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The Paradigm of State Legal Policy Towards The Government's Role in
Institutional Strengthening of Microfinance Institutions:
A Social Welfare Approach

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Abstrak

Dalam penelitian ini memfokuskan kepada peran kebijakan hukum negara terhadap Lembaga keuangan mikro yang memiliki fungsi strategis dalam rangka untuk memenuhi kebutuhan usaha-usaha mikro sebagai kewajiban konstitusional yang termaktub dalam ketentuan UUD NRI 1945. Sebagai negara besar, permasalahan kemiskinan menjadi problem utama dalam masyarakat, permasalahan ini tentu dapat diselesaikan dengan negara menjalankan tugasnya dengan baik melalui sistem pembinaan kepada masyarakat dengan pendekatan usaha mikro sebagai upaya untuk menciptakan kesejahteraan dan pemerataan social bagi masyarakat. Paradigma keadilan social tidak terlepas dari upaya memberikan kesempatan yang sama kepada masyarakat untuk memiliki usaha, oleh karena itu kebijakan hukum negara melalui Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan, Undang-Undang Republik Indonesia Nomor 1 Tahun 2013 Tentang Lembaga Keuangan Mikro dan Peraturan Pemerintah Nomor 89 Tahun 2014 tentang Suku Bunga Pinjaman Atau Imbal Hasil Pembiayaan Dan Luas Cakupan Wilayah Usaha Lembaga Keuangan Mikro, merupakan bentuk kebijakan hukum. Hakikatnya tidak hanya norma saja yang mengaturnya, tetapi lebih kepada implementasi dalam upaya pemenuhan hak-hak rakyat dalam berusaha dengan pemetaan Lembaga Keuangan Mikro sebagai Lembaga keuangan bagi kepentingan usaha mikro. Dalam penelitian ini menggunakan penelitian kualitatif dengan pendekatan hukum.

Kata Kunci: *Kebijakan Hukum, Lembaga Keuangan Mikro, Kesejahteraan Rakyat*

Abstract

This research focuses on the role of state legal policy towards microfinance institutions that have a strategic function in order to meet the needs of micro-enterprises as a constitutional obligation enshrined in the provisions of the 1945 Constitution of the Republic of Indonesia. As a large country, the problem of poverty is a major problem in society, this problem can certainly be resolved by the state carrying out its duties properly through a coaching system for the community with a micro-enterprise approach as an effort to create social welfare and equity for the community. The paradigm of social justice is inseparable from efforts to provide equal opportunities for the community to have a business, therefore state legal policy through the Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector, Law of the Republic of Indonesia Number 1 of 2013 concerning Microfinance Institutions and Government Regulation Number 89 of 2014 concerning Loan Interest Rates or Financing Yields and Business Area Coverage of Microfinance Institutions, is a form of legal policy. The essence is not only the norms that regulate it, but rather the implementation in an effort to fulfil people's rights in trying to map Microfinance Institutions as financial institutions for the benefit of micro businesses. This research uses qualitative research with a legal approach.

Keywords: Legal Policy, Microfinance Institutions, People's Welfare

INTRODUCTION

The main problem in microenterprises lies in the financing provided by each microfinance institution. Microfinance institutions are profit-motivated institutions that are also socially motivated, whose activities are more in the nature of community development without overriding its role as a financial intermediary institution. As a financial institution that functions as an intermediary institution, microfinance institutions also carry out savings and loan activities, whose activities in addition to providing loans are also required to provide savings awareness to the community, especially low-income people. Microfinance itself is a financial sector activity in the form of raising funds and providing loans or financing on a micro scale with a simple procedure to the poor and/or low-income communities. Internationally, the term microfinance refers to financial services provided to small entrepreneurs or small businesses, which are usually unbanked due to the high transaction costs charged by banking institutions. Microfinance can encompass many types of financial services, including microcredit, which is a type of loan that is provided to customers who have a medium to low scale business and tend to have never been in contact with the banking world. These customers often have no collateral, a fixed income, and the administrative requirements tend to be simpler. Microfinance services actually include not only microcredit but also micro savings and micro insurance, which in Indonesia is rarely

known.(I Gde Kajeng Baskara, 2013). The need for microfinance institutions encourages social problems in the lower class of society who need funds to sustain their business.

In Indonesia, the paradigm of meeting the needs of micro-enterprises requires a normative foundation that serves as the basis for fulfilling the rights of every citizen to do business. In general, the legal foundations of microfinance institutions are as follows:

1. Law of the Republic of Indonesia Number 4 of 2023 on the Development and Strengthening of the Financial Sector
2. Law of the Republic of Indonesia Number 1 of 2013 on Microfinance Institutions
3. Government Regulation Number 89 of 2014 concerning Interest Rates on Loans or Financing Yields and Business Area Coverage of Microfinance Institutions.
4. OJK Regulation (POJK) Number 12/POJK.05/2014 on Business Licensing and Institutionalisation of Microfinance Institutions.
5. POJK Number 13/POJK.05/2014 on Business Implementation of Microfinance Institutions.
6. POJK Number 14/POJK.05/2014 on the Guidance and Supervision of Microfinance Institutions.

This foundation encourages the strengthening and existence of micro-enterprises, which are the basis of the people's economy, and therefore have a very important role in national economic development because they are able to expand employment and provide economic services widely to the community, play a role in the process of equalisation and increasing people's income, encourage economic growth, and play a role in realising national stability. Thus, micro-enterprises are one of the main pillars of the national economy that must obtain the main opportunities, support, protection and the widest possible development as a form of firm partiality to the people's economic business groups, without ignoring the role of large businesses and State-Owned Enterprises (BUMN). It has been mentioned in the appendix of the law above that micro-enterprise empowerment is a strategic choice to increase the income of low-income groups, in order to reduce income inequality and poverty through increasing business capacity and business management skills, as well as encouraging certainty, protection, and business coaching. (Euis Amalia, 2016) The existence of micro businesses will encourage the sustainability of a sustainable business system for populist economic development that prioritises the basic principles of the people's economy.

RESEARCH METHOD

The state's obligation to every citizen to earn income through micro-businesses, where the state's obligation is a form of the state's role which is a constitutional order to improve the welfare of the people. Therefore, this research focuses on research into state legal policies on the authority possessed by the state in order to strengthen micro institutions in a social welfare approach, where this research uses a qualitative method with a legal approach as an analysis in this research.

RESULT AND DISCUSSION

State Legal Policy on Microfinance Institution

The emergence of microfinance is inseparable from the needs of the poor and small micro businesses for financial services. Access to financial services is expected to open up business opportunities and create prosperity. However, the need for financial services tends not to be provided by formal commercial financial institutions such as banks, this is due to the characteristics of the poor and small micro-enterprises that tend to be uneducated, poor business governance, no financial statements and an uncertain business environment, thus making this group considered to have a high risk to be given access to capital. These conditions encourage the poor and small micro-enterprises to innovate by establishing microfinance institutions independently to fulfil the need for access to financial services (capital). Based on their orientation, microfinance institutions have two main objectives: to be financially self-sufficient and to contribute to poverty alleviation. Microfinance institutions that aim for financial self-sufficiency are referred to as commercially-oriented institutions. (Sharia Microfinance Division, Directorate of Financial Inclusion of Religious Social Funds and Sharia Microfinance, National Committee for Sharia Finance (KNKS), 2019). The Consultative Group to Assist the Poor or CGAP (2004) has put forward eleven key principles of Microfinance in a decade-long consultation with members and stakeholders, which are as follows: (Sharia Microfinance Division, Directorate of Financial Inclusion of Religious Social Funds and Sharia Microfinance, National Committee on Sharia Finance (KNKS), 2019).

1. The poor need a range of financial services not just loans. In addition to loans, the poor need savings, insurance, and remittance services.
2. Microfinance is a powerful tool to fight poverty. Poor households use financial services to increase their income, build their assets, and protect themselves from external shocks.

3. Microfinance has the substance of building a financial system that serves the poor. Microfinance will reach its full potential only if it is integrated into a country's mainstream financial system.
4. Financial sustainability is necessary for microfinance to serve as many poor people as possible. Sustainability is one of the keys to the success of microfinance providers, allowing microfinance to finance its services and operations. Sustainability makes microfinance institutions less dependent on private or donor funds. If microfinance providers can position themselves to be financially self-sufficient and sustainable, it will lead to reduced transaction costs and better quality and quantity of services for their target clients, especially the poor. Microfinance is about building permanent local financial institutions that can collect domestic savings, convert them into loans, and provide other financial services.
5. Microcredit is not always the main service answer suitable for the poor. Other types of support may work better for very poor people so that they can have income or means of payment. Interest rate ceilings hurt poor people by making it harder for them to get credit. This makes many small loans more expensive than applying for a few large loans. Interest rate ceilings prevent microfinance institutions from covering their costs, and thus hamper the supply of credit to the poor.

In an effort to safeguard the finances of microfinance institutions, the Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector, where Article 8, that microfinance institutions are prohibited from being owned other than by:

1. Indonesian citizen;
2. Village-owned business entity;
3. District/city government;
4. Provincial Regional Government; and/or;
5. Cooperatives.

The government's job is to enable access to financial services, not to provide them directly. Governments can hardly ever do a good job of lending, but they can set an enabling policy environment. Donor funds should complement private sector capital, not compete with it. Donor subsidies should be temporary initial support designed to bring the institution to a point where it can operate utilising private sources of funding, such as deposits. The main obstacle is the lack of strong institutions and management. Donors should focus their support on capacity building. Microfinance works best when its performance can be measured and disclosed (performance transparency). Reporting not only helps stakeholders

assess costs and benefits, but also improves performance. Microfinance institutions need to produce accurate and comparable reporting of financial performance (e.g. loan repayments and cost recovery) and social performance (e.g. number and poverty level of clients served).

Until recently, microfinance services were considered one of the key strategies in poverty reduction, and the benefits of microfinance services in improving the lives of the poor have been widely revealed by studies in various countries. However, the poor are not a homogeneous community, and the strategies and forms of microfinance services continue to evolve in line with the development of thinking and understanding of the poor. During the subsidised agricultural credit era (1950s-1970s), the poor were seen as marginalised smallholders with a focus on men as the main breadwinners. Therefore, it was deemed necessary to increase their productivity through the provision of credit. In the 1980s, the poor were mostly seen as micro-entrepreneurs, mostly women, who had no assets to pledge as collateral even though their businesses had prospects for growth. Based on this understanding, efforts were made by non-governmental organisations to provide microcredit, especially for women. The shift from subsidised to unsubsidised credit was also motivated by the argument that the poor do not actually need subsidised interest rates, but rather access to credit. Microcredit flourished in the 1990s with the innovative Grameen Bank approach to group lending, with poor women as the main target. This pattern has attracted global attention and has been adopted by many countries and supported by many funding agencies. The development gave rise to a microfinance industry that applies the concept of 'financial viability and sustainability' of microfinance service providers. (Syaikhu Usman, et al, 2004). With this concept, it is expected to encourage the sustainability of the existence and development of microfinance institutions. The existence of Microfinance Institutions provides a new atmosphere and hope for the economic life of the community around its working area. The main benefits of MFIs are as follows: (Wiwin Widiastuti and Sriyanto, 2013)

1. Provide capital assistance opportunities to start and grow small businesses;
2. Create employment opportunities and increase income through the creation and development of micro-enterprises;
3. Improve productivity and increase income for vulnerable groups, especially women and low-income communities;
4. Reducing the dependence of rural communities on the risk of crop failure, through diversification of activities as a substitute for earning income from other sectors; and
5. Reducing the space for moneylenders in rural areas.

Microfinance institutions are institutions that provide financial services to low-income and poor populations. These microfinance institutions are specific because they match the

demand for funds of the poor with the availability of funds. For formal banking financial institutions, the poor will not be able to be served because they do not have the formal requirements that must be met. (Yopi Saleh and Yayat Hidayat, 2011) According to Salam (2002), the development of MFIs in Indonesia generally faces obstacles caused by internal and external factors which can be explained as follows: (Aditya Pramudia)

1. Internal Factors, Problems surrounding microfinance institutions, if grouped, will be reflected as explained in the section below. MFIs generally have relatively small capital and it is difficult to increase capital if needed due to lack of awareness of the importance of capital in supporting business development and to cover the risk of loss as well as the very limited financial capacity of the owner. MFIs also face difficulties in accessing funds from banks or other sources to fulfil funding needs for business development and to overcome liquidity difficulties due to mismatch.
2. External Factors, In addition to the internal factors of microfinance institutions as described above, there are also several problems that exist in microfinance institutions that come from outside the institution. Competition comes from fellow microfinance institutions as well as commercial banks that have small business units or branches in rural areas. These banks have clear status, extensive networks, high technology, research and development departments with large amounts of capital. The liquidation of several commercial banks, followed by the liquidation/suspension of the business activities of several BPRs, led to a sharp decline in public confidence and the absence of a deposit insurance agency (LPS) to protect the wealth of customers deposited with microfinance institutions. Weak or no network is a major weakness faced by microfinance institutions. Weak networks mean that the network exists but does not provide meaning and change for the better to the members of the network.

The increasing number of small and medium-sized enterprises raises the issue of access to capital. The difficulty of accessing banking financial institutions is due to the micro nature of small and medium enterprises with small capital, no legal entity, and most of them still use traditional business management systems so that this sector is not touched by banking financial institutions. The government also took part in solving this problem, by connecting small and medium enterprises with large entrepreneurs. (Rahmat Aulia, et al) In an economy, poverty is a very basic problem to be solved in various ways and strategies. One of them is by empowering small communities through providing access to capital to be used in productive activities (trading), especially people in the informal sector who have been marginalised. The informal sector is one of the pillars of the national economy that

has a very large role in reducing poverty. (Irwan Suriadi, et al, 2021) Therefore, the existence of microfinance institutions encourages the economic sustainability of the community.

Patterns of State Legal Policy on the Management of Microfinance Institution

Reforms in the financial sector have a high urgency in improving the intermediation role of the financial sector, as well as strengthening the resilience of the national financial system. A deep, innovative, efficient, inclusive, trustworthy, strong, and stable financial sector will support a balanced, inclusive, and sustainable economic growth that is indispensable in realising a just, prosperous, and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Currently, Indonesia's financial sector is still experiencing many problems. The proportion of assets in the national financial sector is not yet evenly distributed. The banking sector, which is one of the sources of short-term financing, is still very dominant compared to other financial sectors. The share of assets in the non-bank financial industry, which is a long-term source of funds that is expected to support development financing, is relatively small. This condition indicates that the collection of funds by the financial industry is relatively limited, while the potential for deepening the national financial market is still quite. Microfinance Institutions (MFIs) are financial institutions specifically established with the aim of providing community empowerment and business development services, by providing loans or financing for both micro-businesses to members and the community. (Ricek Palloan, et.al, 2023).

In the banking sector, fundamental problems are reflected in, among others, the high interest rate on loans, as well as the imbalance in the number of accounts and deposits between small and large customers. Problems are also reflected in the low capitalisation of the national stock and bond markets compared to other countries, as well as limited financial instruments for investment and risk management (hedging), especially for complex and high-risk financial products. On the other hand, Indonesia's financial sector also faces challenges from the emergence of complex and high-risk financial instruments such as cryptocurrencies and the low rating of financial sector governance and law enforcement in recent assessments. In order to protect the interests of micro businesses, based on the Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector article 9, where before carrying out business activities, Microfinance Institutions must have a business licence from the Financial Services Authority. Microfinance Institutions based on their business scale are categorised into:

1. Small-scale microfinance institutions;
2. Medium-scale Microfinance Institutions; and

3. Large-scale Microfinance Institutions.

In order to realise a healthy microfinance institution, the Financial Services Authority determines the level of health and prudent business principles. If a MFI does not meet the health level as referred to in paragraph (1), the Financial Services Authority and the regency/city local government are authorised to request:

1. Shareholders or management and/or members increase capital;
2. Shareholders or members meeting replace the board of commissioners or supervisors and/or directors or management of the MFI;
3. The MFI writes off bad loans or financing and takes into account the loss of the MFI with its capital;
4. MFI conducts merger or consolidation with other MFIs;
5. The MFI transfers its ownership to another party willing to take over all obligations;
6. The MFI hands over the management of all or part of the MFI activities to another party;
7. MFI sells part or all of its assets and/or liabilities to other MFIs or parties; and/or
8. MFI takes other actions as stipulated by the Financial Services Authority.

Based on the Law of the Republic of Indonesia Number 1 of 2013 concerning Article 11 explains that the business activities of MFIs include business development services and community empowerment, both through loans or financing in micro-scale businesses to members and the community, management of deposits, as well as providing business development consulting services, The provisions regarding interest rates on loans or returns on financing are regulated in Government Regulations. Loan or Financing disbursement and Deposit management by MFIs shall be conducted conventionally or based on sharia principles. Meanwhile, business activities based on sharia principles must be implemented in accordance with sharia fatwas issued by the National Sharia Council of the Indonesian Ulema Council.

In order to accommodate sharia-based business activities, sharia financial institutions are required to establish a sharia supervisory board. The sharia supervisory board is tasked with providing advice and suggestions to the board of directors or management and overseeing the activities of MFIs to comply with sharia principles. In Article 14 of the Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector, where in conducting business activities, MFIs are prohibited:

1. Accept deposits in the form of demand deposits and participate in payment traffic;
2. Conduct business activities in foreign exchange;
3. Conduct insurance business as an insurer;

4. Acting as a guarantor; and
5. Provide loans or financing to other MFIs, except in order to overcome liquidity difficulties for other MFIs in the same district/city.

Paradigm in Development in today's society, financial institutions that provide funds or capital for micro-scale businesses and small-scale businesses are very important and urgent. These micro-scale financial institutions are indeed only focused on micro community businesses. These micro-scale financial institutions are known as Microfinance Institutions (MFIs). The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (1) affirms that the economy is structured as a joint effort based on the principle of kinship. Furthermore, Article 33 paragraph (4) of the 1945 Constitution states that the national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity. MFI is basically formed based on the spirit contained in Article 27 paragraph (2) and Article 33 paragraph (1) and paragraph (4) of the 1945 Constitution. The existence of MFI is in principle as a financial institution that provides micro-scale Savings and Financing services to the community, expands employment opportunities, and can act as an instrument for equalizing and increasing community income, and increasing the welfare of the poor and/or low-income communities. This map encourages strengthening the microfinance system by placing community interests in efforts to build social welfare for the community.

CONCLUSION

The paradigm of state legal policy towards the development of micro-enterprises is based on several legal norms as the basis, namely Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector; Law of the Republic of Indonesia Number 1 of 2013 concerning Microfinance Institutions; Government Regulation Number 89 of 2014 concerning Loan Interest Rates or Financing Yields and Coverage Areas of Microfinance Institution Businesses. The regulation focuses on the authority of the government, including local governments, in supporting small businesses through microfinance institutions as an effort to meet the needs of small communities in the business sector. Microfinance institutions are a basic instrument in order to support government policies in solving poverty, by developing small and medium enterprises with the support of microfinance institutions. Therefore, microfinance institutions can be a mutual cooperation system in community finances towards a just society in the fields of economics and social welfare.

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