

# TRADEMARKS AND THE PROTECTION FOR BUSINESS ACTORS IN INDONESIA DURING COVID 19 OUTBREAK

*by Marwah -*

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## TRADEMARKS AND THE PROTECTION FOR BUSINESS ACTORS IN INDONESIA DURING COVID 19 OUTBREAK

MARWAH\*, FARIDA PATITTINGI, ANDI KURNIAWATI, AULIA RIFAI, ANWAR BORAHIMA, NURFAIDAH SAID

Faculty of Law, Hasanuddin University, Indonesia  
Corresponding author: marwah@unhas.ac.id

**Abstract:** *The recognition of the Covid-19 (SARS CoV-2) outbreak as a global pandemic by WHO on March 11th, 2020, has brought impacts on various sectors including the economic sector. The Government of Indonesia is also striving to prevent the transmission of Covid-19 by establishing a large-scale social restriction policy in various regions. The determination of the large-scale social restriction policy, which requires people to undertake their activities at a distance (social distancing), has in fact caused considerable losses to Micro, Small, and Medium Enterprises (hereafter MSMEs) because the demand and purchasing power of the community has dramatically decreased. This situation makes it difficult for MSMEs actors to pay instalments for business capital loans, which has the potential to increase the number of bad loans in the banking sector. This research is an empirical law study that aims to analyze the Government of Indonesia's policies in protecting micro, small, and medium enterprises from the impact of the Covid-19 pandemic. The results of this research indicate that the strategies that must be implemented by the government in protecting MSMEs actors from the impact of the Covid-19 pandemic are by relaxing and restructuring MSME loans, and providing stimulus in the form of working capital.*

**Keywords:** *Pandemic; Covid-19; Business; Loan Restructuring*

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#### INTRODUCTION

Indonesia is one of the countries with the largest population of Corona Virus Disease 2019 (Covid-19) in Southeast Asia. Based on data obtained on the covid19.go.id, on March 26, 2021 there were 1.4 million Indonesians who were confirmed positive for Covid-19. This has had adverse effects on various sectors of life in society, including the economic sector.

It was never thought that a virus could threaten the entire world economy, which is an example of the complexity of the environment in which different regions live and as a risk, in a remote part of the world, it can compromise the vast majority of known systems. This means a catastrophe for many countries where SMEs represent an important generator for employment, innovation and economic growth.[1]

Based on data obtained from the website of the Ministry of Cooperatives and MSMEs on September 30, 2020, around 99% of business units in Indonesia are MSMEs, consisting of 6,702 medium enterprises, 783,132 small businesses, and 63.5 million micro enterprises. The contribution of MSMEs to national gross domestic product (GDP) reached 60.34%. MSMEs also absorb around 97% of the total national workforce compared to large enterprises.

Micro, Small and Medium Enterprises (MSMEs) are facing an economic crisis due to decreased purchasing power due to the Covid-19 pandemic. This has a significant effect on the sustainability of MSMEs in Indonesia. Based on information obtained from the official website of the Central Statistics

Agency, the economic recession, marked by the gross domestic product (GDP) of the Republic of Indonesia in the third quarter of 2020, reached minus 3.49 percent. The transmission of Covid-19, which is still high, has lowered people's mobility, and thus has resulted in an economic downturn. MSMEs as drivers of the domestic economy and absorbing labor are facing a decline in productivity which results in a significant decline in profits.

The development of the spread of Covid-19 has also had a direct or indirect impact on the performance and capacity of debtors, including micro, small and medium business (MSME) debtors, so that it has the potential to disrupt banking performance and financial system stability which can affect economic growth. The economic crisis experienced by MSMEs can unwittingly become a threat to the national economy.

Therefore, on March 31, 2020, the government has determined a public health emergency due to Corona Virus Disease 2019 (COVID-19) through Presidential Decree No.11 of 2020. However, this is not sufficient to provide a solution to overcome the impact of the Covid-19 pandemic, especially for the UMKM sector. The government must overcome this condition and work on mitigation and recovery solutions gradually. Therefore, guidance and assistance for MSME actors during a pandemic need to be the concern of many sectors, especially government agencies.

### 1. PROBLEMS

This study attempts to present a normative review to examine how the form of Indonesian government policies in protecting micro, small and medium enterprises from the impact of the Covid-19 pandemic.

### 2. RESEARCH METHOD

The type of the research is normative legal research by using primary legal materials in the form of statutory regulations and secondary legal materials in the form of articles and scientific works related to the object of research. The data then analyzed descriptively qualitatively.

### 3. DISCUSSION

One of the important pillars of the national economic sector is Micro, Small and Medium Enterprises. The activities of Micro, Small and Medium Enterprises in Indonesia are regulated based on Law Number 20 of 2008. The criteria for Micro Businesses regulated in this provision are productive businesses owned by individuals and / or individual business entities which have a net worth of at most IDR 50 million. Furthermore, which is included in the Small Business category is an independent productive economic business, carried out by an individual or a business entity that is not a subsidiary or branch of a company, which has a net worth of more than IDR 50 million to a maximum of IDR 500 million. As for what is included in the criteria for medium-sized businesses, namely independent productive economic enterprises, carried out by individuals or business entities that are not subsidiaries or corporate branches with a total net worth of more than IDR 500 million to a maximum of IDR 10 billion.[2]

In early 2021, there were 60 million MSME players registered with the Ministry of Cooperatives and Small and Medium Enterprises. The definition of business actor in question is an individual or entity in any form who in their business activities or work produces goods, imports goods, exports goods, carries out trading business, utilizes intangible goods from outside the customs area, carries out service business, or utilizes services outside the customs area.

Recognizing that SMEs tend to be most vulnerable during this kind of severe economic shock, the immediate policy priority at the beginning of the pandemic has been to address the challenges of the survival phase for SMEs. This has entailed different kinds of financial support to prevent liquidity crunches and minimize employment losses.[3]

Therefore, to maintain stability and restore the national economy, the Indonesian government issued several policies to continue to support MSMEs during a pandemic. This policy is regulated in



Government Regulation Number 23 of 2020 concerning the Implementation of the National Economic Recovery Program.

Based on the research results, it is known that the Indonesian government has prepared 5 (five) schemes for economic protection and recovery for the MSME sector. The scheme is prepared so that MSME business actors can survive the Covid-19 pandemic. The scheme is as follows:

#### 1. Social Assistance to Micro Business Actors

This social assistance is provided to micro business actors who are categorized as poor and vulnerable to being affected by Covid-19. This assistance includes Direct Cash Assistance for the Family Hope Program, Assistance for Basic Needs, Reduction in Electricity Rates and Pre-Employment Cards.

Based on information obtained from the indonesia.go.id website, the Family of Hope Program provides assistance to an amount of IDR 900 thousand to IDR 3 million per year to underprivileged families. This social assistance program is regulated in the Decree of the Director General of Social Protection and Security number 02/3 / BS.02.01 / 01/2020 concerning the Index and Weighing Factors for the 2020 Family Hope Program Social Assistance. In 2021, the Family Hope Program is allocated for 10 million families beneficiaries who will be carried out within a period of one year. The provision of assistance will be carried out in 4 (four) stages, namely January, April, July and October.

To ease the burden on the poor and vulnerable as well as industrial and commercial groups in the face of the Covid-19 pandemic, the government has also provided stimulus in the form of electricity bill relief until March 2021. The stimulus was provided through discounts on electricity rates and exemption from applying minimum and charges or subscriptions for social, business, industrial, and special service customers.

The next program implemented by the government is the Pre-Employment Card Program. The main target of this program is no longer young job seekers as previously planned, but formal / informal workers and micro business actors who have been affected and experienced a decrease in income due to the Covid-19 pandemic.

#### 2. Providing Tax Incentives

MSME actors with a turnover of below IDR 4.8 billion per year are given tax incentives by the government during the Covid-19 pandemic. Based on information obtained from [djponline.pajak.go.id](http://djponline.pajak.go.id), the government has lowered the final PPh rate for six months for MSMEs from 0.5 to 0 percent over a six month period starting from April to September 2020. Furthermore, through the Minister of Finance Regulation Number 44 /PMK.03/2020, the government added one new type of tax incentive, namely Final PPh based on Government-borne PP 23 (DTP). The background of the tax incentive for Final Income Tax DTP is an effort to expand the scope of tax incentives because of the impact of Covid-19 which also reaches MSME players. With the tax incentives, MSME players are exempt from paying PPh Final PP 23 during the April 2020 to September 2020 tax period. To obtain this tax incentive, MSME taxpayers submit an application for a Certificate first on the [tax.go.id](http://tax.go.id) page. and submit reports on time every month using the Covid-19 Incentive eReporting service.

In relation to this policy, the role of the Indonesian Parliament in the supervisory function, especially Commission VI, is needed to encourage the realization of fiscal assistance to be carried out quickly and on target so that there is an acceleration in efforts to restore the national economy through strengthening and empowering MSMEs. [4]

#### 3. MSME Credit Relaxation and Restructuring Policy.

There are several factors that cause bad credit. One of them is the factor that comes from the customer.[5]During the pandemic, people's interest in consuming products or using MSME services has also decreased. This is what causes a decrease in the income of most MSME players so that they are unable to pay business capital loans to banks. In banking practice, the Covid-19 pandemic also has implications for banking business activities. Disruption of banking operations and credit risk are logical consequences of the pandemic for the banking sector.[6]Non-performing loans greatly affect the soundness of a bank. Non-performing loans are a term used to denote credit collectability classifications that describe the quality of a credit.[7]To avoid non-performing loans, banks have actually taken preventive steps by conducting in-depth analysis of the business and income and



capabilities of the debtor. However, even though there have been preventive measures, there is still a possibility that the debtor will not be able to complete the debt payment on time.[8] Especially if an unexpected event occurs, such as a pandemic.

Therefore, in order to implement the National Economic Recovery Program, the government subsidized credit interest and postponed installment payments for 6 months to 60.6 million accounts. MSMEs borrowing under Rp. 500 million will receive a postponement of installments plus an interest subsidy of 6% for the first 3 months and 3% for the next 3 months. Meanwhile, MSMEs that have loans from banks of IDR million to IDR 10 billion, get a postponement of installments and an interest subsidy of 3% in the first three months and 2% for the next 3 months.

Policies related to relaxation and restructuring of MSME loans are regulated in the Regulation of the Coordinating Minister for Economic Affairs Number 6 of 2020 issued on April 14, 2020. This regulation was later amended in the Regulation of the Coordinating Minister for Economic Affairs Number 8 of 2020 concerning Special Treatment for Affected People Business Credit Recipients The Covid-19 Pandemic. This policy aims to:

- a. provide convenience and / or relief of principal and interest / margin installment payments for KUR Recipients whose business is affected by the Covid-19 pandemic;
- b. maintain the sustainability of the business of KUR recipients whose businesses have been affected by the Covid-19 pandemic; and
- c. encourage economic growth and employment during the Covid-19 pandemic.

The criteria for KUR recipients who experienced a decline in business as referred to in the regulation are business actors who have experienced a decrease in turnover and production disruptions due to the impact of the Covid-19 pandemic. Furthermore, based on the provisions of Article 6 of the Regulation of the Coordinating Minister for Economic Affairs Number 8 of 2020, KUR recipients affected by the Covid-19 pandemic can obtain special provisions for KUR in the form of a postponement of KUR principal installments for a maximum of 6 (six) months according to the assessment of KUR distributors starting April 1 2020 and no later than December 31, 2020; and / or relaxation of provisions in the form of KUR restructuring in the form of:

- a. extension of the KUR period;
- b. addition of the KUR ceiling limit; and / or
- c. postponement of fulfilling administrative requirements in the restructuring process until the end of the national disaster for the spread of the Covid-19 pandemic set by the government.

To support the policies of the Coordinating Minister for the Economy, the Financial Services Authority (OJK) as an institution that has the function of implementing an integrated regulatory and supervisory system for all activities in the financial services sector, issues debt restructuring policies for debtors or financial service customers who are directly affected and indirectly the Corona virus. This is regulated in OJK Regulation Number 11 of 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Covid-19, which is further extended by OJK Regulation Number 48 of 2020 which takes effect December 3, 2020 to March 31, 2022.

Based on the OJK Regulation, Banks can implement policies that support economic growth stimulus for debtors affected by the spread of COVID-19, including MSME debtors, while still observing the principle of prudence. Debtors affected by the spread of COVID-19 including MSME debtors are debtors who have difficulty fulfilling obligations to the Bank because the debtor or debtor's business is affected by the spread of COVID-19, either directly or indirectly in the economic sector, including tourism, transportation, hospitality, trade, processing, agriculture and mining. The ways of restructuring credit / financing are carried out, among others by:

- a. interest rate reduction;
- b. extension of the period of time;
- c. reduction in principal arrears;
- d. reduction in arrears of interest;
- e. additional credit / financing facilities; and / or
- f. conversion of credit / financing into Temporary Equity Participation.



In general, in granting restructuring, banks refer to POJK regarding asset quality assessment. However, the implementation of the MSME credit restructuring policy is left to the internal regulations of each KUR channeling bank. Based on the results of research in February 2021 at PT. Bank Rakyat Indonesia, obtained information that the type of restructuring is determined based on the profile and ability to pay customers. If there is interest subsidy assistance from the government, the funds will be channeled directly to the customer's loan account.

Furthermore, the OJK also emphasizes all banks so that the issuance of this restructuring policy is carried out responsibly and so that moral hazard does not occur. Therefore, the category of debtors that were given the restructuring policy was debtors with good faith. Good faith between the bank and the debtor is defined as honesty when making a contract. [9] Good faith in this context is in the form of estimating or assuming that the conditions needed to start a legal relationship have been fulfilled. [10] This is also closely related to good faith in the pre-contractual phase, which requires the parties to explain and examine material facts before entering into an agreement. [11] In addition, the faith in this case can also be interpreted as an intention or desire of the debtor to solve a problem. [12]

Apart from OJK, Bank Indonesia (BI) is also trying to help the government to restore the welfare of MSME players who have been affected by Covid-19. BI establishes four strategies to save MSMEs that focus on economic and financial inclusion, namely:

- a. Policy synergy;
- b. Integration of digital economy and finance;
- c. Prioritization; and
- d. Education and literacy.

This strategy is not only to strengthen financial inclusion but also the economy, so that the Indonesian economy is more advanced, especially for MSME players. As one of the efforts to implement the mandate of macroprudential policies, especially in terms of promoting a balanced and quality intermediary function and increasing access to finance, BI also has a role in the development of MSMEs. One of the main concerns of BI regarding MSMEs is MSME financial access. Based on information obtained from the Bank Indonesia website, BI as the central bank of Bank Indonesia strives to make the best contribution through the policy of developing MSMEs in increasing MSME financial access to upgrade. In addition, the development of BI MSMEs also aims to increase the capacity and managerial capabilities of HR as well as innovation from MSMEs.

#### 4. Stimulus of Working Capital Assistance for MSMEs

In this scheme, the government prepares emergency working capital assistance specifically designed for MSME players who feel the impact of Covid-19. Working capital loans are loans that are used to meet working capital needs, which usually run out in one business cycle. [13]

The distribution of working capital credit guarantees by the government in collaboration with banking institutions aims to help stimulate bank credit growth amid sluggish demand. In lending, banks still have to pay attention to the principles of credit, one of which is the principle of trust. The principle of trust in question is the trust of the creditor that the credit extended is beneficial for the debtor and the creditor believes that the debtor able to pay the credit. [14] Thus, the first factor that becomes a consideration for a creditor to be willing to lend to a debtor is the debtor's willingness to repay the debt at maturity. [15]

The COVID-19 outbreak forced changes in merchant credit management. In SMEs operating in group purchasing organizations, the first step was to buy goods and materials with a lot of reserve. This was related to the fear of the occurrence of downtime in the work of factories supplying goods to the purchasing groups. [16]

This policy is expected to be able to help MSMEs that need capital for operational costs during a pandemic, so that MSMEs can maintain their business continuity. The total budget for MSMEs in PEN in 2020 reaches IDR 123.46 trillion, while for 2021 the Government has prepared a budget of IDR 48.80 trillion.



The enactment of the Job Creation Law in February 2021 is also expected to have a positive impact on MSMEs in Indonesia. The Job Creation Law was drafted in the context of job creation, ease of granting business licenses, and reducing regulations.

5. The government, through the Ministry, State-Owned Enterprises and Local Governments, has a role as a buffer in the MSME ecosystem.

This role will be carried out at the recovery and consolidation stage of businesses after the Covid-19 pandemic. The form of support realized from the Ministry is the implementation of the agenda for the Signing of a Collective Agreement between the Ministry of BUMN and the Ministry of Cooperatives and SMEs regarding the development and fostering of Cooperatives, Micro, Small and Medium Enterprises (KUMKM). This agreement is a form of collaboration in an effort to help restore and develop MSMEs. The scope of the Collective Agreement this time includes assistance and development of human resources, provision of raw materials, logistics, and marketing including but not limited to digital platforms, in terms of developing and fostering KUMKM.

The development of MSMEs by the Ministry of BUMN has been realized by opening up space for MSME players to become vendors or suppliers of BUMN projects. Through the UMKM Digital Market (PaDi UMKM) program, the procurement of BUMN amounting to IDR 18.5 trillion or projects under IDR 14 billion will be submitted to MSMEs. The program was introduced to the public on August 17, 2020. PaDi UMKM is a platform that acts as a centralized manager of information and business-to-business (B2B) marketing services between MSMEs and other stakeholders such as BUMN, ministries, banking, and logistics companies. In this platform, MSMEs that have been certified and included in the catalog of the Ministry of Cooperatives and SMEs can become suppliers for various BUMN projects. For example, projects for the provision of products such as catering, uniforms, to various manufacturing support products.

In addition to the policy scheme that has been established by the government, protection of MSME actors during the Covid-19 pandemic is also carried out by the Indonesian Institute of Sciences (LIPI). LIPI is committed to contributing to solving the problems of Indonesian MSMEs affected by Covid-19. LIPI as a government agency has the responsibility to carry out rescue by supporting every step of MSMEs and gradually providing solutions to existing problems, especially in the midst of a pandemic. LIPI through the Science and Technology Utilization and Innovation Center carries out an incubation function, which is to provide guidance to MSMEs by providing opportunities for the community, especially MSME players, to take advantage of the facilities available at the Science and Technology Utilization and Innovation Center, ranging from work space to equipment needed for the production process. In addition, LIPI also seeks to support MSMEs in improving quality and product marketing by expanding cooperation with various parties and holding regular online meetings and discussions to maintain the productivity of MSMEs.

The New Normal era has caused some business actors in the MSME sector to try to get out of the crush of the Covid-19 pandemic. One way is to optimize sales through digital-based businesses. Based on data from the ministry of cooperatives and MSMEs, in December 2020, the number of MSMEs that market their products on the new digital platform is around 11 to 12 million. Therefore, by 2021, the government is targeting 30 million MSMEs from a total of 60 million MSME units in Indonesia to enter the digital platform by 2021.

<sup>4</sup> Digital business is aimed at enhancing the competitiveness of an organisation by deploying innovative digital technologies throughout an organisation and beyond, through links to partners and customers and promotion through digital media. It does not simply involve using technology to automate existing processes, but is about digital transformation <sup>6</sup> applying technology to help change these processes to add value to the business and its customers. Stolterman and Forse describe digital transformation as the changes that occur in any part of human society through the application of digital technology. Digital transformation in business occurs when there are significant changes to organisational processes, structures and systems, implemented to improve organisational performance through increasing the application of digital technology. [17]



Therefore, to help MSMEs survive the COVID-19 Pandemic, the government and all related parties must encourage MSMEs to change their marketing communication style through socializing social innovation using digital-based technology.[18] Regarding mitigation efforts, David R. Tairas argued that, the mitigation of the impact of the COVID-19 pandemic on MSMEs' business can be done in three ways. First, give a briefing or education on sustainable business that can help MSMEs in dealing with the economic challenges. Second, production training and workshop on creative economic products that can compete with other countries, including how to determine the products that are marketable in both domestic and international markets. Third, MSMEs also require assistance in product marketing.[19]

The various policy schemes that have been carried out by the government and financial service institutions and stakeholders are expected to help encourage MSME players to survive and remain able to compete, even after the Covid-19 pandemic ends.

#### 4. CONCLUSION

The form of policies taken by the government to protect MSME players from the impact of the Covid-19 pandemic, namely by providing social assistance to micro-entrepreneurs, providing tax incentives, relaxation and restructuring policies for MSME loans, providing working capital assistance, and involving ministries, state-owned enterprises. and the government in assisting the absorption of UMKM production. Coaching and assistance for MSME actors during a pandemic need to be the concern of many sectors, especially government agencies. In addition, the government must also cooperate with various institutions such as the Financial Services Authority, Bank Indonesia, the House of Representatives and the Indonesian Institute of Sciences. With all the steps and efforts made by the government and various institutions, it is hoped that MSME actors can survive and continue to carry out their production activities both during and after the Covid-19 pandemic ends.

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