prof. Mr. Djokosoetono, Pondok Cina, Beji, Depok, Jawa Barat 16424

E-mail: bryan.eduardus@ui.ac.id

ABSTRACT

A village is the lowest regional unit that is expected to be socially, culturally, and economically independent. Parallel with Indonesian principle that upholds the people's economy, Village-Owned Enterprises acts to strengthen village economic institutions, and social and non-economic benefits. Village-Owned Enterprises itself is regulated by Law Number 6 of 2014 on Villages. However, the establishment of the Job Creation Law as one of the clusters of the Omnibus Law gives several changes to the provisions of Village-Owned Enterprises. The most fundamental thing is the status changed to become a legal entity which then cause many implications for the establishment and regulation. This research was made using the normative legal research method, to discuss the impact of the provisions of Law Number 11 of 2020 on the Competitiveness of Village-Owned Enterprises in facing the era of the ASEAN Economic Community which demands great economic competitiveness.

Keywords: ASEAN free trade, BUMDes, job creation law, omnibus law, village-owned enterprises

A. Introduction

Building Indonesia from the periphery by strengthening regions and villages within the framework of a unitary state is one of the contents of the nine Nawacita programs promoted by President Jokowi since 2014. Indonesia has 74,093 villages, in which more than 32.000 fall into the category of underdeveloped villages.¹ One of the implementations of the Nawacita program is the government's attention to villages by establishing a

ministerial-level state institution that deals with village problems. The institution is named the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration. The Ministry's establishment is the implementing agent of Law Number 6 of 2014 on Villages, which is expected to develop villages through structural and cultural approaches.

A village is a unit of traditional society as a subject of development.

1 Gabriella Hanny Kusuma, "Innovation Challenges of Village-owned Enterprises", KINERJA Volume 23, No. 1, 2019 Page. 54-66.

One of the most important solutions for sustainable rural development is village entrepreneurship which can resolve major challenges such as unemployment and low income in villages. Development is a process to increase capacity and generate sustainable improvements. Law Number 6 of 2014 provides a new spirit for villages to empower themselves with the spirit of village building as the initial milestone in the success of national development.

Based on theoretical studies on the village economy, the village has extremely strong and entrenched community social capital. One of them is the variety of strong social ties and solidarity possessed as an important buffer for government, development, and society. However, the condition of social capital is still inversely proportional to the condition of economic capital, in which the three aspects of social capital: the social bonding, social bridging, and social linking are parochial and unable to facilitate economic development to create a socially vibrant village in the context of local democracy.²

The Indonesian economy is organized based on the principles of economic democracy with the principles

of togetherness, justice, sustainability, environmental insight, independence, and maintaining a balance of progress and national economic unity.³ Based on the above reality, the formation of Village-Owned Enterprises (BUMDes) is the embodiment of the mandate of Article 87 of Law Number 6 of 2014 which states that it was formed based on the spirit of kinship and cooperation to utilize all economic potential, economic institutions, as well as the potential of natural and human resources to improve the welfare of rural communities. The existence of Village-Owned Enterprises amid village communities runs businesses in the economic sector and public services and is not only profit-oriented but also supports improving the welfare of rural communities.⁴

Village-Owned Enterprises (BUM-Des) have now been officially established as legal entities through the Job Creation Law. Previously, the status has been a problem since 2014, because Law Number 6 of 2014 on Villages mentions Village-Owned Enterprises as a business entity but has not been explicitly stated as a legal entity.⁵ In Article 117 of Law Number 11 of 2020 on Job Creation, it is written: "*Village-Owned Enterprises,*

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- 2 Budi Susilo and Komara, "Membangun Gerakan Desa Wirausaha", (Yogyakarta: Yayasan Penabulu, 2016), p. 115.
 - 3 Admin, "Pendekatan Utuh Penguatan Kelembagaan Ekonomi Desa", Keuangan Desa, <http://www.keuandangdesa.com/pendekatan-utuh-penguatan-kelembagaan-ekonomi-desa/> (accessed 8 June 2021).
 - 4 D.M. Markley, "Local Strategies for Responding to Rural Restructuring: The Role of Entrepreneurship. Globalization and Restructuring in Rural America" (Paper at the Conference ERS-USDA, Washington DC, 2005).
 - 5 Antoni Putra, Penerapan Omnibus Law dalam Upaya Reformasi Regulasi. Jurnal Legislasi Indonesia Vol. 17 No. 1, Mar 2020, p. 5.

hereinafter referred to as BUM Desa, are legal entities established by villages and/or together with villages to manage businesses, utilize assets, develop investment and productivity, providing services, and/or other types of business for the maximum welfare of the Village community.”

Village-Owned Enterprises has a significant contribution to poverty alleviation through “social business activities” in the community; Therefore, it needs to be empowered.⁶ The establishment of Village-Owned Enterprises as a legal entity is one of the efforts made by the government to accelerate the economic improvement of rural communities.⁷ Village-Owned Enterprises as a village economic institution has an important role that the government needs, to support development of small and medium industries.⁸ From the center to the regions, government commitment is needed to form a network marketing group through these enterprises. If the government does not prepare a market network, it will be difficult for domestic products to compete with other products in the ASEAN region.

The ASEAN Economic Community opens opportunities for the opening of

cross-regional free markets, where each country has a balanced opportunity to compete with each other. The era of global trade is marked by the rapid advancement of information technology, thus making the boundaries between countries increasingly apparent. Indonesia positions itself as a potential resource, both natural and human, to compete by increasing the competitiveness of business actors. As business and economic development institutions for rural communities, Village-Owned Enterprises are expected to produce superior local products that can become a positive image in free-market competition.

Therefore, it can be concluded that a village with extraordinary resources will lose the competition if it cannot create community welfare, hence it requires creative efforts in developing its social capital. It is important to pay attention to rural communities’ business and economic development because it will increase competitiveness, which encourages economic growth and has a positive impact on the national level in facing free-market competition. The establishment of Village-Owned Enterprises as a legal entity is one of the government’s efforts which is expected to be supported.

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- 6 Prabowo, T.H.E., 2014, Developing Bumdes (Village-owned Enterprise) for Sustainable Poverty Alleviation Model Village Community Study in Bleberan-Gunung Kidul-Indonesia. *World Applied Sciences Journal 30* (Innovation Challenges in Multidisciplinary Research & Practice), pp. 19-26.
 - 7 Editorial Team, “BUMDes Resmi Jadi Badan Hukum Lewat UU Cipta Kerja”, *Kumparan*, <https://kumparan.com/kumparanbisnis/bumdes-resmi-jadi-badan-hukum-lewat-uu-cipta-kerja-1ucq4PD69ur> (accessed 8 June 2021).
 - 8 Iit Novita Riyantidan, Optimalisasi Peran Badan Usaha Milik Desa (BUMDes) Singajaya dalam Meningkatkan Kesejahteraan Masyarakat. *Jurnal al-Idarah Vol. 2, No. 1, Feb 2021*, p. 82.

The Job Creation Law presents many regulatory changes for Village-Owned Enterprises, one of which is the status of a legal entity as mentioned above. First, this article will analyze the definition of Village-Owned Enterprises and its implementation challenges in Indonesia. Second, changes caused by the provisions of the Job Creation Law. Third, the mechanism for registering Village-Owned Enterprises as a legal entity, and the legal vacuum needs to be clarified. Finally, the positive impact for Village-Owned Enterprises in dealing with ASEAN Free Trade.

B. Research Method

Research is a scientific activity based on analysis and construction that is carried out systematically, methodologically, and consistently.⁹ The author will answer the problems in this study with a normative juridical method based on legal norms related to the problem. This study is descriptive analytical through library research which includes primary legal materials in the form of laws and regulations, and secondary materials in the form of books, journals, news, and official reports.

C. Discussion

1. Definition of Village-Owned Enterprises

Article 1 Section 6 of the Village Law states that Village-Owned Enterprises

is a business entity whose capital is wholly or most of the capital owned by the village through direct participation from village assets which are separated in order to manage assets, services, and other businesses for the greatest welfare of the village community. However, the establishment of the Job Creation Law, in Article 117, has changed the provisions. Based on Article 117 of Job Creation Law, Village-Owned Enterprises (BUMDes) are legal entities established by villages and/or together with villages to manage businesses, utilize assets, develop investment and productivity, provide services, and/or other types of businesses for the greatest welfare of the village community. Government Regulation of the Republic of Indonesia Number 11 of 2021 on Village-Owned Enterprises as one of the derivative regulations of the Job Creation Law states that "*Village-Owned Enterprises can be a contributor to the Village's Original Income (PADesa). Therefore, in the future, Village-Owned Enterprises believed to be the lever of the Village.*" As one of the economic institutions in rural areas, Village-Owned Enterprises must be different from other economic institutions in general. This is intended so that the existence and performance can significantly contribute to improving the welfare of villagers.

According to the Center for Development System Dynamic Study, seven main characteristics that distinguish

9 Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986), p. 3.

ish Village-Owned Enterprises from commercial economic institutions in general, namely.¹⁰

- a. It is owned by the village and managed jointly.
- b. Business capital comes from the village and the community through equity participation.
- c. Its operation uses a business philosophy rooted in local culture.
- d. The business carried out is based on the potential and results of market information.
- e. The profits are aimed at improving the welfare of members and the community through village policies.
- f. Facilitated by the government (provincial, regency, and village).
- g. The implementation of the operationalization is jointly controlled by the Village Government, the Village Consultative Body, and members.

The establishment and management of Village-Owned Enterprises is a manifestation of the village's productive economic management, which is carried out in a cooperative, participatory, emancipatory, transparent, accountable, and sustainable manner. Therefore, serious efforts are needed to manage it

effectively, efficiently, professionally, and independently.¹¹ The main objectives of establishing Village-Owned Enterprises are improving the village economy by increasing the original income, improving the processing of village potential, and become the backbone of village economics growth and equity.

However, Village-Owned Enterprises are not solely for profit, but also social and non-economic benefits. Other benefits are expected to be able to strengthen togetherness, and encourage the growth of initiatives to develop villages independently. One of the benefits of establishing Village-Owned Enterprises is accommodating the existing entrepreneurial communities as the main attraction for young entrepreneurs committed to develop the village economy and take care of their village.

A major challenge of the Village-Owned Enterprises in Indonesia is its sustainability related to the lack of skills, financial support, knowledge about entrepreneurship, and the uncertainty and ambiguity in the implementation.¹² The proper development and management of Village-Owned Enterprises is a framework for realizing a democratic village economy,¹³ which can have a

10 Departemen Pendidikan Nasional Pusat Kajian Dinamika Sistem Pembangunan (PKDSP), *Buku Panduan Pendirian dan Pengelolaan Badan Usaha Milik Desa (BUMDes)*, (Jakarta: Fakultas Ekonomi Universitas Brawijaya, 2017).

11 Nadya Pakaya, *Transparansi Pengelolaan Badan Usaha Milik Desa (BUMDes) di Desa Kamanga Kecamatan Tompaso*. *Jurnal UNSRAT*, p. 5.

12 Brines, S., Shepherd, D., and Woods, C., *SME family business innovation: exploring new combination*. *Journal of Family Business Management*, pp. 117-135.

13 Indarti, N. and Langenberg, M., "Factors affecting business success among SMEs: Empirical evidences from Indonesia" (Paper at the Second Bi-Annual European Summer University, Enschede, The Netherlands: University of Twente 19, 2004).

major impact on national economic development and bring Indonesia to be economically sovereign in facing the challenges of globalization on a regional and international economic scale.

2. Implications of Job Creation Law to Village-Owned Enterprises as a Legal Entity

The Omnibus Law was created with the intention of overcoming problems related to the complexity of licensing and overlapping regulations that can hinder investment. There are three clusters created, namely the Job Creation Law, the Taxation Law, and the Community Empowerment Law. The House of Representatives (DPR) has ratified the Omnibus Law, including the Job Creation Law on Monday, at 5 October 2020, which includes changes and simplifications of 79 laws and 1,203 articles.¹⁴ The urgency of the Job Creation Law is the dynamics of global change that needs to be responded quickly and accurately so that various problems can be resolved, because Indonesia's economic growth will slow down without policy reformulation. It is expected that the Employment Creation Law will change the economic structure that can move all sectors to encourage economic growth, including by providing

ease and certainty of doing business. This law will encourage debureaucratization so that government services will run more efficiently through the implementation of NSPK (Norms, Standards, Procedures, and Criteria) and the use of electronic systems.¹⁵

The derivative provisions related to Village-Owned Enterprises of the Job Creation Law are Law Number 11 of 2020 on Job Creation, followed by the issuance of Government Regulation Number 11 of 2021 on Village-Owned Enterprises and Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration (Mendes PDTT) Number 3 of 2021 on Registration, Data Collection, and Ranking, Guidance, and Development, and Procurement of Goods and/or Services for Village-Owned Enterprises or Joint Village-Owned Enterprises.¹⁶

The Job Creation Law (UU Ciptaker) makes it easier for Village-Owned Enterprises, as a new legal entity. The lack of legal standing for Village-Owned Enterprises has made it difficult for them to establish business cooperation with other parties and reach banking capital, which hampers the opportunity for Village-Owned Enterprises to expand their business. Through various existing

14 Fajar Pebrianto, "Pengusaha Minta Pemerintah Susun Aturan Turunan UU Omnibus Law Cipta Kerja, Tempo, <https://bisnis.tempo.co/read/1393598/pengusaha-minta-pemerintah-susun-aturan-turunan-uu-omnibus-law-cipta-kerja> (accessed 10 June 2021).

15 Agus Suntoro, Implementasi Pencapaian Secara Progresif dalam Omnibus Law Cipta Kerja. *Jurnal HAM* Vol. 12 No. 1 (2021), p. 5.

16 Ardiki Valdi, Pengelolaan Badan Usaha Milik Desa (BUMDes) Ditengah Pandemi Covid-19. *Jurnal Politico* Vol. 10, No. 4, 2021, p. 2.

regulations, Village-Owned Enterprises will be legally able to establish business cooperation with other legal entities such as Limited Liability Companies (PT), State-Owned Enterprises (BUMN) at the national level, and Regional-Owned Enterprises (BUMD) at the regional level. Village-Owned Enterprises are also eligible for government and commercial banking credit schemes.¹⁷

Legal Entity is a translation of legal terms namely *rechtspersoon*, which is the opposite of *natuurlijk persoon* (human). According to E. Utrecht, a *rechtspersoon* is a body with the power (authority) to support rights.¹⁸ R. Rochmat Soemitro also stated that a legal entity is an entity that can have assets, rights, and obligations like an individual.¹⁹ Complementing what was conveyed by the previous experts, Purnadi Purbacaraka and Agus Brotosusilo gave the understanding of a legal entity as an entity that has assets regardless of its members, is considered a legal subject so that it can carry out legal actions, carry out responsibilities, have rights and obligations. Thus, based on the opinions above, it can be concluded that the definition of a legal entity as a legal subject includes the following.

- a. Association of people.
- b. Able to perform legal actions (*rechtshandeling*) in legal relationships (*rechtsbetrekking*).
- c. Have separate assets.
- d. Have a manager.
- e. Have rights and obligations.
- f. Able to act as a party before the court.

When viewed from the juridical status, business entities can be distinguished into business entities that are legal entities and business entities that are not legal entities.²⁰ Business entities that are legal entities have rights and obligations, while business entities that are not legal entities do not. The legal consequence of this is that a third party who has an engagement with a business entity that is not a legal entity can only sue the founder or management, and not a business entity appropriately as to a business entity with a legal entity. Another difference is the obligation to register a company that is a legal entity with the government, while a company that is not a legal entity is not obliged to do so.²¹

The position of Village-Owned Enterprises in the Job Creation Law is as a New Entity Legal Entity whose position is equivalent to a Limited

17 Amalia Purnama Sari, "Gus Menteri Tegaskan BUMDes Jadi Badan Hukum Ketika Sudah Ada Peraturan Desa", Kompas, <https://nasional.kompas.com/read/2020/12/14/16000071/gus-menteri-tegaskan-bumdes-jadi-badan-hukum-ketika-sudah-ada-peraturan-desa?page=all> (accessed 8 June 2021).

18 Chidir Ali, *Badan Hukum*, (Bandung: Alumni, 2005), p. 108-109.

19 Wirjono Prodjodikoro. *Asas-Asas Hukum Perdata*. (Bandung: Bale Bandung. 1987), p. 23.

20 *Ibid.*

21 Editorial Team, "Perbedaan Badan Usaha Berbadan Hukum dengan Badan Usaha Tidak Berbadan Hukum", PKBH UAD, <http://pkbh.uad.ac.id/perbedaan-badan-usaha-yang-berbadan-hukum-dengan-badan-usaha-yang-tidak-berbadan-hukum/> (accessed 11 June 2021).

Liability Company which is equivalent to BUMN at the national level and BUMD at the regional level as explained in the Elucidation of Article 117 of the Job Creation Law which amends Article 787 of the Village Law in which the position of Village-Owned Enterprises as legal entities are no equivalent to companies and cooperatives. The expected positive impact of the status of Village-Owned Enterprises as a legal entity is to facilitate village partnerships, facilitate the promotion of various regional potentials, and accelerate regional economic improvement.

The position of Village-Owned Enterprises as a legal entity means that it will have nothing to do with the village head regardless of the political process that occurs in the village. The status of a legal entity makes the role of Village-Owned Enterprises increasingly important, among others, as a consolidator of products or services, producers of various needs, and community business incubators.

The organization itself consists of Village Deliberations, Advisors, Operational Executors, and Supervisors. The Operational Executor is authorized to cooperate with other parties to develop the Village-Owned Enterprises or Joint Village-Owned Enterprises business after obtaining the approval of the Village Deliberation or Advisors and Supervisors in accordance with the provisions in the Articles of Association. Article 26

of Government Regulation Number 11 of 2021 explains that the Operational Executor of Village-Owned Enterprises or Joint Village-Owned Enterprises holds a position for five years, and can be reappointed for two terms of office with the consideration that they are considered capable of carrying out their duties properly during their term of office, regeneration, avoiding conflicts of interest.

In Article 49 of Government Regulation Number 11 of 2021, it is stated that Village-Owned Enterprises or Joint Village-Owned Enterprises may own and/or form a Village-Owned Enterprises or Joint Village-Owned Enterprises in accordance with the provisions of the legislation. This business unit has a strategic function, related to the livelihood of the people and general welfare. Article 50 then explains how Village-Owned Enterprises or Joint Village-Owned Enterprises Business Units obtain financial benefits and benefits the community through various activities.

Through various regulations derived from the Job Creation Law, it is now possible for Village-Owned Enterprises to expand the field of business they carry out. Government Regulation Number 5 of 2021 as one of the derivative regulations allows Village-Owned Enterprises to manage water resources businesses and parts of toll and non-toll roads. Government Regulation Number 29 of 2021 stipulates that halal Village-

Owned Enterprises partner to manage passenger terminals and participate in managing people's markets. Then through Government Regulation Number 30 of 2021, it is possible for Village-Owned Enterprises to cooperate in motor vehicle testing, calibration and maintenance services. Village-Owned Enterprises are even allowed to run businesses in forestry areas, processing logs into sawn timber products with a production capacity of less than 2,000 m³ each year, and processing non-timber forest products on a small scale.

Furthermore, regarding the convenience of credit schemes, the government has been trying to find various steps by collaborating with Micro Waqf Banks in recent years. This is because the capital requirement which may be very hard for Village-Owned Enterprises whose funding is from village funds.²² Thus, granting legal entity status to Village-Owned Enterprises is expected to eliminate obstacles related to credit from the government and banks.

3. Establishment Process of Village-Owned Enterprises Establishment Process in the Job Creation Law

Provisions regarding the establishment of Village-Owned Enterprises or Joint Village-Owned Enterprises are

contained in Chapter II of Government Regulation Number 11 of 2021, Articles 7 to 10. Article 7 states that a Village-Owned Enterprises is established by a village-based on a Village Deliberation and establishment is determined by a Village Regulation, while two or more villages establish a Joint Village-Owned Enterprises based on an Inter-Village Deliberation and a Joint Village Head Regulation is stipulated. The Village Regulations and the Joint Regulations of the Village Head shall at least contain the establishment of Village-Owned Enterprises or Joint Village-Owned Enterprises together, Articles of Association together, and determination of the amount of Village and/or Village community capital participation in the framework of establishing together.²³

Establishment of Village-Owned Enterprises as a legal entity begins when the village has established village regulations, which are the product of village deliberations that are ratified and signed by the village head. In Government Regulation Number 11 of 2021 on Village-Owned Enterprises, Village-Owned Enterprises must undergo a registration process at the Ministry of Village, Development of Disadvantaged Regions and Transmigration of Republic of Indonesia (Kemendes PDTT) to avoid several things such as similar names.

22 Adhitya Himawan, "Mendes Akui Syarat Modal dari Bank Terlalu Berat Bagi BUMDes", *Suara*, <https://www.suara.com/bisnis/2018/03/15/134502/mendes-akan-sinergikan-bumdes-dengan-bank-wakaf-mikro?page=all> (accessed 8 June 2021).

23 Mumuh Muksin, *Tata Kelola Badan Usaha Milik Desa (BUMDes) Dalam Perspektif Ekologi Administrasi*. *Jurnal Inovasi Penelitian* Vol. 2, No. 1, June 2021, p. 206.

The name of the proposed Village-Owned Enterprises (BUMDes) contains three items, namely BUMDes, the name chosen and the village's name.²⁴ It is then proceeded to the Ministry of Law and Human Rights (Kemenkumham) to be documented. This is done because as a legal entity, Village-Owned Enterprises can create a new legal entity such as a Limited Liability Company (PT). Then, the registration process is continued by sending data to the Ministry of Cooperatives and Small and Medium Enterprises (SMEs), and other relevant ministries.²⁵ As mentioned in Article 8 of Government Regulation Number 11 of 2021, Village-Owned Enterprises (BUMDes) or Joint Village-Owned Enterprises (BUMDes) shall obtain the status of a legal entity upon the issuance of the electronic registration certificate of the minister who carries out government affairs in the fields of law and human rights.

Mendes PD TT emphasized that if one village could only establish one Village-Owned Enterprises, it was certain that the number would not exceed the number of villages as many as 74,953. However, when it comes to the Joint Village-Owned Enterprises (BUMDes), each village can have more than one Joint Village-Owned

Enterprises based on the joint decision of the village heads. This depends on the need for joint efforts to prosper the lives of rural communities. The establishment of Joint Village-Owned Enterprises is also not limited in terms of zoning and territory, as long as there is a common goal and vision.²⁶

Arrangements for the formation and management of Village-Owned Enterprises or Joint Village-Owned Enterprises together as legal entities according to Government Regulation Number 11 of 2021 are adjusted to corporate principles, but still places the spirit of kinship and mutual cooperation as the main pillars; This is acknowledged by placing the Village Deliberation as the highest organ in decision-making.

4. Increasing Village-Owned Enterprises Productivity in Facing the ASEAN Economic Community

In a fast-paced world, various changes have to be addressed by world's countries every day, including Southeast Asian countries. In the economic field, the ASEAN Economic Community (AEC) was formed, which is an effort to integrate the economies of Southeast Asia to reduce or even eliminate all obstacles to improve

24 Vendy Yhulia Susanto, "Menteri Desa PD TT: Sudah ada 88 BUMDes Mendaftar Sebagai Badan Hukum", Kontan, <https://nasional.kontan.co.id/news/menteri-desa-pdtt-sudah-ada-88-bumdes-mendaftar-sebagai-badan-hukum?page=2> (accessed 8 June 2021).

25 Jayanty Nada Shofa, "Kedudukan BUMDes sebagai Badan Hukum Kunci Pengembangan Desa", Berita Satu, <https://www.beritasatu.com/nasional/705525/kedudukan-bumdes-sebagai-badan-hukum-kunci-pengembangan-desa> (accessed 8 June 2021).

26 Nurcholis Ma'arif, "Mendes Jelaskan Cara BUMDes Bisa Berbadan Hukum", Detik News, <https://news.detik.com/berita/d-5283263/mendes-jelaskan-cara-bumdes-bisa-berbadan-hukum> (accessed 8 June 2021).

the economy, such as trade in goods, services, and investment.²⁷ The Asean Economic Community was initiated by the 1997 Summit (KTT) agreement in Kuala Lumpur, Malaysia, which resulted in the ASEAN Vision 2020 to make the Southeast Asian economy more prosperous. The AEC was established and implemented in 2015 based on 4 (four) pillars, namely.²⁸

- a. Making ASEAN as a single market and international production base, including elements of free flow of goods, services, investment, educated labor, and freer flow of capital.
- b. Realizing ASEAN as a competitive economic region. This highly competitive economy must have competition regulations, consumer protection, intellectual property rights, infrastructure development, taxation, and e-commerce.
- c. Creating ASEAN as a region with equitable economic development, including small and medium business development elements.
- d. Making ASEAN as a fully integrated region with the global economy, including elements of a coherent approach to economic relations outside the region and increasing

participation in global production networks.

Countries in the ASEAN region are determined to increase economic growth and competitiveness among countries in the face of global competition. For Indonesia, the existence of the AEC is the initial stage to develop various qualities of the economy in the Southeast Asia region in developing a free market.²⁹ Indonesia must also be prepared as early as possible to face the AEC from the central to the village level. At the village level, the role of Village-Owned Enterprise should be maximized as a driving force for the economy.³⁰

The implementation of One Tambon One Product (OTOP) program in Thailand, which was made as a breakthrough to drive domestic production, especially local products in the area, can be one of the references to increase the effectiveness of Village-Owned Enterprises in achieving various desired goals. The OTOP program encourages each tambon to rely on local natural traditions to utilize local natural, human, and technological resources. The three missions of the OTOP program are to globalize local products, produce products on their creativity and

27 Suara Mahasiswa, "Tantangan Pada Masa Masyarakat Ekonomi ASEAN", Binus, <https://binus.ac.id/character-building/2020/05/tantangan-pada-masa-masyarakat-ekonomi-asean/> (accessed 10 June 2021).

28 Harditya Bayu Kusuma, Pengembangan BUMDes dalam Menjaga Kemandirian Desa Menghadapi Masyarakat Ekonomi ASEAN (MEA). *Jurnal Desentralisasi* Volume 13, No. 2, p. 120.

29 Admin, "Peluang dan Tantangan dalam Menghadapi MEA", Provinsi Babel, <http://bandiklat.babelprov.go.id/2016/11/14/peluang-dan-tantangan-dalam-menghadapi-mea> (accessed 10 June 2021).

30 Nike Kusumawanti, BUMDes and ASEAN Economic Communities in Developing Rural Economy. (Paper at the International Conference ASEAN Golden Anniversary, 22-23 August 2017).

abilities, and develop human resource capabilities.³¹ The concept above is inseparable from community economic institutions' role in building and improving the quality of resources through the use of superior commodity for business and economic development.

The government's move to issue Village-Owned Enterprise regulations as a legal entity with all implications is the right step to increase the competitiveness of Village-Owned Enterprise amid of global competition. Opportunities to cooperate with other legal entities open many promising opportunities for Village-Owned Enterprise. In addition, easier government, and commercial banking credit schemes also open wider opportunities to expand their business for development, distribution of production commodities, product quality, and marketing.³²

However, the government is expected to wait for Village-Owned Enterprises registration, and actively disseminate information about the importance of creating Village-Owned Enterprises to support the village economy. To create village competitiveness, it is necessary to inventory the potential of each village to be used as superior local products. Therefore, the government as the regulator can also urge the village

community to prioritize region's unique potential as a Village-Owned Enterprises commodity. Through data collection in the Omnibus Law, the government should continue to supervise and provide guidance to Village-Owned Enterprises after its registration as a legal entity.

D. Conclusion

Changes in Village-Owned Enterprises arrangements in the Law Number 11 of 2020 on Job Creation have many positive implications and increase competitiveness at the international level. Village-Owned Enterprise as a legal entity as regulated in the Job Creation Law is expected to be a way out for the status of Village-Owned Enterprise so far, so that it is expected to have a positive impact on the village economy and will even have a huge impact on the national level if implemented massively. As a legal entity, Village-Owned Enterprise will also have the same characteristics as other legal entities in general; It can have separate assets and can act as *rechtspersoon*. This is expected to make it easier for them to establish relationships with other legal entities such as PT, BUMN, and BUMD. In addition, this also makes it easier for them to get financial assistance which has been one of the obstacles.

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- 31 Arsoowan Laeha, Implementasi Kebijakan One Tambon One Product dalam Rangka Meningkatkan Partisipasi Masyarakat di Kecamatan Natam Provinsi Yala Thailand. *Jurnal Jejaring Administrasi Publik* Vol. 5 No. 1, p. 236).
- 32 Heri Faisal, "Kembangkan BUMDes, Perbankan Jamin Bantu Permodalan", *Finansial Bisnis*, <https://finansial.bisnis.com/read/20170515/90/653485/kembangkan-bumdes-perbankan-jamin-bantu-permodalan> (accessed 11 June 2021).

However, the government should also conduct more massive dissemination to Village-Owned Enterprise throughout Indonesia regarding all the implications of changing this provision to obtain maximum benefits. The author hopes that implementing regulations related to Village-Owned Enterprises can be disseminated properly and evenly. In addition, the bureaucracy for licensing is expected to run easily. To increase competitiveness, the government can take inspiration from the implementation of similar programs in other countries where the regulator urges each Village-Owned Enterprise to raise the local culture so that a clear differentiation can be seen, which will then increase sustainability in the long term.

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6. Government Regulation No. 30 of 2021 on the Implementation of the Road Traffic and Transportation Sector

Curriculum Vitae of the Author

Bryan Eduardus Christiano is an active student at the Faculty of Law Universitas Indonesia and currently serves as the Chairman of the National Law Debate Community Indonesia 2021. During his college, he has participated in several moot court competitions, namely Asia Cup 2021, Nuremberg Moot Court 2021, and won the International Tribunal for the Law of the Sea Moot Court Competition 2020. He is also active in publishing articles in various journals both national and international, as well as participating in several international law conferences and became the youngest speaker in the conference themed “Sustainable Diversity in Arbitration” held by the Graduate School of Law, Nagoya University. He is interested in international law, civil law, and current legal issues. Bryan can be contacted via email: bryan.eduardus@ui.ac.id and WhatsApp +6281311111071.

LEGAL ASPECTS AND POLICIES FOR INDONESIAN SMEs AFTER THE OMNIBUS LAW-CHALLENGES IN THE REGIONAL FREE TRADE

Juvelin Rezara

School of International Law

Southwest University of Political Science and Law (SWUPL)

E-mail: jruvelin10@gmail.com

ABSTRACT

As an active developing country, the Republic of Indonesia plays a mammoth role in regional economic cooperation, inter alia, bilateral Free Trade Agreement, Free Trade under the ASEAN Economic Community (AEC), and even in the Regional Comprehensive Economic Partnership (RCEP). After enacting the omnibus law in 2007, the country has highlighted the protection and enhancement of the Small and Medium Enterprises (SMEs) environment. Nonetheless, the weak performance of SMEs and myriad FTAs in the country relatively generate confusing challenges. Hence, the purpose of the study is to analyse the Challenges of legal policies for SMEs to evoke a clear understanding for incoming improvement. Regarding the expected result of this study, the research was based empirically on analysis of primary and secondary data with considering surveys reported by some authors. Based on the finds, this paper examines holistically the treatment of SMEs under domestic regulations related to SMEs` regulations under regional FTAs, and further to Challenges of SMEs in Indonesia in the regional Free Trade despite the enactment of the Omnibus law and other legal aspects. Expressly the research found the challenges are arisen due to volatility of domestic system and regional (international) issues.

Keywords: Legal Aspects, Indonesia, Challenges, SMEs, Investment policies, and FTA

A. Introduction

In most developing countries, SMEs contribute the economic growth prosperously. In Indonesia, the arrangement of SMEs is specified in certain regulations¹, to encourage

economic implication by creating of employment, alleviating poverty, and enhancing its agile competitiveness against corporate and regional enterprises². The SMEs have been

1 Based on the 1945 Constitution of the Republic of Indonesia, (article 33) it is necessary to make sustainable national economic development. Underlined by Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR1998 concerning the economic policy in the context of economic democracy, investment policies should at all times underlay the people's economy that commits itself to the enhancement of micro, small and medium enterprises, and cooperatives.

2 Stated by the Ministry of Trade of Indonesia[2020] that majority of economy is almost occupied by SMEs

underlined distinctly after the enactment of Omnibus law and other legal aspects. The Law on SMEs of 2008 defines it as an enterprise domiciled and conducts business in Indonesia and meets the criteria as follows: having a net asset of more than five hundred Million Rupiah up to ten billion Rupiah, and having maximum annual sales proceeds of more than two billion and five hundred million Rupiah up to a maximum amount of fifty billion Rupiah. On the other hand, the Government of Indonesia has been enlarged its FTAs in order to promote in the regional market its SMEs` capacities³. However, despite legal aspects for enhancing SMEs in Indonesia, it still faces challenges because the domestic policy is not much agile, and as well the expansion of Regional FTAs may hamper relatively the SMEs` environments because of unbalanced competition, the regional SMEs or goods may flood

the market especially the developed countries⁴.

The research places its significance in highlighting the challenges faced by SMEs in Indonesia through domestic legal issues and external issues generated by regional FTAs. Meanwhile, the study set to consider the possible improvement of SMEs to face regional FTA. Consequently, it becomes problematic to grasp the domestic legal policies, and Regional economic policies are not realistic and conducive to SMEs despite their provisions to protect and enhance SMEs in Indonesia. Henceforth, how do legal policies, inter alia, omnibus law, the law on SMEs, and regulation on special treatment of SMEs and other aspects, function to expand the interest of SMEs in Indonesia? Do the rules for protecting SMEs under the Regional FTAs lay down convergent with omnibus law? Moreover, what are the reasons that

about 90% of total business and 97% of employment, "Ditandatangani di Tengah masa Pandemic Covid-19, RCEP Tumbuhkan Harapan Baru di Kawasan," [signed in the middle of the COVID-19 pandemic, RCEP brings a new hope], Press Release, 15 November, <https://www.kemendag.go.id/id/newsroom/press-release/ditangani-di-tengah-masa-pandemi-covid-19-rcep-tumbuhkan-harapan-buru-dikawasan-1>

3 Indonesia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension, it also has preferential trade agreements with Australia, China, Hong Kong India, Japan, Korea, and New Zealand and concluded text-based negotiations of the Regional Comprehensive Economic Partnership in November 2019. Indonesia has signed bilateral free trade agreements (FTAs) with Australia, Chile, Mozambique, as well as with Iceland, Liechtenstein, Norway, and Switzerland under the European Free Trade Association, but as of the end of 2019, none of these FTAs are yet in force except with Chile. Indonesia recently concluded negotiations with Korea on a Comprehensive Economic Partnership Agreement. Indonesia is negotiating other FTAs with the European Union (EU), India, Tunisia, and Turkey as well as reviewing its trade agreements with Japan and Pakistan. Available at trade- <https://www.trade.gov/knowledge-product/indonesia-agreement>

4 The SMEs may not able to compete or participate in regional markets dominated by large enterprises. This is the main reason why India withdrew its assumption for signing the entry into in force of RCEP agreement in December 2020, but does not mean regional FTA agreement is thoroughly impact negatively the SMEs, the policy of Developing country has to rigorously set forth the protection of SMEs interest and its economic implication into state economic growth by partnership with MNE, or restriction of some sectors targeted only to SMEs.

factually challenge the SMEs and what remedial steps the government might have to take?

The first part of this study highlighted the legal policies for SMEs in Indonesia under the domestic rules and with regional FTA rules stipulating the treatment of SMEs to which the country has to commit. The following part focused mainly on the Challenges of SMEs in Indonesia in facing Regional FTAs rules impact. The rules addressing the treatment of SMEs in FTA looks a bit unrealistic in terms of protecting the interest of SMEs because they cannot be a subject of intense competition with corporate enterprises internationally, and low rate of trade liberalization is systematically booming products from developed countries in large scale to developing country into Indonesia's Market. At the very least, the research talks about the possible amelioration of SMEs legal policies to render conducive Regional Free Trade implications to Indonesia.

B. Research Method

In general, the method used in this research focused basically on doctrinal methodology by analysing, commenting, and interpreting qualitatively laws relating to investment law in Indonesia, such as omnibus law and other rules related to SMEs and the regional Free Trade Agreements. In order to understand the Challenges of SMEs in the Regional Free Trade deeply, the present study

lays down on the collection of all relevant primary and secondary data and analysing pragmatically for the objective of attaining the main point of the research. In detail, the analysis took into consideration all previous empirical researches, surveys guided by previous author and all statements posted by the Minister of Commerce in Indonesia on its official website, the statements on the official website of the regional FTAs, among other things, AEC website, RCEP website and others. Furtherly, the study also examined all interviews directed by some searchers online.

Adversely this research proffers its weakness by lack of direct interviews to SMEs in Indonesia in facing the expansion of regional Free Trade, the practical implementation of legal aspects for SMEs, and other possible challenges that may appear in the future which will be generated by mega FTA such as the future impact of RCEP FTA. In doing so, the author genuinely intended to complete the research more pragmatically, yet the circumstances paralyzed it.

C. Discussion

After enacting Omnibus law with other rules and regulations set out the SMEs and ASEAN Economic Community policy, which means the year 2007 to 2021, several academic researchers have been conducted to point out challenges of Indonesian SMEs' legal policies in encountering Regional Free Trade.

However, those cited hereinafter are relevant for this study. The role of small and medium-sized enterprises (SMEs) related to private sector engagement is often neglected by policymakers. But SMEs are mostly the main driver of local socioeconomic welfare in Indonesia (Neise Thomas, Diez, Javier Reveilla, 2018). Iwan Koerniawan (Iwan Koerniawan, 2020) states in his study on understanding SME in Indonesia the policy issues had brought multi-dimensional emergency of SMEs in Indonesia;⁵ Irfan Ridwan Maksum (Irfan Ridwan Maksum, 2020) found that expansion of the global economy increases negative factors for SMEs.⁶ Moreover, Raden (Aswin Rahadi, 2016) advanced in his study that the challenges of SMEs are because of lower performance to enable in the regional market; Arias Kurniawan (2019) found the challenges through weak courage of SMEs to enhance the quality of its enterprise to reach regional standards company. In order to enhance and extend the economic contribution of SMEs in Indonesia, it is needed to improve social security and business performance (Nina TORM, 2020), but Sembiring (Meliadi Sembiring, 2008) stated that

the weakness of Indonesian SMEs in technology, human resource quality, productivity competence of information communication, and performance of the company and business climate obstacle its competitiveness in the regional market.⁷ Actually, SMEs do not contribute to the export activity due to SMEs' lack of global competitiveness to compete in the regional market. Furtherly examined that the main challenge is, SMEs in Indonesia has no proper legal protection in facing AEC trade liberalization and has advantages under the Omnibus law and other legal aspects by restricting regional business in accessing to some sectors, most of the sectors are open to SMEs only rather other types of enterprises (Peach, Melissa 2013). Due to systematic changes they were expected to get the opportunity to enter the market better than larger companies, but the concept of competitiveness is not well enforced (Anton, Setyawan Agus Muzakan, Isa Muhammad, Wajdi Farid, 2015).⁸ The implication of regional FTA impacts the growth of SMEs due to higher competition and the market mostly flooded by the regional goods (Thomas Neise, 2018).⁹ There are many

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- 5 Koerniawan, I Samiha, Y T Fatimah, C E A Terminanto, A A Irviani, R, "Understanding micro small medium enterprise in Indonesia." *European Journal of Molecular & Clinical Medicine*, ISSN 2515-8260, Volume 07, Issue 02, 2020
 - 6 Maksum, Irfan Ridwan Yayuk, Amy Rahayu, Sri Kusumawardhani, Dhian, "A Social Enterprise Approach to Empowering Micro, Small and Medium Enterprises (SMEs) in Indonesia." *Journal of open innovation: Technology, Market, and Complexity*, published in 20 July 2020
 - 7 Anton, Setyawan Agus Muzakan, Isa Muhammad, Wajdi Farid <https://www.cjournal.cz/files/190.pdf>
 - 8 Anton, Setyawan Agus Muzakan, Isa Muhammad, Wajdi Farid, "An Assessment of SME Competitiveness in Indonesia." *vol.7,2*, 2015, p.60-74
 - 9 Thomas Neise, "Firms' adaptation strategies to floods and their potential on regional economic-Insights

constraints endowing to SMEs, such as lack of capital, lack of sponsor from the government, cumbersome business regulation, restrictions, and poor governance, weaken the accession to inter-regional market (Talus Tambunan, 2009). Lastly, Burger (2015) in his study axed on reforming policies for Small Medium-Sized Enterprises in Indonesia examines the importance of reform for SMEs policies in Indonesia in broadening strategies to promote economic growth. And additionally, he added a recommendation for policymakers assisting capacity of productivity, facilitating the expansion of their business, and eliminating notably overlaps between government's offices responsible for supporting SMEs may not be feasible.¹⁰ The study of Rothenberg, Alexander D Gaduh, Arya Burger, Nicholas E (2016) shows up the incapability of SMEs accessing to an international market is due to their informality, they cannot reach the international standards required to be regional traders and investors, and consequently it remarkably suggested the formalization of SMEs.¹¹

1. Treatment of SMEs in Indonesia

Threaten of SMEs is governed by two dependents regulations which are domestic and regionals. Indonesia has its myriad national legal framework for treating and protecting its domestic investment activities, at the same it has also its inter-regional commitments relating to standards of treatment and protection of trade and investment operations from its regional partners. Thereafter, the treatment and protection of SMEs at the national level and regional will be discussed.

1.1. Domestic legal policies for SMEs in Indonesia

Despite the fact that Indonesia has signed myriad Regional Free Trade Agreements with vast trade liberalization mechanisms, the treatment of SMEs is remaining restricted areas in order to provide for special treatment of SMEs, with the objective of maintaining persistence of sustainable viability of SMEs for economic growth, among other things, creation of long-term employment and economic growth to peoples of Indonesia. As a result, some sectors remain reserved

from Jakarta and Semarang, Indonesia" Published in 2018 retrieved at <https://www.semanticscholar.org/paper/Reforming-Policies-for-Small-and-Medium-Sized-in-Burger-Chazali/998b70baba5d75ea1dafb7a93e32b32959109ad1>

10 Burger, Nicholas Chazali, Charina Gaduh, Arya Rothenber, Alexander D Tjandraningsih, Indrasari Weilant, Sarah, "Reforming policies for small and medium-sized enterprises in Indonesia." RAND Corporation in collaboration with Tim Nasional Percepatan Penanggulangan Kemiskinan (TNP2K), retrieved at 2015, P.136 s/Reforming SMEs_0529_lowres_2015-1.pdf

11 Rothenberg, Alexander D Gaduh, Arya Burger, Nicholas E, "Rethinking Indonesia's Informal Sector" World Development Vol. 80, pp. 96-113, 2016 0305-750X/ 2015 The Authors. Published by Elsevier Ltd. This is an open access article under the CC BY license (<http://creativecommons.org/licenses/by/4.0/>).

for small-scale enterprises, and their coverage has been widened (covering 19 activities in the chicken, fishery, forestry, mining, industrial, trading, transportation, telecommunications, and health industries). Large-scale domestic or foreign investors are allowed only in partnership with a small local business or cooperative (tubers-related agricultural businesses, particular fish cultivation, forestry).¹²

Firstly, looking at the legal evolution of investment regulations in Indonesia, before the omnibus law there were several laws introduced and replaced subsequently, such as Law Number 1 of 1967 concerning Foreign Investments marked with limited provisions of foreign investment regulations,¹³ it was amended by Law Number 11 of 1970 concerning Amendments and Supplement to Law Number 1 of 1967 concerning Foreign Investments,¹⁴ and Law Number 6 of 1968 concerning Domestic Investments, as amended by Law Number 12 of 1970 concerning Amendments and Supplement to Law Number 6 of 1968 concerning Domestic Investments need a replacement for no longer being consistent with the need of accelerated national economic enhancement and law development, most notably, in the field of investment. Those previous laws

are mostly marked by a lack of legal protection of SMEs and contained a limited understanding of SMEs' economic contribution to State development.

Due to a lack of awareness of the previous regulations on SMEs, therefore, the government of Indonesia enacted Omnibus Law for the reason of improving the provisions of previous regulations in strengthening the legal protection of the SMEs. In the light of its provisions article 13: "The Government must establish business sectors that are reserved for micro, small and medium enterprises, and cooperatives, as well as business sectors that are open to large businesses on condition that they cooperate with micro, small and medium enterprises, and cooperatives." Meanwhile, the SMEs are granted to be treated by the Government profitably as the country's economy relies on its contribution.¹⁵ By this provision, the Government has to settle agile policy to promote the participation of SMEs in a business environment in the country by the measures of protecting them of domination of market may be generated by the corporate enterprises. The Government shall guide and enhance micro, small and medium enterprises, and cooperatives through partnership programs, increase competitiveness, inducement of innovation and market

12 Presidential Decree No. 99/98 on small-scale enterprises as amended by Presidential Decree No. 127/2001 (published on 14 December 2001).

13 [http://www.flevin.com/id/lgsso/translations/Laws/Law/Foreign%20Investment%20\(BI\).pdf](http://www.flevin.com/id/lgsso/translations/Laws/Law/Foreign%20Investment%20(BI).pdf)

14 <http://www.flevin.com/id/lgsso/translations/Laws/pdf>

15 See article 13 section 1 of Law of the Republic of Indonesia Number 25 of 2007 concerning Investments, signed by the President on April 26, 2007

expansion, and wide dissemination of information¹⁶. Expressly article 4 previews: “The Government shall adopt major investment policies: to encourage the creation of a conducive national business climate for investments in order to strengthen the competitiveness of the national economy; and to expedite the increase of investments”,¹⁷ This provision is elucidated in same article © says: “Government shall give opportunities to the enhancement of and give protection to micro, small and medium enterprises, and cooperatives”. It implicates that the Government has a legal obligation to push up SMEs partnership programs, an increase of competitiveness, market expansion, and wide dissemination of information Enlarge cooperation of Large Enterprises with SMEs by limiting their advantages in order to promote SMEs and promote small enterprises to enlarge in the business environment and international business. Accordingly the mandate of Decree of the People’s Consultative Assembly of the Republic of Indonesia Number XVI/MPR-RI/1998 regarding Economic Policy in the Context of Economic Democracy; Micro, Small, and Medium Enterprises need to be empowered as an integral part of the

people’s economy that has a strategic status, role, and potential to materialize the national economic structure that has increasingly become more balanced, developed, and equitable.

Secondly, by the omnibus law, the Government has implemented a business sectors policy in which treatment of SMEs is extended mainly to prevent risks induced by corporate enterprises in the market or business sectors. Accordingly, considering enhancing investment activities both from domestic and foreign countries and accelerating development, it is essential to protect the SMEs by establishing business field Open with conditions means particular business field subject to investment activities¹⁸. The objective of the regulation is highlighted to improve the economic competitiveness in facing the ASEAN Economic Community era and incentives of the global economy. Besides, the regulation of investment sectors targets SMEs’ advantages and sets aside business reserved for AEC¹⁹, either conducted by a domestic investor or foreign investors within the territory of the Republic of Indonesia²⁰. The details of the policy governing the determination of SMEs scrupulously is evoked by the Law of the Republic of Indonesia Number

16 See Ibid. section 2

17 See Ibid. article 4

18 Stated by Presidential regulation of the Republic of Indonesia Number 44 of 2016 concerning list of business fields that are closed to investment and business fields open with conditions to Investment, meanwhile, stipulated by Article 2(2)(a) of said regulation, a business which consists of reserving for SMEs

19 Ibid article 2(2)(B)(5), the business field Open with condition consists of limited capital ownership in the context of the Association Southeast Asian Nations cooperation

20 See, *ibid* first Chapter article 1.4

20 the year 2008 regarding micro, small, and medium enterprises in the objectives of empowering SMEs²¹. Article 1(9) of this law previews: Business Climate shall be condition striven for by the Government and Regional Governments in order to empower Micro, Small, and Medium Enterprises in a synergized manner through the stipulation of various laws and regulations as well as policies in various aspects of the life of economy so that Micro, Small, and Medium Enterprises obtain favoring, certainty, opportunity, protection, and support for running a business as broad as possible". In elucidating, SMEs need special treatment and protection in order to conduct a comprehensive, sustainable, and conducive climate of business. As a result, the law on SMEs in Indonesia welcomes the regional SMEs or Investors to conduct their investment under the sectors determined by the law, for example, AEC but has to comply with specific rules, which means that there are business sectors that are not allowed to be subject on FTA with Corporate enterprises. Concerning the business sector protection, this regulation is due to the implementation of Article 12 paragraph (4) and Article 13 paragraph (1) of Law Number 25 of 2007 concerning Investment, the President has issued Presidential Regulation

Number 39 of 2014 concerning Lists of Business fields that Are Closed to Investment and Business fields that Are open with conditions to Investment. The Omnibus Law mostly updates and prioritizes the SMEs in facing regional market. Consequently, Law Number 44 of 2016 set out that the amendment of the provisions on lists of business fields that are closed to investment and business fields that are open with conditions to investment is the pathway to accelerate development while remaining improving protection on Micro, Small, and Medium-scale Enterprises and Cooperatives and various national strategic sectors, and to improve the economic competitiveness in facing the ASEAN Economic Community (AEC) era and the dynamics of the global economy from home to overseas. In view of article 2 of this law stipulates the types of business fields open, closed, and open with conditions.²²

Knowingly all Free Trade Agreement signed by developing countries has almost to set aside the treatment of SMEs since their economic growth relies on a good environment of it, inter alia, all FTA agreed by Indonesia highlights the SMEs as an integral part of the agreement in order to prevent possible domination of the market by MNE, or by the flood of goods²³.

21 See Law number 20 of 2008 concerning Small, Micro, and Medium-scale Enterprises. Retrieved at <http://eng.kppu.go.id/wp-content/uploads/LAW-OF-THE-REPUBLIC-OF-INDONESIA-20-OF-2008.pdf>

22 Business fields that are Open with conditions as intended in paragraph (1) letter c shall consist of: Business fields that are Open with conditions, which are reserved for or in partnership with a Small, Micro, and Medium Enterprise, and Cooperatives.

23 Set forth in the agreement protection of SMEs in Indonesia by rules on Anti-dumping, countervailing, and

1.2. Treatment of SMEs in the view of Regional FTAs

The Republic of Indonesia has signed and implemented many Regional FTAs with various countries around the world; inter alia, FTA agreement under AEC and China, New Zealand, Japan, Korea, Australia, which sought to facilitate and reduce the import tariffs to 90% trade in goods²⁴. Through the comprehensive approach, the trend of FTAs in Indonesia is inclined to the ASEAN Free-Trade Area (AFTA). As known, Indonesia has agreed many FTAs around the world; consequently, this study may focus on some alleged FTAs that face or will engender challenges gloomily on its domestic SMEs.

Under the agenda of AEC to revamp the SMEs around country members is an integral part of the cooperation, it is based on the fact that SMEs contribute to the economy of 50% up to 80% and increase employment, and encourage capability of competitiveness²⁵. The AEC implicates a free market for trade liberalization, allowing free movement of goods, services, and foreign investment and free

flow of capital²⁶. Expressly, article 1(5) of the ASEAN charter introduces that “ To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is a free flow of goods, services, and investment; facilitated the movement of business persons, professionals, talents and labor; and freer flow of capital To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is a free flow of goods, services, and investment; facilitated the movement of business persons, professionals, talents and labor; and freer flow of capital”.²⁷ This provision seeks to promote investment business among member countries through trade facilitation, free flow of goods in a single market.

In further AEC rule ensure comprehensive policies data on the contribution of the SME. It also allows market access and internationalization and prioritizes

safeguards.

- 24 The framework was signed on 4th November 2002 which came into full effect on 1st January 2010. Retrieved http://www.gbgindonesia.com/en/main/business_guide/2016/indonesia_in_free_trade_agreements_11504.php#:~:text=Indonesia%20is%20a%20member%20of,signed%20on%204th%20November%202002.&text=Indonesia%20is%20also%20involved%20in,came%20into%20effect%20in%202008.
- 25 Zainuddin Djafar, “ASEAN Competitiveness, Is Indonesia Ready yet?” Vol.9 No. 4, July 2012, Depok: Faculty of Law Universitas Indonesia Page 599.
- 26 Koesrianti, “law reform of Small and Medium Enterprises (SMEs) and equitable cooperative for competitiveness improvement in AEC area”, Social science and faculty of Law Universitas Negeri Surabaya (UNESA), 14 September 2016.
- 27 The ASEAN was established on 8 August 1967. The member states are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

the social aspect of SME development²⁸. Accordingly to the AEC set its 2025 blueprint that it has five interrelated and mutually reinforcing characteristics which are: A Highly Integrated and Cohesive Economy; A Competitive, Innovative, and Dynamic ASEAN; Enhanced Connectivity and Sectorial Cooperation; A Resilient, Inclusive, People-Oriented, and People-Centered ASEAN; and A Global ASEAN. All of this is summarized into a common vision called as ASEAN Community Vision 2025.²⁹ However, aside from the already enforced FTAs, Indonesia has progressively agreed to some FTAs, including Indonesia-Chile FTA, Regional Comprehensive Economic Agreement (RCEP), and Indonesia-Europe Free Trade Association FTA (IEFTA, FTA), etc.

On the other hand, under the RCEP agreement, the SMEs are deemed to enhance economic growth and employment for signatories' countries, inter alia, developing and least developed countries. The agreement set forth opportunities for enterprises to acquire a large benefit from Free Trade³⁰. In light of chapter 14, article 14.1 recognises as well the importance of the SMEs "The Parties recognise that small and medium enterprises, including micro-enterprises, contribute significantly to economic

growth, employment, and innovation, and therefore seek to promote information sharing and cooperation in increasing the ability of small and medium enterprises to utilise and benefit from the opportunities created by this Agreement". Expressly, it emphasizes that the agreement seeks to strengthen economic cooperation for the SMEs in various areas, such as e-commerce, access to market, innovation, intellectual property rights, and involvement in Global Value Chains. The RCEP is perceived to modernize various national laws to address secure transactions, simplified registration, and bankruptcy. In chapter 14, article 14.3 determines commitments of parties to be aware of efficient cooperation which shall be taken, for example, the paragraph of the said chapter (b): improving small and medium enterprises' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses. But this improvement is obviously very challenging in Indonesia therefore the benefits from such regional agreement are rarely seen its direct impact. Moreover, although the possible interest of RCEP agreement Indonesian SMEs, yet many lessons are seen from significant FTA that non-tariff barrier elimination in developing countries like Indonesia will impact the

28 See OECD/ERIA(12), SME Policy Index 2018: Boosting Competitiveness and Inclusive Growth, OECD Publishing, Paris/economic Research Institute for ASEAN and East Asia, Jakarta. <https://doi.org/10.1787/9789264305328-en>

29 See the publication of ASEAN (The Association of Southeast Asian Nations) in 2015 for its blueprint in 2025, the economic growth of the country is designed through the improvement of SMEs contributions.

30 Available at <https://perthusasia.edu.au/getattachment/Our-Work/Supporting-Indonesia%E2%80%99s-SMEs-to-benefit-from-RCEP/PU-189-V17-SMEs-RCEP-WEB.pdf.aspx?lang=en-AU>

SMEs gloomily in market competition³¹. Especially its fragile SMEs regulations will be affected if there is no stringent measure.

In short, Indonesian legal aspects for SMEs enacted with and after the omnibus seem to detain protectionism, as the treatment of foreign investors especially large companies do not have free access to all sectors, but under the provisions of the regional agreement, neither the ASEAN charter nor RCEP defines restrictions of the large companies in some activities conserved for the SMEs. The principle of national treatment may be hindered.³² Even if the omnibus law itself defines in its article 4 (2) a: “the government has to accord equitable treatment to domestic investors and foreign investors with due regard to the national interest.”

1. Challenges of Indonesia`s SMEs in facing Regional Free Trade

Although the policies set aside by the regional Free Trade Agreement like AEC and RCEP³³ preview attractive policies for protecting and encouraging SMEs, but have to put in mind that the signatories’

countries should establish clear domestic policies backing up SMEs in order to support the aims of the agreement so that the countries can benefit the opportunities granted. In Indonesia, legal investment policy restricts some sectors for trade liberalization in order to maintain the survival of its SMEs³⁴.

1.1. Weakness of domestic policy for SMEs in entrapping benefit from Regional Free Trade

Admittedly, Jakarta has been working hard to prepare for the regional FTA, especially AEC; however, the current situation appears very critical. The country has been failed to ensure balancing SMEs with regional Free Trade because of inappropriate policies and weak performance of Indonesian Small and Medium Enterprises in encountering trade liberalization environment. The reliance of the country on protectionism policy which limits some sectors in favor of domestic SMEs, abuses the expansion of the local market in the international sphere.³⁵ Accordingly a survey demonstrated the fragility of said type enterprises are knowingly, they

31 Gantz, David A. “The TPP and RCEP: Mega –Trade Agreements for the pacific Rim” *Arizona Journal of International and Comparative Law*, vol.33issue 1 (2016), pp.55-70

32 Each Party shall accord to investors of another Party, and to covered investments, treatment no less favorable than that it accords, in like circumstances, to its own investors and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory

33 See “Summary of the Regional Comprehensive Economic Partnership Agreement”, <https://asean.org/storage/2020/11/Summary-of-the-RCEP-Agreement.pdf>

34 Peach, Melissa. “Eye of the Tiger: Examining Tension in Indonesia’s Trade Regime.” *Currents: International Trade Law Journal*, vol. 22, no. 1, winter 2013, p. 38-54. HeinOnline

35 Tulus Tambunan, “The impacts of Trade liberalization on Indonesian Small and Medium-Sized Enterprises”, *INT`L INSTITUTE FOR SUSTAINABLE DEV.*(2011),[www.iisd.org/tkn/pdf/impact-trade lib Indonesia.pdf](http://www.iisd.org/tkn/pdf/impact-trade%20lib%20Indonesia.pdf).

do not have mainly enough capital, the Nation does not take relevant measures to sponsor and finance their business operations. The regulation and restrictions are cumbersome problems hampering business activities in Indonesia reflect the poor governance in the country, likewise, the policy-generated barriers to domestic competition and trade which include the barriers to inter-regional and inter-island trade.³⁶ There is no reliable legal framework providing an opportunity for small domestic investors with foreign investors, whereas looks protectionism. SMEs in Indonesia encounter various export barriers at the pre-exporting and exporting stages. At the pre-exporting stage, SMEs are less likely to engage in export activities if they perceive difficulties in tariff and non-tariff barriers, informational and human resource barriers, distribution, logistics, and promotional barriers, business environment barriers, procedural barriers, and foreign customer and competitor barriers. SMEs are prevented from sustaining and developing their exports at the exporting stage mainly by informational and human resources barriers, distribution, logistics, promotional, financial, foreign government, procedural, and price

barriers.³⁷ For example, the relevance of AEC in Indonesia in internationalizing and widening the market is unfortunate, but the policy remains poor to benefit the SMEs. In addition, the interview on the challenges of SMEs in Indonesia guided by Rahadi confirmed the weakness of domestic policy in handling the prosperous development of SMEs hamper SMEs to develop to a higher level; the quality of productivity almost ever remains traditional.³⁸ Furthermore informality of SMEs sector in the country weaken their competitiveness skills over the regional market, the regularity is required while encountering competition with foreign companies or goods.³⁹

1.2. Weakness of Domestic SMEs to face Regional Free Trade competition

Many kinds of research asserted that challenges of SMEs in Indonesia to face regional SMEs competition in terms of product quality and productivity are because of the inadequacy of technology and infrastructures utilised by, for example, the use of Industry 4.0 in the country proffered many advantages of the SMEs in quality of product, yet evaluated that most of the SMEs in the country have

36 Tulus Tambunan, "Development and some constraints of SME in Indonesia", Center for Industry, SME & Business Competition Studies University of Trisakti, p.1-9, 2009

37 Raden Aswin Rahadi, "Opportunities and challenges for micro-small and medium business in Indonesia facing ASEAN Economic Community" JMK, VOL.18, NO.1, MARET 2016.145-53

38 See Ibid

39 Rothenberg, Alexander D Gaduh, Arya Burger, Nicholas E, "Rethinking Indonesia's Informal Sector" World Development Vol. 80, pp. 96-113, 2016 0305-750X/ 2015 The Authors. Published by Elsevier Ltd. This is an open-access article under the CC BY license (<http://creativecommons.org/licenses/by/4.0/>).

not yet proceeded to Industry 4.0 and 5.0.⁴⁰ Actually, SMEs in Indonesia has several advantages that are not granted for foreign investor's competitors, inter alia, abundant of natural resources to processed and marketed at international markets, and several competitive sectors include mining sector, fishery, handcrafts, and forestry, etc.⁴¹ Nonetheless an expert stated by lack of infrastructure, limited access to financing and business plan, its SMEs do not enable to compete successfully against their regional counterparts.⁴² And the main challenge is the imperfection of legal rules and legal reforms to improve the competitiveness and legal protection.⁴³ Jakarta has confirmed 90.5% of the AEC blueprint, yet limited transportation access, a lack of knowledge about ASEAN product standardization, and export-import procedures and insufficient technical understanding remain obstacles of

SMEs to take advantages of accessing to regional competition.⁴⁴ During the interview conducted by Rahadi, the first and second respondent affirmed that the SMEs in Indonesia have not capacities to compete with other ASEAN nations because of lacking knowledge and use of advanced technologies. The performance of SMEs in Indonesia is still lower compared to other regional enterprises caused by the imperfect legal framework, lack of accession to social security.⁴⁵ Consequently, they are unable to face challenges in the international market. In fact, in considering the above said the competitiveness of SMEs in the regional market does not rely on government policies only but also on the performance of SMEs concerned.

1.3. Obstacles on improving the partnership between SMEs and Large Enterprises

40 Aries Kurniawan, Beni Dwi Komara, Heri Cahyo Bagus Setiawan, "Preparation and challenges of Industry 5.0 for Small and Medium Enterprises In Indonesia" Volume 2, number, December 20-19. Retrieved at <http://journals.ums.ac.id/index.php/mijeb>

Furtherly Industry 4.0 consists of an integration of robots, interconnected devices, and fast data networks in a factory environment; the focus of such technology is automation and digitization, while Industry 5.0 is a new development of the 4.0, which consists of a combination of automation and personalized human involvement.

41 Ibid

42 Meliadi Sembiring, "SMEs Growth and Development in Indonesia", ADBI Joint Regional Workshop on SME development and regional economic integration, 22-26 September 2008, Tokyo, page 3-4, and see also "Indonesia SMEs: Increased Government support to overcome challenges" http://www.gbgindonesia.com/en/main/why_indonesia/2016/indonesia_smes_increased_government_support_to_overcome_challenges_11603.php

43 Dionisius Narjoko, "turning Dream into Reality?: Achieving the Goal of SME Development in AEC", International conference on ASEAN Vision 2015: Moving toward one Community, CIER, Tapei, May 2011, ERIA

44 See Randy W. Nandyatama "Indonesian SMEs and the ASEAN Economic Community". Retrieved at <https://thediplomat.com/2015/06/indonesian-smes-and-the-asean-economic-community/>

45 Torm, Nina. "To what Extent is Social Security Spending Associated with Enhanced Firm-Level Performance? A case study of SMEs in Indonesia." *International Labour Review*, vol.159, no.3, September 2020, p.339-336. HeinOnline.

The legal framework in Indonesia encourages a closer relationship between SMEs and Large foreign companies to enhance SMEs' capabilities and competencies in terms of productivity, technology, and managerial knowledge.⁴⁶ It is acknowledged that large enterprises⁴⁷ are not flexible to give range extensive of opportunities for SMEs in the sector of business operation,⁴⁸ therefore the engagement of the domestic private sector in the sphere of economic development contribution is still lower due to multinational firms dominates the sector, and the latter does not have a significant positive impact to local communities' economies.⁴⁹ To extend the domestic and regional rules for complete protection of SMEs are conceptualized not thoroughly realistic by the fact that large enterprises defend as well their interests. So, the legal framework for setting aside special treatment of SMEs remains controversial aspects when looking at regional free trade on the other side, because FTA is integrally based on liberalization of trade and market that is definitely dominate

the sectors where SMEs shall develop its capacity. A developing country like Indonesia whose economic development relies on SMEs faces challenges handling the multifaceted regional Free Trade therein. In order to meet the conducive participation of SMEs, the Government of Indonesia should set forth rigorous regulations making necessary financial assistance available and accessible, delivering capacity-building programs needed for SMEs' technological advancement. It should oblige the multinational corporations to optimize suppliers from local SMEs or affiliations of Foreign Direct Investment. In other words, the large company in Indonesia has no reliable support from the government to expand their partnership with SMEs, this reason why perceived that it looks very unrealistic to enhance the partnership between them without supporting legally their business by alleviating some restrictions in their activities.⁵⁰

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- 46 Koesrianti, "law reform of Small and Medium Enterprises (SMEs) and equitable cooperative for competitiveness improvement in AEC area", Social science and faculty of Law Universitas Negeri Surabaya (UNESA), 14 September 2016.
- 47 Shall be productive economic business done by business entities with net assets or annual sales proceeds larger than that of Medium Enterprises, including state-owned or privately owned business, joint ventures, and foreign business that conduct economic activities in Indonesia.
- 48 Rothkegel, Senad; Erakovic; Ljiljana; Shepherd, Deborah, "Strategic alliances between SMEs and large firms: An exploration of the dynamic process" revue ISSN 1861-9916, Rainer Hamp Verlag, Mering, Vol.17, Iss.1, pp.50-70 available at <http://hdl.handle.net/10419/78877>
- 49 Neise, Thomas Diez, Javier Revilla, "ScienceDirect Firms' contribution to flood risk reduction – scenario-based Firms' contribution to flood risk reduction – scenario-based experiments from Jakarta and Semarang, Indonesia experiments from Jakarta and Semarang, Indonesia" vol. 212, 2017, p.567-575, available online at www.sciencedirect.com
- 50 Godwin, Andrew. Corporate Rescue in Asia-Trends and Challenges." Sydney Law Review, vol.34.no.1,2012, p. 163-188. HeinOnline

1.4. Implication of regional autonomy regulations

In Indonesia, the implication of Regional Free Trade rules waiving tariffs and the international goods which flood the market where the SMEs sell their products is tremendous problems of SMEs legal policy.⁵¹ In the concept of regional FTA (includes AEC and RECP), rules set out that liberalization and facilitation of trade mechanism implicate uncontrollable policy to protecting SMEs in Indonesia by the fact that the quality of the product is not identical, the foreign or large company products are definitely more chosen in the market; as a result, the domestic SMEs do not operate positively because their products are not valuable in the market and decline their performances. Unfortunately, the existence of pre-existing FTAs rules becomes a significant challenge for SMEs policies in Indonesia. Thus, the implication of RCEP rules which tends to reduce the customs duties at a lower rate among country members (LDC, developing and developed countries), is definitely going to disorder SMEs policies in Indonesia when the Government takes no rigorous measures to settle those afore-said main challenges. The commitment of Indonesia in this agreement likely generates further critical issues to SMEs policies because the products from Japan, South Korea, Australia, and China will increase more challenges in protecting SMEs.

D. Conclusion

After the omnibus law, the Government of Indonesia has made many efforts in revamping the SMEs environment in the regional investment by offering legal support through multi-dimensional law and regulations. One year after omnibus law, the law on number 20 the year 2008 concerning Small, Micro, and Medium-scale Enterprises for highlighting the importance and protection of SMEs in the economy of the State, and in 2016 the Presidential regulation of the Republic of Indonesia Number 44 of 2016 concerning List of Business Fields Closed to Investment and Business Fields Open with Conditions to Investment was in force in favor of SMEs. Despite those rules, SMEs' environment still bears challenges due to the inadequacy of domestic policies and the implication of autonomy of the regional rules.

The regional FTAs are deemed very critical. It is conceptualized as one tremendous cause of discrepancy of policy protecting the SMEs in Indonesia. Nonetheless, the existence of regional FTA may contribute to economic development in the country by implication of technology transfer, creation of job opportunities, and enhancing domestic SMEs quality through competition with regional countries' products. Hereby, to respond to the problematics stated above, first, in order to enhance the capacity of competitiveness, Indonesia

51 Raden Aswin Rahadi, "Opportunities and challenges for micro-small and medium business in Indonesia facing ASEAN Economic Community" JMK, VOL.18, NO.1, MARET 2016.145-53

should extend the internationalization of its SMEs as government policy, should coordinate and intensify participation of all key stakeholders. For instance, do implement some sort of globalization of entrepreneurship.⁵² Indonesian SMEs can benefit regional cooperation by involving directly or indirectly SMEs activities in the regional market, by all means giving highest priority to its SMEs, instead of multinational companies located in their countries especially those regional companies to be engaged in exports activities or in regional supply chains. The highest-ranking economies should promote trade by opening their markets and providing world-class infrastructure, administrative system, and regulatory system. Second, despite the adaptation of Indonesian investment law since 2007, the divergence of the domestic investment regulations and regional FTA exists. The implementation of regulations in 2008 relating to SMEs sectors is asymmetrical with AEC and other FTA agreements as it apparently looks protectionist. Consequently, instead of turning to protectionism in regional FTAs in the country, it is far better to enforce rigorous domestic policies for boosting local SMEs' competitiveness by special granting taxes, providing technical assistance, simplification of business procedures, customs system and disseminating understanding about

the standard of regional products. It is important to set aside priority for SMEs but not in form of protectionism or discriminatory measures. And last, the main challenges are the ineffectivity of domestic rules in governing the SMEs, the government does not implement conducive legal framework compatible, the SMEs do not have financial support, as a result, they cannot expand to inter-regional market. On the other side, the autonomy of inter-regional regulations capsize the environment of SMEs due to regional goods' floods to the domestic market, and large companies dominate the market, in fact, there is no effective enforcement of rules protecting domestic SMEs. In this regard, the government shall balance the interest of domestic SMEs and the inter-regional trade and investment leverage. The enforcement of effective regulations supporting the SMEs to enabling its activities will be capable to confront international market competitiveness.

52 Balbir B. Bhasin and Sivakumar Venkataramany. "Globalization of Entrepreneurship: Policy Considerations for SMEs development in Indonesia", *International Business and Economics Research Journal*, Vol 9 No.4, April 2010, page 95.

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Curriculum Vitae

Personal information

Name : JUVELIN Rezara
University Address : CHINA, CHONGQING CITY, BEIBEI District, Chongqing
University of Political Science and Law.
Phone : +18660135120
E-mail : rezarajuvelin@gmail.com

Short Profile

I am from Madagascar; I have been started learning Law since 2013 in Madagascar, TOLIARA province, at TOLIARA University, Faculty of “DEGS”, Department of Law. My undergraduate and Master of public law were done there in the late 2017. I was very interested in international law researches, which is reason why I applied to carry out my PHD of international law in China now on; it is supposed to finish altogether within couple of years.

In addition, my PHD research area concerns international law disputes. Hence, the paper awarded by the Indonesia government entitled on “Settlement of territorial Disputes in the perspective of international law and other Aspects” presents to me a great challenge, and broad occasions how I could internationally share my experiences and perspectives about international public law rules.

Participation as a PHD candidate

- Presentation and suggestion on the current territorial disputes between Madagascar and France, the Eparses islands in Mozambique Channel.
- Participation on NELSON Mandela Human rights moot in GENEVA, memorial in hypothetical case
- Research field; Approach on effectivity of disputes settlement in international public law

THE UTILIZATION OF SOFT LAW IN PROMOTING DIGITAL-BASED PLATFORM TO STRENGTHEN INDONESIA'S HALAL INDUSTRY AND SMEs

Purna Cita Nugraha

Ministry of Foreign Affairs of Indonesia

E-mail: purna.cita@kemlu.go.id

ABSTRACT

Indonesia is a country with the largest muslim population. Indonesia, with this modality, can prove that Islam can go hand in hand with democracy and development. Despite being the largest muslim population with a robust economic outlook, Indonesia is ranked 4th in the Global Islamic Economy indicator based on the latest data from the Global Islamic Economic Report 2020/2021. It lags its neighboring country, Malaysia, which came in the first place. It is interesting to elaborate further on how Indonesia takes benefit from its strategic position as the biggest muslim population in the world and makes it as “a dark horse” in supporting the resilience of its national economy. Since the Fourth Industrial Revolution is taking its shape in Indonesia, it is important to see how this digital transformation helps develop Indonesia's halal industry and SMEs. As we know, Indonesia's Omnibus Law on Jobs Creation (Law No. 11 Year 2020) is a substantial and significant legal reform, including in halal product requirements. The effectivity of the halal certification will be fundamental as they accelerate the business licensing process through electronic-based services. This requires strong cooperation from various other stakeholders. Indonesia Sharia Economy Master Plan 2019-2024 as one of the soft laws should be utilized in promoting the digital-based platform to strengthen Indonesia's halal industry and SMEs. The paper aims to investigate the relevance of the utilization of soft law in promoting digital-based services to accelerate Indonesia's halal industry and SMEs. This paper demonstrates how to link digital diplomacy with promoting Indonesia's Halal Industry and SMEs. The paper also suggests several initiatives to utilize digital platforms to promote the halal industry in Indonesia.

Keywords: legal policies, digital-based services, halal industry, halal SMEs, covid-19

A. Introduction

Indonesia is a country with the biggest muslim population in the world. What makes Indonesia distinct from any other country is the complementarity between democracy and Islam. In Indonesia, Islam

can go hand in hand with democracy, stability, and development. This has become our modality to contribute globally to the maintenance of international peace and security. However, so far, the modality

of being the biggest muslim population in the world has not been transformed into economic gain. This is where “halal industry” came into the picture. As the largest muslim population in the world, it is only logical if Indonesia starts to look at its domestic halal industry as one of its future economic growth engines.

In 2020, muslims were the fastest-growing religious group. Most countries in the Middle East and North Africa regions are home to only about 20 percent of the world's muslims population. Most of the muslims globally, about 62 percent live in the Asia Pacific region, including in Indonesia, India, Pakistan, Bangladesh, Iran, and Turkey. Indonesia is currently the country with the largest muslim population. India's 1.35 billion population will have that distinction by the year 2050 in remaining a majority-Hindu country with more than 300 million muslims. The muslim population in Europe also growing and projected that 10 percent of all Europeans will be muslims by 2050. If current demographic trends continue, the number of muslim is expected to grow from 1,8 billion in 2018 into 3 billion in 2030.

The potentials and opportunities of the global halal industry in the future are huge and promising. The halal industry alone is now worth around USD 2.1 trillion and is expected to grow around USD 3 trillion in 2023. It makes one of the fastest-growing consumer segments in the world. Food and beverages lead

muslim spending by category at USD 1.3 trillion, followed by clothing at USD 270 billion, media and entertainment at USD 209 billion, travel at USD 177 billion and spending of pharmaceuticals and cosmetics at USD 87 billion and USD 61 billion respectively.

Today's global halal market is no longer confined to food and food-related products. The halal industry has expanded beyond the food sector. It includes pharmaceuticals, cosmetics, health products, toiletries, medical devices, and service sector components such as logistics, marketing, print and electronic media, packaging, branding, and financing. Parallel with the increase in the number of affluent muslims, the halal industry has expanded further into lifestyle offerings including halal travel, hospitality service, and fashion. This development has triggered changes in consumers' mindset and ethical consumer trends worldwide.

The halal industry in Indonesia has gradually received attention from both the government and domestic industry players. President Joko Widodo and Vice President Ma'ruf Amin are pushing Indonesia to become one of the top leading producers of halal products by 2024 and at the same time, increasing exports of Indonesia's halal products.

Indonesia continues to rise in overall rankings. Its robust improvement and awareness across sectors have allowed the country to rank within the top 10 of

all sectors. Indonesia moved upwards 47 places and reach the fifth position in media and recreation indicator and 19 places and rank sixth in pharma and cosmetics indicator. This is mainly due to the country's outdoing other countries in awareness. Indonesia moved upwards eight positions in the halal food indicator ranking, helped by its exports to OIC countries.

In Islamic finance, Indonesia notices the increase in the value of sukuk and Islamic funds. The awareness of Islamic finance and demand for it is also strong. Indonesia holds the largest number of related events and ranked second in the number of research papers. Regarding media and recreation, Indonesia held 20 associated events in 2019, which resulted in the significant rise of its media and recreation indicator ranking. The Halal Product Assurance Law No.13/2014 came into effect at October 2019 and required mandatory halal certification for all halal products. This has led to significant growth in the halal food, pharma, and cosmetics sectors and a trend that is expected to continue.¹

Indonesia Sharia Economy Master Plan 2019-2024 as one of the soft law in promoting halal industry has mandated the utilization of digital economy. It suggests that new information technology and social media platform will be useful

to create synergy and provide access to the halal industry and market. The utilization of digital platforms to provide greater market access to the halal Industry is something that we need to explore going forward. As of now, we have not seen any synergy and strategy among all stakeholders in this area. It is in this spirit, the utilization of Indonesia Sharia Economy Master Plan 2019-2024 as the soft law comes to the fore to help promote Indonesia's halal industry.

This paper perceives that through the support from all stakeholders and digital diplomacy, Indonesia can catch-up to be one of the leading top producer of halal products, considering that 13% of the world's muslim population is estimated to be around 240 million individuals in the archipelago, in which Indonesia could emerge as a significant producer of halal products and supply its vast domestic market.

This paper further investigates the link between the utilization of Indonesia Sharia Economy Master Plan 2019-2024 as the soft law in promoting digital-based services with the promotion of the halal industry and SMEs in Indonesia. Furthermore, this paper also seeks the best strategy on how Indonesia can contribute, facilitate, and coordinate the digital way in the promotion of the halal industry.

1 The State of the Global Islamic Economy Report 2020/2021, <https://cdn.salaamgateway.com/reports/pdf/456642acf95a783db590e5b104cae94046047101.pdf> (accessed 20 July 2021)

B. Research Method

This paper was written based on normative research. It analysed legal norms, including soft law on halal industry and SMEs as well as digital-based services. It is a descriptive-analysis paper based on systematic interpretation. This article took the analytical and qualitative approach to address the issue at hand. The data used was Indonesia Sharia Economy Master Plan 2019-2024 as the soft law and Omnibus Law on Jobs Creation (Law No. 11 of 2020) and Government Regulation No. 39 of 2021 on Halal Product Assurance.

Several terms used in this paper, among others:

1. Soft Law

Soft law is mostly defined to include hortatory, rather than legally binding obligations. Defining soft law this way presents at least two immediate challenges. First, it identifies the border between soft law and hard law, but it is vague with respect to the distinction between soft law and the absence of any obligation. The second challenge presented by soft law is its breadth. Anything that is "law-like" can be described as a form of soft law.²

2. Digital Diplomacy

There are multiple definitions of digital diplomacy. One of the reasons is because it still lacks official definition. For instance, there is no treaty or international convention which defines the meaning of digital diplomacy; Several organizations have attempted to form a concrete definition of the term, yet it continues to be used vaguely. Rashica tries to define digital diplomacy as a form of new public diplomacy, which uses the internet, new information and communication technologies (ICT) and social media to strengthen diplomatic relations.³

We are confronted with varying possibilities regarding the position of diplomacy in the digital age: gradual change and adaptation within the existing frameworks and principles versus a fundamental break with accepted patterns of behaviour, norms, and rules so that diplomacy starts to look fundamentally different. The term "digital diplomacy" then covers a multitude of meanings.⁴

Rashica further explains that the adoption of digital diplomacy by international subjects, mainly from the state, is based on several goals for the realization of which the latter ones are maximally engaged. The main goals for digital diplomacy are.

2 Andrew T. Guzman, "International Soft Law", the Journal of Legal Analysis, 2010

3 Viona Rashica, *The Benefits and Risks of Digital Diplomacy*, SEEU Review, 2018

4 Brian Hocking and Jan Melissen, "Diplomacy in the Digital Age", Clingendael, Clingendael Report, 2015

- a. Knowledge management: to harness departmental and whole of government knowledge, so that it is retained, shared and its use optimized in pursuit of national interests abroad.
- b. Public diplomacy: to maintain contact with audiences as they migrate online and harness new communications tools to listen to and target important audiences with key messages and influence major online influencers.
- c. Information management: to help aggregate the overwhelming flow of information and use this for better informed policy-making and help anticipate and respond to emerging social and political movements.
- d. Consular communications and response: to create direct and personal communication channels with citizens traveling overseas, with manageable communications in crises.
- e. Disaster response: to harness the power of connective technologies in disaster response situations.
- f. Internet freedom: the creation of technologies to keep the internet free and open. This is related to objectives of promoting freedom of speech and democracy as well as undermining authoritarian regimes.
- g. External resources: creating digital mechanisms to draw on and harness external expertise to advance

national goals.

- h. Policy planning: to allow for effective oversight, coordination, and planning of international policy across government, in response to the internationalization of the bureaucracy.

For the purpose of this paper, the digital diplomacy is closely perceived as the combination of external resources and policy planning. This paper demonstrates the link between digital diplomacy and the efforts to promote Indonesia's halal industry and make it possible by creating digital mechanisms and initiatives to gather support from all stakeholders and improve coordination and planning of policy in the halal industry across government.

3. Halal Industry and Halal Economy

No scholar has so far differentiated between the concept of halal Industry and halal economy. Indonesia Halal Lifestyle Centre defines halal economy as sectors whose core products and services are structurally affected by Islamic law. It means "everything under the sun" starting from halal food, modest fashion, halal travel, halal cosmetics, halal pharmaceuticals, halal media and recreation, and Islamic finance.⁵

On the other note, there is no clear concept on defining what halal industry really stands for. The State of the Global

5 Indonesia Halal Lifestyle Center, *Indonesia Halal Economy and Strategy Roadmap 2018/19*, 2018

Islamic Economy Report 2020/21 only elaborated that the global halal industry today is no longer confined to food and food-related products. The halal industry has expanded beyond the food sector there are pharmaceuticals, cosmetics, health products, toiletries, and medical devices and service sector components such as logistics, marketing, printing and electronic media, packaging, branding, and financing. Following the increase in the number of affluent muslims, the halal industry has expanded further into lifestyle offerings including halal travel and hospitality services and fashion. In this context, this elaboration from the State of the Global Islamic Economy Report, however, does not mention Islamic finance as part of the halal industry.

In this paper, the halal industry's scope comprises all product and services that are structurally affected by Islamic law. Accordingly, Islamic finance services and assets have been excluded from the scope of the halal industry. This has been done to focus the paper on efforts to digitalize the manufacturing and services industry besides the Islamic finance sector that have more recently been exposed to digital technology.

4. Subject and Means of Promotion in the Digital Era

Vienna Convention on Diplomatic Relations 1961 stipulates that one of the functions of a diplomatic mission is promoting friendly relations between the sending state and the receiving state, and developing their economic, cultural, and scientific relations; By this definition, state has been the only entity that promotes economic relations.

The practice of country promotion, and finding concepts to explain the phenomenon, has constantly been augmenting during the twentieth century under the spread of neoliberalism. It reached a climax at the beginning of the twenty-first century, due to the accelerated development of information technologies, the Internet and social media, those new "battlefields" for "winning the war on hearts and minds".⁶

As an impact, various specializations and actors emerge in country promotion, previously considered to be the province of governments. The increasing role of culture leads to the coagulation of a consistent corpus dedicated to cultural diplomacy⁷; as new actors come into country promotion, new concepts are being formulated, such as media

6 J. S. Nye Jr, *Public Diplomacy and Soft Power*, The Annals of the American Academy of Political and Social Science" 616(1), 2008

7 S. Mark, *A greater role for cultural diplomacy*, Netherlands Institute of International Relations (Clingendael), Discussion Papers in Diplomacy, 2009.

diplomacy,⁸ non-state actor diplomacy,⁹ corporate diplomacy,¹⁰ digital diplomacy and public diplomacy 2.0.¹¹ Although these concepts are new and subject to debate,¹² they indicate how the practice and interdisciplinary thinking about country promotion have recently developed, especially during the last decade.

The new media and social media offer these newcomers in international politics new opportunities to gain visibility and to emerge as public actors in an attempt to be recognized by states as dialogue partners. In this context, Madu (2018) argues that digital diplomacy promotes the use of ICT to fulfil the state's foreign policy goals by winning the hearts and minds of society, both in the home country and others. Instead of substituting, digital diplomacy has more to do with complementing traditional diplomacy. In the era of digital diplomacy, governments or non-state actors have objectives they want to secure and develop.

C. Discussion

1. Utilizing Soft Law to Connect Digital Diplomacy with Indonesia's Halal Industry and SMEs

The potentials and opportunities in the future of the global halal industry is vast and promising. However, its promising potentials have not been fully maximized. A USD 2.1 trillion global halal economics Indonesia represents roughly 10 percent of 2017 global spend, with only 3.8 percent of related exports.

Today's global halal market is no longer confined to food and food-related products. The halal industry has expanded beyond the food sector to include pharmaceuticals, cosmetics, health products, toiletries, and medical devices and service sector components such as logistics, marketing, print and electronic media, packaging, branding, and financing. This halal industry has expanded further into lifestyle offerings including halal travel and hospitality services and fashion. This development has been triggered by a revolutionary change in muslim consumers' mindset and modernized the industry as a whole.

Manurung (2019) pointed out three fundamental reasons. **First**, the halal industry has now expanded beyond the traditionally known scope of the food sector. Halal products today include cosmetics, pharmaceuticals, toiletries,

8 E. Gilboa, *Media diplomacy: Conceptual divergence and applications*, International Journal of Press/ Politics, 3(3), 1998

9 R. Langhorne, *The diplomacy of non-state actors*, Diplomacy and Statecraft, 16, 2005

10 W Henisz, *Corporate diplomacy: Building reputations and relationships with external stakeholders*, Sheffield, UK: Greenleaf, 2014

11 N. J Cull, *The long road to public diplomacy 2.0: The Internet in U.S. public diplomacy*, International Studies Review, 15(1), 2013

12 J.Melissen, *The new public diplomacy: Between theory and practice*, In J. Melissen (Ed.), *The new public diplomacy. Soft power in international relations*, pp. 3-27. New York, NY: Palgrave Macmillan, 2005

and penetrate the service industry, such as Islamic financing, logistics, tourism, marketing, travel agents, and mass media. **Second**, the muslim market share is enormous, with total followers of around 2.2 billion people. However, the halal market is non-exclusive to muslims. Halal product requires a set of rules that must be fulfilled because they must uphold ethical values, social responsibility, economic and social justice and animal welfare. It needs the promotion of ethical consumerism. the demand for halal-certified products from non-muslim consumers continues to increase. **Third**, the competitiveness of halal industry products and services accessing the international market.¹³

The Global Islamic Economic Report 2018/2019 (2019) stated that Indonesia is ranked 4th in the Global Islamic Economy. Indonesia continues to rise in overall rankings. Scoring strongly on awareness across sectors has ranked the country within the top 10 of all sectors. Indonesia moved upwards 47 places to reach the fifth position within the media and recreation indicator and 19 places to rank sixth in the pharma and cosmetics indicator. This is mainly due to the country outdoing other countries in awareness. Indonesia moved upwards eight positions in the halal food indicator ranking, helped by its exports to OIC countries.¹⁴

Indicator score breakdown for top 15 ranking countries

Country	GIEI	Halal Food	Islamic Finance	Muslim-Friendly Travel	Modest Fashion	Pharma & Cosmetics	Media & Recreation
1. Malaysia	290.2	209.8	389.0	98.3	43.7	80.2	59.9
2. Saudi Arabia	155.1	51.1	234.2	36.8	22.1	33.4	34.7
3. UAE	133.0	104.4	142.5	78.3	235.6	72.1	125.3
4. Indonesia	91.2	71.5	111.6	45.3	57.9	47.5	43.6
5. Jordan	88.1	39.6	124.6	43.3	18.5	39.1	31.6
6. Bahrain	86.9	42.2	121.9	31.9	16.7	33.5	42.3
7. Kuwait	73.3	42.2	99.2	27.1	17.5	33.3	40.8
8. Pakistan	70.9	54.7	91.1	23.6	30.6	32.5	12.9
9. Iran	64.0	60.5	74.0	28.8	33.5	55.9	26.6
10. Qatar	63.1	44.3	80.1	36.7	20.3	32.1	40.2
11. Oman	60.0	47.1	73.4	33.2	28.7	33.5	35.3
12. Turkey	55.9	70.7	49.9	62.7	75.1	43.3	34.6
13. Nigeria	53.1	20.7	76.6	14.1	19.8	21.6	16.7
14. Sri Lanka	49.2	27.3	66.6	13.3	26.2	20.1	18.4
15. Singapore	47.4	125.2	16.9	42.6	30.6	62.9	46.8

Source: State of the Global Islamic Economy Report 2020/21

During the launch of Indonesia Sharia Economy Master Plan 2019-2024 at 14 May 2019, President Joko Widodo pointed out Indonesia's aspiration to become the top producer of the global halal industry in 2024. To achieve this target, the master plan has laid out four strategies. **First**, is by strengthening the halal value chain that focus on sectors that are considered potential and highly competitive such as food, beverages, tourism, fashion, media, recreation, pharmaceuticals, and cosmetics. **Second**, is by strengthening the Islamic financial sector with a master plan that has been outlined previously in the Indonesian Sharia Financial Architecture Master Plan (MAKSI) and incorporated into the current master plan as the main driver of the halal value chain. Third, is by strengthening the small-medium enterprises (SME's) sector. Fourth, is by utilizing and enhancing the digital economy, especially trading (e-commerce, marketplace) and finance (financial technology) to encourage and

13 Hendra Manurung, *Indonesia Halal Industry and National Economy*, Article in Research Gate, 2019 Available from: <https://www.researchgate.net/publication/332439782>

14 The State of the Global Islamic Economy Report 2020/2021

accelerate the achievement of other strategies.

To carry out these four strategies, Indonesia Sharia Economy Master Plan 2019-2024 outlines several basic strategies that must be carried out, namely increasing public awareness, increasing the quantity and quality of human resources, strengthening research and development (R&D) capacity, and strengthening fatwas, regulations and governance.

Indonesia Sharia Economy Master Plan 2019-2024 as one of the soft law in promoting halal industry has mandated the utilization of digital economy. It suggests that new information technology and social media platform will be useful to create synergy and to provide access to the halal industry and market. It is in this spirit, the utilization of Indonesia Sharia Economy Master Plan 2019-2024 as the soft law comes to the fore to help promoting Indonesia's halal industry by connecting digital economy and digital diplomacy with Indonesia's halal industry and SMEs.

New information technology and digital platforms should be utilized to forge synergy while cultivating and providing access to the halal industry. The utilization of digital platform to provide greater market access to halal Industry including food and beverages is something that we need to explore going forward. As of now, we have not seen any synergy and strategy among all stakeholders in this

area. This is why digital diplomacy comes to the fore to help creating synergy in promoting Indonesia's halal industry.

2. The Utilization of Digital Platform to Provide Greater Market Access to Halal Industry

There are at least four goals on how Indonesia should strengthen its halal industry and SMEs:

- a. to show Indonesia's leadership as the largest muslim population in the world.
- b. to advance cooperation in the Indonesian halal industry with the Middle East, OIC Countries, and
- c. increase awareness and promotion of the halal industry domestically and internationally.

One of its goals is to increase awareness and promotion of the halal industry domestically and internationally. This is where the role of digital diplomacy could give effect. Digital diplomacy as a form of new public diplomacy, which uses the internet, new information and communication technologies (ICT) and social media can increase awareness and promote Indonesia's halal industry both domestically and internationally. This is also in line with the fourth strategy of Indonesia Sharia Economy Master Plan 2019-2024: the utilization of digital economy.

Digital diplomacy has a potential of reaching more than 4,5 billion of internet users both domestically and

internationally. It is also considered as the most effective tools to reach out 150 million active social media users in Indonesia. Thus, digital diplomacy could encourage its stakeholders and business sector to open greater access for halal products to enter e-commerce.

The Islamic industry has shown its tune with the latest developments in technology and investment. Companies have adopted blockchain technology for payments, to confirm halal compliance, or track food, cosmetics and pharmaceutical products from the manufacturing facility to the retailer. In Islamic finance, blockchain and automation are expanding access to financial services.

Smart technologies are being incorporated into clothing, such as the smart hijab, to GPS systems that show the closest prayer spaces. Equally, investment is taking place in artificial intelligence (AI), virtual reality (VR) and the internet of things, showing a readiness to respond to the needs of muslims in the 21st century.

Many leading countries like Saudi Arabia and Malaysia are starting to look at how the Fourth Industrial Revolution will help develop their halal industry. They are setting up proposals to take advantage of the latest technologies such as mobile apps, artificial intelligence, and robotics to boost international trade on the halal product.

One way that Indonesia could do to promote its halal industry is by endorsing

the utilization of digital platforms in providing greater market access to Indonesia's halal industry. This can be done through collaborative efforts with the private sector. Digital platforms such as Indonesia@ccess will be a good way-into start this initiative. Indonesia@ccess is a private-owned digital marketing arm of Indonesia to bridge international buyers and high-quality Indonesian products. Indonesia@ccess strives to empower Indonesian businesses to succeed and flourished in the global market by enabling easy access to curated Indonesian product. Indonesia@ccess also supports small-medium enterprises (SME's) to export abroad and offer their products online on its business-to-business (B2B) platform.

3. Omnibus Law and Digital-Based Platform in Implementing the halal assurance

On 2 November 2020, Indonesia enacted Law No. 11 of 2020 on Job Creation (Omnibus Law), covering amendments to various laws and regulations in Indonesia, including on halal product assurance. Article 48 and Article 185 (b) of the Omnibus Law mandated the government to issue new regulations to implement the amendments.

On 2 February 2021, the government also issued an implementing regulation in the form of Government Regulation No. 39 of 2021 on Halal Product Assurance (GR 39/2021), which replaced the pre-

existing regulations on halal product assurance in Government Regulation Number 31 of 2019 on Halal Product Assurance (GR 31/2019).

GR 39/2021 emphasizes that the BPJPH will use integrated electronic-based services in implementing the halal assurance. Furthermore, if any disruption that causes the electronic-based services to be disabled BPJPH will conduct the service manually.

This indicates further the commitment from the government to integrate all licensing processes into a unified (and hopefully simpler) electronic-based system, which presumably will be interconnected with the other government-run electronic platform for general license administration, i.e., the Online Single Submission (OSS).

Although GR 31/2019 has already hinted at the focused use of electronic-based services, GR 39/2019 also adds that if BPJPH has not yet implemented the electronic-based services as mandated under the regulation, BPJPH can only carry out manual services for one year after the enactment of GR 39/2019, i.e., until 2 February 2022.

Furthermore, according to Law No. 11 of 2020, in obtaining halal certification, micro and small businesses must submit a statement about the certainty of halal products based on BPJPH standards. BPJPH will only rely on the statement to issue the halal certificate, provided that the product is not at risk or uses

materials that have been confirmed to be halal and the production process has been ascertained to be halal and straightforward. In addition, under the new regulation, micro and small businesses will not have to pay any fee concerning halal certification process.

D. CLOSING

Throughout the deliberation in this paper, this policy paper concludes and propose some recommendations as follows.

- a. The utilization of Indonesia Sharia Economy Master Plan 2019-2024 as the soft law in promoting digital-based platforms to promote the halal industry and SMEs should be one of Indonesia's priorities in the near future. The government and related stakeholders should implement Indonesia Sharia Economy Master Plan 2019-2024 which has been materialized since 14 May 2019.
- b. As the largest muslim population in the world, Indonesia should strive to utilize Indonesia Sharia Economy Master Plan 2019-2024 as the soft law as the basic position for negotiation on its halal cooperation framework with partners. One of the aspects that should be put forward by Indonesia is the promotion of digital-based platform which could be complimentary to the existing economy diplomacy in promoting halal products from SMEs. Collaboration and cooperation with

related stakeholders from ministries and private sectors will be vital in promoting the master plan to boost the utilization of digital-based services with the promotion of the halal industry and SMEs in Indonesia

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Curriculum Vitae of Author

Purna Cita Nugraha is a coordinator at the Directorate of Middle East Affairs, the Directorate General of Asia and Pacific Affairs, Ministry of Foreign Affairs of Indonesia. He holds a doctoral degree in cyberlaw and is a member of the Indonesia Telematics Society. He was previously posted in the Permanent Mission of the Republic of Indonesia to the United Nations, New York.

THE ROLE OF LAW FOR SMALL MEDIUM ENTERPRISES (SME's) PROTECTIONS FACES THE CHALLENGES OF REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP) IN INDONESIA

Marcellino Gonzales

South West University Political Science and Law,
Chongqing, People's Republic of China.
E-mail: marcel261081@gmail.com

ABSTRACT

During the current uncertain world economy, the *Regional Comprehensive Economic Partnership* (RCEP) was born. RCEP is the largest trade agreement in the world outside the World Trade Organization (WTO) from the perspective of its world coverage for the total Gross Domestic Product (GDP), foreign direct investment (FDI) population, and trade. However, this agreement also raises new challenges, especially for each country that has joined the RCEP Agreement, in preparing legal provisions for welcoming this RCEP. The recklessness in preparing legal foundations in trade and investment sectors can raise some new problems. This paper will discuss whether any impacts from the RCEP implementation? And specifically, how Indonesia's legal instrument readiness to protect their national interests, especially for the Small Medium Enterprises, faces the challenges that come up from RCEP? The method used in this paper will be descriptive. To obtain an overview of the situation and circumstances of the RCEP, by presenting the data obtained as it is, and through various analyses to draw several conclusions. From the discussion, we can conclude that RCEP positively impacts developing supply chains that have been disturbed due to the Covid-19 pandemic and the China-US decoupling. Secondly, RCEP has an enormous momentum in making a giant leap towards legal transformation in the economic sector, particularly for Indonesia. Thus far, in facing this RCEP challenge, Indonesia already has a new legal instrument enacted on October 5th, 2020. This law is known as the Job Creation Law or the *Indonesia Omnibus Law*. It has provided a significant shove for changes to the formation of the laws as a whole in the Indonesian economic sector, including the Small Medium Enterprises protection.

Keywords: RCEP, SME's, Indonesia Job Creation Law, Indonesia Omnibus Law

A. Introduction

According to international trade theory, countries accept Free Trade

Agreements (FTA) because of the benefits that the countries involved in this trade

derive from comparative advantage.¹ A nation will specialize in producing a product if it has a comparative advantage. With this kind of specialization, the world can develop total world output with the same resources. At the same time, economic efficiency will continue to increase. The result, theoretically,² an FTA can guarantee that the countries involved in this agreement will benefit from the results of the formation of trade creation and trade diversion.

The latest trend of FTAs shows that many countries in the world have been involved in various trade agreements and investment agreements, both bilateral and regional agreements. That is because they realized that trade and encouraging foreign capital were ways to develop their national economy and fulfill its needs. However, the turmoil that has occurred in the world recently, such as the impact from the tension between the two largest economic giants globally, between America and China, affects the world economic map. And also *covid-19* pandemic which beat hard to the whole world economy since 2020. It caused the countries' economic conditions to be even more hit and affected the lower level, making them think of various ways to get out of their economic downturn.

For getting out of the economic downturn, the countries should take

some strategic steps to increase trade cooperation between countries, especially for stimulating the development of the small middle enterprises. Other strategies are how to encourage foreign capital to enter, also how to improve the export potential and import substitution, increase foreign capital earnings and be able to save it, with the hope to the cooperation can jointly rise from the impact of the global economic downturn caused by various current issues and in particular the *covid-19* pandemic. Increasing the financial income of countries by finding a way or solution to simplify the trade process from upstream to downstream and attract foreign investment is the main objective why such cooperation is needed. The hope is to help each other to accelerate the economic growth of the affected countries so that they all together will soon recover.

Amid the current uncertain world economy, the *Regional Comprehensive Economic Partnership* (RCEP) was born, a comprehensive Asian regional economic partnership initiated by Indonesia when it assumed the leadership of ASEAN in 2011. This cooperation aims to consolidate five free trade agreements (FTA) which ASEAN already has with its six trading partners. The countries declared the negotiations on November 11th, 2020, with 15 countries that agreed,

1 Amalia Adininggar Widyasanti, *PERDAGANGAN BEBAS REGIONAL DAN DAYA SAING EKSPOR: KASUS INDONESIA (Regional Free Trade and Export Competitiveness: The Case of Indonesia)*, Buletin Ekonomi Moneter dan Perbankan; Juli 2010, p. 6

2 *Ibid.*

consisting of 10 ASEAN countries and 5 ASEAN partners, namely China, Japan, South Korea, Australia, and New Zealand, and signed by the fifteen countries on November 15th, 2020.

The RCEP will become the largest trade agreement in the world, outside the World Trade Organization (WTO). Based on data, it shows from world coverage for the total Gross Domestic Product (GDP) (30.2 percent); foreign direct investment (FDI) (29.8 percent); population (29.6 percent); and trade (27.4 percent) which is slightly below the EU-27 which was recorded at 29.8 percent.³ Furthermore, the Peterson Institute for International Economics has forecasted that RCEP will add almost US\$200 billion to the global economy and an average of 0.2 percent per year to the GDP of its members, therefore creating employment and improving the standards of living of

member countries.⁴

Agus Suparmanto revealed why Indonesia needs a Regional Comprehensive Economic Partnership (RCEP) trade agreement at the virtual press conference. The reasons are:⁵

1. Indonesia needs RCEP to deal with uncertain international trade dynamics; this is closely related to the weakening of trust in the WTO (World Trade Organization) and the multilateral system, which has shifted many countries to regional and bilateral agreements.
2. To anticipate the impact of the trade war between the United States and China. According to him, countries with direct trade relations with the US and China are beginning to shift dependence from the two countries to compete in other regions. It

3 CNN Indonesia, *Mengenal RCEP dan Untungnya Buat Indonesia (Get to know RCEP and the Benefit for Indonesia)*, <https://www.cnnindonesia.com/ekonomi/20201116073151-92-570136/mengenal-rcep-dan-untungnya-buat-indonesia>, Accessed December 14th, 2020

4 Ministry of Finance and Economy, Brunei Darussalam The RCEP Agreement, <http://www.asean2021.bn/Theme/news/news-21.02.21.aspx>, Accessed March 15th, 2021

5 Agus Suparmanto is the Indonesia Mi The original statements of the Indonesia Minister of Trading are:

1. *Indonesia membutuhkan RCEP untuk menghadapi dinamika perdagangan internasional yang tidak pasti, hal ini erat kaitannya dengan melemahnya kepercayaan terhadap WTO (Organisasi Perdagangan Dunia) beserta sistem multilateral, telah mengalihkan banyak negara kepada kesepakatan-kesepakatan regional dan terutama bilateral.*
2. *Untuk mengantisipasi dampak dari perang dagang antara Amerika Serikat dan China. Menurutnya, negara-negara yang punya hubungan dagang langsung dengan AS dan China mulai mengalihkan ketergantungan dari dua negara tersebut untuk bersaing di kawasan lain. Hal tersebut juga tak lepas dari antisipasi pada kebijakan proteksi AS terhadap neraca perdagangannya. Bahkan, ini menjadi tren baru yang dicontoh negara lain dan akan berdampak pada perdagangan internasional ke depan.*
3. *Sebagai langkah mitigasi dampak dari pandemi virus corona (SARS-CoV-2) yang menekan perdagangan dunia yang sebelumnya sudah kurang kondusif. Hal ini membuat ekonomi dunia membutuhkan tahap pemulihan yang tidak bisa dilakukan sendiri dan dengan proses yang cepat.*

CNN Indonesia, *Alasan RI Butuh RCEP, Tak Percaya WTO hingga Perang Dagang*, <https://www.cnnindonesia.com/ekonomi/20201115160739-92-570018/alasan-ri-butuh-rcep-tak-percaya-wto-hingga-perang-dagang>, Accessed December 14th, 2020

also cannot be separated from the anticipation of the US protection policy on its trade balance. It is a new trend that other countries are emulating and will impact international trade in the future.

3. To mitigate the coronavirus pandemic (SARS-CoV-2) impact, which suppressed world trade that was previously less conducive. It makes the world economy need a recovery stage collaboratively and fast.

Indeed, these fifteen countries have their agenda of interests, like China, where participation in the RCEP is an extraordinary step. In various media, it has been stated that RCEP is the first multilateral free trade agreement China has ever participated in, as it typically prefers to negotiate bilateral free trade agreements. RCEP holds great significance for China. Once implemented, RCEP will create the largest trade bloc in Asia with the expectation to amount to US\$12.4 trillion in trade. Besides that, the RCEP will also open opportunities for China to involve and increase business expansion.⁶ China already has bilateral trade deals with many RCEP members and still hopes for a trilateral pact with Japan and South

Korea. The conclusion of the RCEP agreement is expected to strengthen economic relations between all three countries with ASEAN nations. It could lead to further bilateral arrangements among all members, particularly China.⁷ Likewise with Australia, by joining in RCEP, Australia hopes they can get their main benefits, they are:⁸

- A new single set of rules and procedures for accessing preferential tariffs in any of the 15 RCEP markets
- There is a new scope for trade in services throughout the region, including cross telecommunications, professional and financial services.
- Improved mechanisms for tackling non-tariff barriers, including in areas such as customs procedures, quarantine, and technical standards.
- Greater investment certainty for businesses.
- Rules on e-commerce to make it easier for businesses to trade online.
- A standard set of rules on intellectual property.
- Agreed rules of origin that will increase the competitiveness of Australian inputs into regional production chains.

However, this agreement also

6 Dorcas Wong, *RCEP FTA Signed What Can Foreign Investors In China Expect?*, November 17th, 2020: China Briefing, <https://www.china-briefing.com/news/rcep-fta-signed-what-can-foreign-investors-in-china-expect/>, Accessed December 15th, 2020.

7 Johnston, Eric, *What Does RCEP Mean For Japan And Its Asian Neighbors?* <https://www.japantimes.co.jp/news/2020/11/15/national/politics-diplomacy/rcep-japan-asia-trade/>, Accessed December 15th, 2020.

8 Prime Minister of Australia, *Regional Trade Deal to Boost Export Opportunities for Aussie Farmers and Businesses*, November 15th, 2020: Australia, <https://www.pm.gov.au/media/regional-trade-deal-boost-export-opportunities-aussie-farmers-and-businesses>, Accessed December 15th, 2020.

raises new challenges, especially for each country that has joined the RCEP Agreement, in preparing legal provisions for welcoming this RCEP. The recklessness in preparing legal foundations in trade and investment sectors can raise some new RCEP members' problems. Many doubts arose from various circles regarding the influx of imported goods, which will be eroding domestic products, the same thing that India worried about, so it resigned from this RCEP. In addition, there are concerns that RCEP will only benefit certain parties and hinder the economic growth of countries that are not ready.

These facts are interesting to be discussed deeper; reflecting on these, the author will try to analyze and describe more about the readiness of one of the RCEP members, in particular, to discuss further Indonesia's readiness. The form of enthusiasm here is specifically regarding legal instruments considered as formal to secure all forms of concern. Based on that, the scope of discussion in this paper will only specifically discuss:

1. Are there any impacts on the RCEP implementation?
2. How do Indonesian legal instrument protect their national interests in facing the challenges arising from RCEP, especially for the SME's?

B. Research Method

A method as a tool to help, answer, and find the truth symbolically,

methodological, and consistent, then held the analysis and construction of the data that has been collected and processed following the purpose of research. The method used in this paper will be descriptive. It is a research method to gain an overview of the situation and circumstances of the RCEP, by way of exposure data obtained as it is, then through the various analyses compiled some conclusions. Meanwhile, the study was conducted using a normative juridical approach. Literature and scientific papers related to the object of research and sociological juridical approach, namely the study, were also born of the condition and the facts on the regulations, especially the regulations related to Indonesia SME's trading and investment area.

It is essential to use internal logic research in analyzing RCEP and the role of law in the SME's sector to develop only descriptions or criteria in evaluating correct arguments about the law, particularly the regulations for SME's protections. Furthermore, this connection analysis should use deductive logic to conclude general matters into individual cases. The research should use the analysis methods because the understanding of RCEP itself is pretty new. There has not been much scientific law discussion regarding itself and its relation to transforming economic Law in Indonesia through the Indonesian Job Creation Law new conception.

C. The RCEP and the Consequence for Indonesia

1. What Is RCEP?

The Regional Comprehensive Economic Partnership (RCEP) is a significant trade pact proposed by ASEAN to increase trade between its member countries plus free trade agreement (FTA) partners. It was considered as the largest trade cooperation in the world because it involves 15 countries (10 ASEAN member countries plus Australia, New Zealand, South Korea, Japan, and China) which cover 30% of the world economy, 30% of the world population, and no less than 2.2 billion potential customers. Top officials from 15 nations inked the RCEP nearly a decade in the making on the final day of the 37th ASEAN Summit hosted virtually by Vietnam this year. The completion of negotiations is a strong message affirming China, Eastern Asia, and ASEAN's role in supporting the multilateral trade system. In addition, this agreement will contribute to developing supply chains that have been disrupted by the Covid-19 pandemic and the China-US decoupling, as well as supporting the regional and world economic recovery.

The objective of RCEP is to establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will facilitate the expansion of regional trade and

investment and contribute to global economic growth and development. Accordingly, it will bring about the market and employment opportunities to businesses and people in the region. Furthermore, the RCEP Agreement will work alongside and support an open, inclusive, and rules-based multilateral trading system. This RCEP agreement also has four key features:⁹

1) Modern. The RCEP agreement is an agreement not made just for today but is also an agreement for tomorrow. It updates the existing ASEAN Plus One FTAs (ASEAN's FTAs with the five dialogue partners). It considers changing and emerging trade realities, including the age of electronic commerce, the potential of micro, small and medium enterprises, the deepening regional value chain, and the complexity of the market competition. The RCEP Agreement will complement the World Trade Organization (WTO), building on the WTO Agreement in areas where the Parties have agreed to update or go beyond its provisions.

2) Comprehensive. The RCEP agreement is extended in terms of both coverage and depth of commitments. On its scope, the RCEP Agreement comprises 20 Chapters and includes many areas

⁹ Summary of the RCEP Agreement, <https://asean.org/storage/2020/11/Summary-of-the-RCEP-Agreement.pdf>, Accessed December 13th, 2020, p. 1-3

that were not previously covered in the ASEAN Plus One FTAs. The RCEP agreement has specific provisions covering trade in goods, including rules of origin; customs procedures and trade facilitation; sanitary and phytosanitary measures; standards, technical regulations, and conformity assessment procedures; and trade remedies. It also covers trade in services, including specific provisions on financial services; telecommunication services, professional services, and the temporary movement of natural persons. In addition, there are chapters on investment, intellectual property; electronic commerce; competition; small and medium enterprises (SMEs); economic and technical cooperation, government procurement, and legal and institutional areas, including dispute settlement. In terms of market access, the RCEP Agreement achieves liberalization in trade in goods and services and has extended coverage to investment.

3) High-Quality. The RCEP Agreement contains provisions beyond the existing ASEAN Plus One FTAs while recognizing the individual and diverse levels of development and economic needs of the RCEP Parties. The RCEP agreement addresses the issues required to support the Parties' global and regional supply chain engagement. It complements

market access commitments with trade and investment, enabling rules that are business-facilitating while at the same time preserving legitimate public policy objectives. The RCEP Agreement strives to boost competition in a way that drives productivity, which is sustainable, responsible, and constructive. In addition, the RCEP Agreement has the added value of bringing together a single rulebook to help facilitate the development and expansion of regional supply chains among Parties.

4) Mutually beneficial. The RCEP Agreement brings together countries with diverse levels of development. Thus, the RCEP Parties have recognized that its success will be determined by its ability to bring benefits mutually. The RCEP agreement is designed to achieve this objective in several ways, including through appropriate forms of flexibility and provisions for special and differential treatment, especially for Cambodia, Lao PDR, Myanmar, and Viet Nam, as appropriate, and additional flexibility for the least developed Parties. In addition, the RCEP Agreement includes technical cooperation and capacity building that will be made available to support the implementation of commitments made under the RCEP Agreement and for the Parties to maximize the benefits accruing from there. Finally,

the RCEP Agreement also includes provisions that will ensure that economies with different levels of development, businesses of differing sizes, and the broader stakeholders can all benefit from the agreement.

An RCEP description above shows that the signing of this agreement is expected to benefit its member countries. However, apart from the expected benefits, it is inevitable that this agreement can also have some impacts, bringing positive consequences or negative ones. Many experts provide opinions or analysis on this RCEP, such as the few comments during a webinar held on November 10th, 2020. Economic experts, business owners, civil society organizations, and parliamentarians expressed their concerns about it.

*Rashmi Banga*¹⁰ said FTAs like RCEP might further restrict the policy and fiscal space of developing countries. In her analysis based on SMART methodology, assuming tariffs are removed on all products between RCEP countries, she finds that imports post RCEP will rise

more than their exports for most ASEAN countries. Therefore, developing countries are more vulnerable and are expected to be hit harder, and will take more time to recover.¹¹ She also expressed her fear of RCEP, especially the impact on ASEAN countries: "ASEAN countries can only benefit from RCEP if they can use the potential on Regional Value Chains which should link with the Global Value Chains. But mostly in regional cooperation, such as RCEP, most ASEAN Countries will lose preferential access. That access will go to more efficient producers and exporters, but how many countries in ASEAN can compete with China?"¹²

*Kate Lappin*¹³ also has a statement about her expression for RCEP and the impacts. She said that FTAs such as RCEP would increase the pressure on governments to privatize, as public services need to be traded and compete on the market. Another negative impact will rise on equality, including corrosive effects on gender equality. She also said that with the pandemic issue, the rules have shown their effect on the

10 Rashmi Banga is a senior economist in the Unit of Economic Cooperation and Integration among Developing Countries (ECIDC), Division of Globalisation and Development Strategies (GDS), UNCTAD. She is former Adviser and Head, Trade Competitiveness in Commonwealth Secretariat, where the Section provided policy support to more than 30 countries in building trade competitiveness including countries like Belize, Botswana, Grenada, India, Jamaica, Kenya, Lesotho, Pakistan, Nigeria, and Sri Lanka, St Kitts and Nevis, among others. She has worked as a Senior Economist in DFID-funded UNCTAD's project which provided support to the Ministry of Commerce, India in its trade negotiations and helped link the poor to international markets. She was an Associate Professor of Economics in Jawaharlal Nehru University, India and has taught for nineteen years.

11 These statements were conveyed in the webinar forum in *Chiangmai*, Thailand, November 11th, 2020 with the theme "*RCEP Will Impact The Future of Developing Countries*", [https://igj.or.id/wp-content/uploads/2020/11/Press Release RCEP Will Impact The Future of Developing Countries.pdf](https://igj.or.id/wp-content/uploads/2020/11/Press%20Release%20RCEP%20Will%20Impact%20The%20Future%20of%20Developing%20Countries.pdf). Accessed December 15th, 2020

12 *Ibid.*

13 *Kate Lappin* is regional coordinator of the Asia Pacific Forum on Women, Law and Development, a network of 220 women's rights organizations and movements across the Asia-Pacific region.

Government's ability to respond to a crisis. Countries had to resort to multiple measures that can be construed as breaches of the trade rules in RCEP and other free trade agreements.

She argued that signing on RCEP will bind the hands of governments in taking measures in the public interest in crises to come, be it health or environmental. Further, she said that free trade rules shift the weight of who has power in the economy away from workers and in the hands of MNCs and narrow economic interests. In fact, by constraining the policy space of future governments, deals like this are restricting the potential for future poor-worker governments to alter the rules of the economy.

From the businessman side, there was *Ian Syarif*, owner of PT Sipata Moda Indonesia, a local textile company, said that free trade agreements like RCEP would bypass diversified trade opportunities and benefit the organized country like China with the sole focus on industrial efficiency. RCEP will also increase possible transshipment activities where goods will be shipped to other RCEP participating countries with zero tariffs and eventually re-exported to Indonesia, bypassing the trade remedies that the Government has imposed.¹⁴ *Barry*

Coates, Trade for All Advisory Board, from New Zealand, expressed concern that free trade agreements are signed in secrecy. He stressed that the idea that an international agreement will be signed without prior scrutiny is unacceptable without assessing its impact.¹⁵

In contrast to the practitioners' concerns, Deputy Foreign Minister Mahendra Siregar said RCEP would have many positive impacts on Indonesia in addition to increasing exports. According to Mahendra, RCEP will increase investment by more than 20% and Gross Domestic Product in the next ten years. In addition, 60 million SMEs will be positively affected by this trade cooperation. He said that "RCEP is a vehicle to increase Indonesia's role and contribution and presence in world trade and investment. In parallel, the Government has also passed the Job Creation Law. This law is an essential element in improving the homework that has been faced so far related to investment."¹⁶

From all of these practitioners' opinions will generally underline the readiness of ASEAN countries, especially for Indonesia, in facing the other five RCEP partners, particularly China, which is one of the most influential and dominant countries in economic terms.

14 Press Release of the IGJ Forum in Chiangmai, Thailand, 2020, https://igj.or.id/wp-content/uploads/2020/11/Press_Release_RCEP_Will_Impact_The_Future_of_Developing_Countries.pdf. Accessed December 14th, 2020.

15 *Ibid.*

16 Lamgiat Siringoringo, *RCEP Bakalan Meningkatkan Ekspor Indonesia Hingga 11% Dalam Lima Tahun*, <https://nasional.kontan.co.id/news/rcep-bakalan-meningkatkan-ekspor-indonesia-hingga-11-dalam-lima-tahun>, Accessed June 12th, 2021

Thus, it is expected that the 15 countries can place themselves fairly and equally according to their portions, in line with the main principle to help each other and encourage the economic growth of each member.

2. Domestic Law Improvement as a Solution to the Negative Impacts of RCEP in Indonesia

The RCEP pros and cons provide new homework for every country, especially for developing countries; Indonesia is one of them. Its implications for the member countries can be pointed up more clearly in the explanation above. Considering the importance of this agreement, Indonesia in particular also realizes that responding to the impact of this RCEP agreement requires some strategic steps, with the intention that it does not cause new problems for Indonesia itself. The adverse effects of a decision are a consequence that must be accepted. Remarkably, in this case, the existing anxieties must be reduced to a measurable and controllable impact. The best control instrument is to form strategic and targeted laws. Even though these laws are deemed unable to fulfill the sense of justice of all the stakeholders, it is hoped that they can create an order with the intention that they can be the answer to any problems that may and arise in the future in protecting Indonesia's interests.

In an advanced legal system, with the creation and development of professionally and logically designed laws, there is no doubt that legal products can influence, even change, the joints of people's lives.¹⁷ The faster the law responds to the reform voice / legal change in society, the greater the law's role in changing that society. On the other hand, the slower the law responds to voices of reform in the community, the smaller the function and role of law in changing culture because society has changed.

In line with this thought, the Indonesian Government is currently trying not to be slow in responding to the voice of reform in society but instead trying to accelerate it. The expectation that the role played by law in that society will also increase. It is particularly so in reading the changes in the international world, where the Indonesian Government is very aware that if it cannot see or read world changes, it will be difficult for Indonesia to develop. It will continue to throw away more opportunities for cooperation that benefit Indonesia with the international world. Meanwhile, to advance development, the participation of international cooperation is an absolute must for every nation. It is where the role of law in a country should be.

From that explanation, we can see two aspects of the legal change in society:

17 Munir Fuady, *Sosiologi Hukum Kontemporer "Interaksi Hukum, Kekuasaan, dan Masyarakat"* (Sociology of Contemporary Law "The Interaction of Law, Power and Society"), Jakarta: Kencana, 2011, p. 61.

first, laws that tend to be changed and laws that tend to be conservative. For example, family law or laws regarding individual property are everywhere conventional and rarely changed. On the other hand, many areas of business law, state administration, etc., are laws that tend to change according to the wishes and developments in society.¹⁸ Specifically, regarding the RCEP Agreement, it can be concluded that it is part of business law that can frequently change because it is closely related to economic policy. The Indonesian Government must prepare itself and accelerate the response to the voice of reform / legal change.

RCEP, initiated in 2011 and then finally completed by the signing in 2020, has a long process in the discussion; almost nine years, this agreement is in operation. In that period, there were also many changes and developments in the international world, which also affected the world economy, directly or indirectly impacting Indonesia. As an example, in 2019, 33 Chinese companies decided to invest overseas. However, none of the 33 companies visited Indonesia. Twenty-three chose Vietnam, and the other ten went to Malaysia, Thailand, and Cambodia. Nobody went to Indonesia;

besides that, in 2017, 73 Japanese companies decided to relocate. But again, Vietnam is one of the main goals. A total of 43 companies chose to invest in Vietnam. Meanwhile, 11 companies went to Thailand and the Philippines. Only 10 Japanese companies invested in Indonesia. *Jokowi*¹⁹ said the Government needed to be careful in overcoming this problem. According to him, Vietnam is the leading destination for foreign investors cannot be separated from a more concise regulation.²⁰

Learning from this, the Indonesian Government finally accelerated the establishment of a Job Creation Law which was finally completed on October 5th, 2020, exactly one month before RCEP was signed on November 15th, 2020. The approval of the Job Creation Law by the Indonesian Parliament was responded to with a large-scale demonstration-more significant in several regions in Indonesia, some of which lead to chaos. The base of this demonstration was mainly related to the changes in the articles of labor. The Job Creation Law originates from a bill proposed by *Jokowi* in April 2020. This law is also often referred to as the omnibus Law on Job Creation. Before the establishment

18 *Ibid.*

19 *Ir. H. Joko Widodo* is the 7th elected president of Indonesia, who has served since 2014. He continues his second term as president after winning the 2019 presidential election. *Jokowi* is the first president who is not from the political or military elite. His business career began as a wood crafts entrepreneur who then went into politics in 2005. *Jokowi* has served as mayor of Solo for 7 years and was DKI Jakarta Governor for 2 years.

20 *Ihsanuddin, Presiden Jokowi Kecewa Calon Investor Banyak Lari ke Negara Tetangga (President Jokowi is Disappointed That Many Potential Investors Run to Neighboring Countries)*, <https://nasional.kompas.com/read/2019/09/04/16425441/>, accessed Desember 20th, 2020.

of the Job Creation Law, the omnibus law was relatively unfamiliar to Indonesians. The Job Creation Law is the first omnibus law in Indonesian law. The Omnibus Law became known to the public for the first time since it was mentioned in *Jokowi's* inauguration speech in his second term in October 2019.²¹

Why does it state that the Job Creation Law is named the omnibus law? In terminology, omnibus comes from Latin, which means for everything. In a legal context, the omnibus law is a law that can cover all or one law that regulates many things.²² Omnibus Law is a law whose substance is to revise and/or repeal any laws. This concept developed in common law countries with *Anglo-Saxon* legal systems such as the United States, Belgium, England, and Canada. The omnibus law concept offers solutions to problems caused by over-regulation and overlapping regulations. If the problem is solved in the usual way, it will take a long time and cost a lot. Not to mention that the process of designing and forming laws and regulations often creates deadlocks or is not following interests.²³ Omnibus Law allows the parliament to amend several laws at once.

One of the countries in the world that adopted the omnibus law concept was Serbia in 2002 to regulate the autonomous status of *Vojvodina* Province. The law formed under this concept covers the jurisdiction of the *Vojvodina* Provincial government regarding culture, education, language, media, health, sanitation, health insurance, pensions, social protection, tourism, mining, agriculture, and sports.²⁴ Apart from Serbia, the concept of omnibus law has also been adopted by other countries such as Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and United Kingdom.²⁵ In Southeast Asia, Vietnam and the Philippines are two countries that have already practiced the omnibus law. Vietnam has been prosperous in attracting a lot of investment after the Government provided various facilities for investors in multiple sectors, such as incentives, tax exemptions, and permits.

21 Muhammad Idris, *Mengapa UU Cipta Kerja Disebut Omnibus Law? (Why is the Job Creation Law Called the Omnibus Law?)* <https://money.kompas.com/read/2020/10/17/073311026>, Accessed December 20th, 2020.

22 *Ibid.*

23 Firman Freaddy Busroh, *Konseptualisasi Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan (Conceptualization of the Omnibus Law in Solving Land Regulation Problems)*, ARENA HUKUM Volume 10, No. 2, Agustus 2017, p. 241.

24 *Ibid.*

25 *Ibid.* p. 142.

These conveniences were provided after the issuance of the omnibus law.²⁶

Job Creation Law is finally established considering many opportunities that have been wasted due to the overlapping regulations, especially in the economic sector in Indonesia. The question will be, why the Job Creation Law is considered a solution for Indonesia to complete some homework in the financial industry? It is because the Job Creation Law covers at least 11 clusters that are considered problematic and hindering in Indonesia up to now, i.e.:²⁷

- The simplification of land permits
- Investment criteria
- Employment
- The ease and the protection of SMEs
- The ease to start a business
- The support to do research and innovation
- Governmental administration
- Sanction-imposing
- Land-controlling
- The ease of governmental projects
- Special Economic Zone

Additionally, these six sectors regarding taxation are covered:²⁸

- Investment funding
- Territorial system
- Individual taxpayer
- Taxpayer compliance
- Business climate fairness

- Facilities

Thus, this law has streamlined regulations in terms of numbers and simplified them to be more targeted. With the existence of eleven clusters and six sectors that have been described, the Indonesian Government has subsequently issued the related implementing regulations, which is expected to have an immediate impact on the efforts to the national economic recovery as well as become a momentum for the awakening of the Indonesian nation. A total of forty-five Government Regulations and four Presidential Regulations were enacted:

- 1) Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing
- 2) Government Regulation Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions
- 3) Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises
- 4) Government Regulation Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment, and Disbursement of Companies that Meet the Criteria for Micro and Small Businesses

26 *Op.cit.*

27 Tata Soesatya, *Break The News: Omnibus Law Passed*, <https://engliven.com/2020/10/13/omnibus-law-passed/>, Accessed December 20th, 2020

28 *Ibid.*

- 5) Government Regulation Number 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business
- 6) Government Regulation Number 10 of 2021 concerning Regional Taxes and Regional Levies in the Framework of Supporting Ease of Doing Business and Regional Services
- 7) Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises
- 8) Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas
- 9) Government Regulation Number 13 of 2021 concerning Implementation of Flats
- 10) Government Regulation Number 14 of 2021 concerning Amendments to Government Regulation Number 22 of 2020 concerning Implementation Regulations of Law Number 2 of 2017 concerning Construction Services
- 11) Government Regulation Number 15 of 2021 concerning Implementation Regulations of Law Number 6 of 2017 concerning Architects
- 12) Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings
- 13) Government Regulation Number 17 of 2021 concerning the Fourth Amendment to Government Regulation Number 15 of 2005 concerning Toll Roads
- 14) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration
- 15) Government Regulation Number 19 of 2021 concerning Implementation of Land Acquisition for Development for Public Interest
- 16) Government Regulation Number 20 of 2021 concerning Control of Neglected Areas and Lands
- 17) Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning
- 18) Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management
- 19) Government Regulation Number 23 of 2021 concerning Forestry Implementation
- 20) Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Derived from Administrative Fines in the Forestry Sector
- 21) Government Regulation Number 25 of 2021 concerning the Implementation of the Sector of Energy and Mineral Resources
- 22) Government Regulation Number 26 of 2021 concerning the Implementation of the Agricultural Sector
- 23) Government Regulation Number 27 of 2021 concerning the Implementation of the Marine and Fisheries Sector

- 24) Government Regulation Number 28 of 2021 concerning the Implementation of the Industrial Sector
- 25) Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector
- 26) Government Regulation Number 30 of 2021 concerning the Implementation of the Road Traffic and Transportation Sector
- 27) Government Regulation Number 31 of 2021 concerning the Implementation of the Shipping Sector
- 28) Government Regulation Number 32 of 2021 concerning the Implementation of the Aviation Sector
- 29) Government Regulation Number 33 of 2021 concerning the Implementation of the Railway Sector
- 30) Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers
- 31) Government Regulation Number 35 the Year 2021 concerning Specific Time Work Agreements, Transfer, Working Hours and Breaks, and Termination of Employment.
- 32) Government Regulation Number 36 of 2021 concerning Wages
- 33) Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program
- 34) Government Regulation Number 38 of 2021 concerning Accompanying Accounts for Umrah Travel Expenses
- 35) Government Regulation Number 39 Year 2021 concerning Implementation of the Halal Product Guarantee Sector
- 36) Government Regulation Number 40 of 2021 concerning the Implementation of Special Economic Zones
- 37) Government Regulation Number 41 of 2021 concerning the Implementation of Free Trade Zones and Free Ports
- 38) Government Regulation Number 42 of 2021 concerning the Ease of National Strategic Projects
- 39) Government Regulation Number 43 of 2021 concerning Settlement of Inconsistencies in Spatial Planning, Forest Areas, Permits, and / or Land Rights
- 40) Government Regulation Number 44 of 2021 concerning Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition
- 41) Government Regulation Number 45 of 2021 concerning the Implementation of Geospatial Information
- 42) Government Regulation Number 46 of 2021 concerning Post, Telecommunication, and Broadcasting
- 43) Government Regulation Number 47 of 2021 concerning the Implementation of Hospitalization
- 44) Government Regulation Number 48 of 2021 concerning Third Amendment to Government Regulation Number 31 of 2013 concerning Implementation Regulations of Law Number 6 of 2011 concerning Immigration.

45) Government Regulation Number 49 of 2021 concerning Taxation Treatment of Transactions Involving Investment Management Institutions and/or Entities They Own

3. Presidential Regulation

- 1) Presidential Regulation Number 9 of 2021 concerning the Agency for the Acceleration of Housing Management
- 2) Presidential Regulation Number 10 of 2021 concerning the Investment Business Field
- 3) Presidential Regulation Number 11 of 2021 concerning Cooperation between the Central Government and State-Owned Enterprises in Providing Basic Geospatial Information
- 4) Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services

The Job Creation law is expected to be the entry point to change practices that hinder investment in Indonesia and its readiness to protect its people interests, and significantly reduce the negative impacts of joining in RCEP Agreement for domestic SMEs. It is also expected to encourage foreign investors to invest in Indonesia and create more job opportunities which are decreasing, particularly during the *Covid-19* pandemic.

Thus, the Job Creation Law or the Indonesian Omnibus Law, is a big step

for Indonesia to make changes and improvements to domestic law. This is to prepare for all the possibilities that arise from implementing any cooperation that involves Indonesia in the international world in general, and RCEP in particular, or in other words, this law is expected to be Indonesia's initial core in strengthening its national interests.

The Job Creation Law was a major transformative step for Indonesia; after a long period of slow-moving in creating systematic and integrated rules. It turns out to change the mindset of law formation that puts forward dynamic and strategic efforts in the same direction of people's lives. In addition, the existence of the Job Creation Law provides an impetus for cultural change in forming a legal provision which initially required a long time and consideration in creating a requirement. However, with the formation of this law, the efforts to cut bureaucracy are visible. That people adapt more swiftly, and their interests are easily accommodated and protected.

This significant step will provide culture shock for experts and researchers, especially the law-maker team in Indonesia, that the law not fall behind in reading the development of society. However, legal provisions in the making shall map out the changes in society. It requires the continuity of government policies in shaping and directing the development of a nation. With a clear path of state leadership, the results

enjoyed by the people can be reflected in the form of laws made on a transparent and sustainable basis in an appropriate period.

The descriptions above illustrate that RCEP is significant momentum in making a giant leap towards legal transformation in the economic sector for all member countries, especially for the developing countries who want to obtain more economic advantages from this agreement. For Indonesia, RCEP has provided a significant shove for changes to overall formation of the laws in the financial sector.

Although not ideal and will continue to be improved, this step provides more real hope for business actors and potential investors who intend to invest in Indonesia after several decades. There is no legal umbrella that can facilitate and provide legal certainty in securing economic activities for domestic and foreign business actors in Indonesia. The untidy and overlapping regulations each year in both central and regional became homework for the Indonesian Government before the Job Creation Law appeared and made it very inconvenient for economic actors working in Indonesia. And RCEP has given momentum to the importance of legal transformation in the financial sector in Indonesia so that it can optimally compete with other member countries to get the maximum benefits from these trade opportunities arising from this agreement. At the same time,

continue to prioritize the principle of prudence and protect domestic interests.

However, it should be noted that to increase business opportunities and grow SMEs, the job creation law alone is not enough. However, concrete work is still needed to realize and stimulate SMEs to grow and compete in the global market. In terms of regulations, the Government needs to pay special continuous attention to protect SMEs' from complicated bureaucratic practices at all levels. And another task of the Government is also to provide entrepreneurship training and sustainable market to support SMEs products to maintain the production and innovation. It will guide Indonesian SMEs ' products to develop and able to compete in the global market.

At the end of the discussion on RCEP and legal transformation in the economic sector in Indonesia as the implication of the agreement itself, it proves that the world economy is part of a busy life that should not be separated from dynamic business law. By realizing this, in the future, the regulations in the economic sector can grow and develop to balance the dynamics of society, which is the main engine driving the nation's economy. With the lively economic happening, the Indonesian Government must prepare itself and always accelerate the response to the voice of reform / legal change in the financial sector since the economy is one of the most critical milestones for its progress.

D. Conclusion

From the discussion above, it can be concluded that:

1. RCEP can bring both positive and negative impacts. The positive impact will benefit all members if they work together in building a strong relationship; that this agreement will contribute to evolving supply chains that have been disturbed and support the regional and world economic recovery. The purpose of RCEP itself is to create a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will facilitate the expansion of regional trade and investment and contribute to global economic growth and development. Accordingly, it will bring about the market and employment opportunities to businesses and people in the region. On the other hand, negative impacts can also occur if members are not careful in carrying out strategic steps, namely:
 - a. For most ASEAN countries, imports post RCEP will rise more than their exports leading to a worsening of their trade balance concerning RCEP members. Developing countries are more susceptible and are expected to be hit harder and will take more time to recuperate.²⁹
 - b. Passing on RCEP will bind the hands of governments in taking measures in

the public interest in catastrophes to come, be it health or environmental. Further, free trade rules shift the weight of who has control in the economy left from employees and in the hands of MNCs and narrow economic interests. In fact, by confining the policy space of future governments, deals like this deny the potential for future poor-worker governments to alter the financial rules.

- c. RCEP will bypass expanded trade opportunities and benefit the organized country like China that has the sole focus on industrial efficiency. RCEP will also increase probable transshipment activities where goods will be dispatched to other RCEP member participating countries with zero tariffs and eventually re-exported to other member countries, bypassing the trade remedies that the Government has imposed.
 - d. The idea an international agreement will be engaged without prior analysis, without an assessment of its impact, is unacceptable.
2. Thus far, in facing the challenges of RCEP, Indonesia already has a new legal instrument which was recently enacted on October 5th, 2020. This law is known as the Job Creation Law or the Indonesia Omnibus Law, with forty-five Government Regulations and four Presidential Regulations

29 <https://www.bilaterals.org/?rcep-will-impact-the-future-of&lang=en>, accessed November 2nd, 2021

as the implementation regulations. This law is considered a reference for Indonesia in facing issues that are feared to arise during the implementation of RCEP in Indonesia. The Job Creation Law covers at least 11 clusters considered problematic and hindering in Indonesia up to now, and additionally, six sectors regarding taxation are also covered. This law has streamlined regulations in terms of numbers and simplified them to be more targeted. Thus, the Job Creation Law or the Indonesian Omnibus Law, is a big step for Indonesia in changing and improving domestic law. Also to prepare for all the possibilities arising from the implementation of every cooperation that Indonesia in the international world in general, and RCEP in particular, or in other words, this law is expected to be Indonesia's initial asset in strengthening its national interests. RCEP is significant momentum in making a giant leap towards legal transformation in the economic sector, particularly for Indonesia; RCEP has provided a mighty shove for changes to the law-making in the financial industry. Although it is not ideal and will continue to be improved, this step provides legal certainty in securing economic activities for domestic and foreign business in Indonesia.

E. Suggestion

Some suggestions from the discussion above will be as follows:

1. Facing the RCEP, all member countries must be able to play an active role and strive to promote the spirit of togetherness as the ASEAN group has always carried out to this day, even though there are competitions that produce turmoil. Still, everything can always be resolved with a spirit of togetherness. Strategic steps that can be taken are increasing trade cooperation between countries, encouraging the entry of foreign capital, increasing the export potential and import substitution, increasing and saving the foreign capital earnings. Increasing the nations' financial income by finding a way or solution to simplify the trade process from upstream to downstream and attract foreign investment is the main objective of why this cooperation is needed. The main goal is to help each other to accelerate the economic growth of the affected countries so that together they will all soon recover. This goal will be achieved when altogether work side by side and help each other with the same spirit and vision for the future.
2. Especially for Indonesia, considering at the importance of RCEP and its possible impacts in the future, the Government of Indonesia should

be optimistic in trying to accelerate the response to the voice of reform / legal change in society, with the expectation that the role played by law in that society will also increase. Even though Indonesia already has the Job Creation Law or *Indonesia Omnibus Law*, there are still a lot of homework to do to achieve the goal of joining RCEP. Other steps are needed, namely to create supporting regulations for the Job Creation Law, to fully enforce the law that has been made, and to strictly apply the sanctions against its misappropriation. It also monitors the Job Creation Law and its derivative regulations from the center to the regions. Such efforts will make Indonesia to be more prepared to achieve the goals of joining the RCEP.

3. Learning from the existence of Job Creation Law, Indonesia must improve its performance in reforming law in various sectors based on the continuity of government policies in shaping and directing the development of a nation. With a clear path of state leadership, the results enjoyed by the people can be reflected in the form of laws made based on a transparent and sustainable basis in an appropriate period. So that the law is no longer blamed for being late in developing, when the direction of political policy is not sustainable and firmly directed firmly.

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AUTHOR CURRICULUM VITAE

Marcellino Gonzales S., He is currently a Judge on the Trenggalek District Court, East Java. He graduated from the Law Faculty of Universitas Padjadjaran, Bandung, Indonesia. He had been granted a scholarship of "YES-Program" from the People's Republic of China. He received his LLM degree from East China University of Political Science and Law (ECUPL), Shanghai, China, in 2016. He is currently joining the Ph.D. candidate scholarship program of the class of International Law 2019, in Southwest University of Political Science & Law, Chongqing, China.

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