

The Role of the Welfare State in Regulating Marketplace Policies to Protect the Sustainability of Micro Small and Medium Enterprises in Indonesia

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Abstract

The existence of marketplaces helps MSMEs expand their business reach and facilitates their transformation into digital MSMEs. However, issues have emerged concerning private marketplace platforms in Indonesia, particularly related to the increasing commission fees and direct-to-consumer sales by producers that bypass traditional distribution channels, disadvantaging smaller businesses. This raises the question of how local governments, as part of the welfare state, can establish and regulate marketplaces to empower MSMEs. The research method used is normative legal research with a statutory approach. The results of the study show that in accordance with the welfare state principle, the government bears responsibility for the economic welfare of its citizens. Local governments play a crucial role in supporting MSMEs by developing regionally owned marketplaces. These platforms implement policies such as differentiated commission rates based on the scale of the business, where smaller enterprises are subject to lower fees, and allow only MSME-scale producers and those selling perishable goods to conduct direct sales. These measures are intended to provide fairer access and greater protection for micro small and medium enterprises within the digital economy.

Keywords: *Marketplace, Welfare State, Local Government, Micro Small and Medium Enterprises*

1. INTRODUCTION

Article 1 of Law Number 20 of 2008 on Micro, Small, and Medium Enterprises (*MSME Law*) categorizes business actors in Indonesia into several business criteria: micro enterprises, small enterprises, medium enterprises, and large enterprises. According to the Ministry of Cooperatives and Small and Medium Enterprises (*Kemenkop UKM*), in 2021, there were 65 million registered Micro, Small, and Medium Enterprises (MSMEs), with micro enterprises dominating at 63.9 million units.¹ These micro enterprises contribute 61% to Indonesia's national GDP and create employment for 120 million people, or 97% of the total workforce in Indonesia.² Despite their significant contribution to the national economy, marketing remains one of the biggest challenges for MSME actors in Indonesia in scaling up their businesses. This issue stems from the tendency of these business actors to focus primarily on production processes without sufficient emphasis on marketing and promotion. The marketing strategies

¹ Sekretariat Kadin Indonesia, "Kadin Indonesia Dorong Digitalisasi UMKM Yogyakarta Agar Berdaya Saing Global," accessed on August 6, 2024, <https://kadin.id/kabar/kadin-indonesia-dorong-digitalisasi-umkm-yogyakarta-agar-berdaya-saing-global/>.

² OJK, *Peta Jalan Pengembangan dan Penguatan Industri Penjaminan Indonesia 2024-2028*, (Jakarta: Otoritas Jasa Keuangan, 2024).



employed by MSMEs tend to be conventional, relying on word-of-mouth or merely displaying products in physical stores, which essentially requires direct face-to-face interactions. As a result, small businesses find it difficult to expand as their products do not reach a wider market.³

The advancement of technology has transformed many aspects of human life. From this development emerged a new paradigm in conducting trade activities, i.e. through the use of the internet and information technology infrastructure. Trade activities utilizing information technology and the internet are commonly referred to as e-commerce. E-commerce refers to the conduct trade in goods and services through the utilization of telecommunication systems and digital platforms such as the internet.⁴ E-commerce operates within virtual spaces, serving as platforms for commercial transactions. Certain e-commerce providers also offer a space where other businesses can showcase their products via apps or websites, forming what is known as a marketplace. A marketplace represents a solution born from the rapid progress of digital technology and the internet. It allows businesses to promote and sell their products without needing to develop their own systems. This model is particularly advantageous for micro small and medium enterprises, as it simplifies access to broader markets.

Marketplaces make it simpler for micro small and medium businesses to operate, as they allow MSMEs to sell their goods online.⁵ Through this virtual market, business owners only need to provide complete information about their products, such as descriptions, prices, and shipping options.⁶ Marketing products through a marketplace is more promising for vendors because it allows potential customers to access comprehensive information about products and transact via the internet. It enables direct reach to consumers, reduces promotional costs, and expands into new markets segments that were previously unreachable due to limitations in time, location, or communication channels.⁷

Utilizing marketplaces provides several benefits for MSMEs. First, it allows them to expand their product market reach by tapping into national and even international markets, thereby increasing their potential customer base without the limitations of physical presence. Second, online platforms help reduce operational costs and shorten both transaction and product delivery times, improving overall efficiency. Third, marketplaces enable consumers to easily access detailed product information, including specifications and pricing, without the need to visit physical stores, enhancing convenience and decision-making. Lastly, having a presence on a marketplace can serve as a powerful branding and prestige tool, helping MSMEs build a stronger image in the eyes of both consumers and competitors.⁸

³ Yustinus Andri DP, "Pengembangan UMKM: Pemasaran Dan Promosi Masih Jadi Kendala," accessed on August 6, 2024, <https://ekonomi.bisnis.com/read/20191213/12/1181057/pengembangan-umkm-pemasaran-dan-promosi-masih-jadi-kendala>.

⁴ Maureen Semu Kabugumila, et.al., "E-Commerce: An Overview of Adoption and Its Effective Implementation", *International Journal of Business and Social Science* 7, no. 4 (2016): 243-252.

⁵ Selfi Anggriani Saputri, et.al, "Peran Marketplace Dalam Meningkatkan Daya Saing UMKM Di Indonesia", *KNOWLEDGE: Jurnal Inovasi Hasil Penelitian dan Pengembangan* 3, no. 1 (2023): 69-75.

⁶ Rini Yustiani and Rio Yunanto, "Peran Marketplace Sebagai Alternatif Bisnis Di Era Teknologi Informasi," *Jurnal Ilmiah Komputer Dan Informatika (KOMPUTA)* 6, no. 2 (2017): 43-49. <https://ojs.unikom.ac.id/index.php/komputa/article/view/2476>

⁷ Aria Bagus Sasi Kirana, "Efektivitas Marketplace Dalam Pemasaran Untuk Meningkatkan Volume Ekspor Pada PT Pratama Asta Indonesia," *KNOWLEDGE: Jurnal Inovasi Hasil Penelitian Dan Pengembangan* 4, no. 1 (2024): 9-16, <https://doi.org/10.51878/knowledge.v4i1.2832>.

⁸ Truffi Murdiani, "Analysis on The Usage Advantages of Marketplace for MSMES in Lampung", *International Journal of Economics, Business, and Entrepreneurship (IJEBE)* 4, no. 1 (2021): 53.

However, the benefits offered by private marketplaces do not come without risks. The recent issues have arisen in trading activities on private company-owned marketplaces in Indonesia, causing complaints among several vendors. The presence of marketplaces has many advantages, including direct access to consumers. However, this advantage has led to problems when factories (producers) sell their products directly to consumers on the marketplace, bypassing the distribution chain (agents or distributors) that was previously managed by MSMEs.

According to the Director of the Center for Economic and Law Studies, if this trend continues, many small distributors may go out of business because they cannot compete. This is because consumers tend to purchase products sold directly by factories (producers), as the prices are generally lower than those sold by distributors.⁹ Distributors need to earn a profit margin from the difference between the price they obtain from the factory and the retail price,¹⁰ resulting in higher prices for the goods sold by distributors compared to those sold directly by the factory. This imbalance may hinder the growth of MSMEs and even threaten their business continuity.

This phenomenon reveals a structural inequality within the digital market that may disadvantage small enterprises in competing against large-scale producers. Therefore, it is crucial to further examine how private company-owned marketplaces today present both opportunities and threats to the sustainability of MSMEs. An assessment of marketplace regulatory frameworks and their impact on MSMEs becomes essential in understanding the extent to which the state plays a role in protecting and empowering this sector.

In general, marketplace platform providers, who act as intermediaries in trade transactions, generate revenue from two main sources: sellers and buyers. One common method for sellers to profit is by charging a percentage of each product sold on the platform, commonly known as a commission.¹¹ For instance, when a product is sold through a marketplace platform for Rp100,000.00 (one hundred thousand rupiah) the full amount isn't immediately transferred to the seller upon purchase. Instead, the marketplace deducts a portion of the sale price, commonly referred to as a "Service Fee" (a term that may vary depending on the platform; in this example, it refers to the terminology used by Tokopedia).¹²

The Service Fee may be set either as a percentage or a fixed amount, for instance, 3% or IDR 5,000.00 (five thousand rupiah) for each transaction involving a product priced at IDR 100,000.00 (one hundred thousand rupiah). Consequently, the seller does not receive the full IDR 100,000.00 (one hundred thousand rupiah) displayed on the marketplace platform. For example, if the listed price of a product is IDR 100,000.00 (one hundred thousand rupiah) and a 3% service fee is applied, the seller will receive only IDR 97,000.00 (ninety-seven thousand rupiah), while the remaining IDR 3,000.00 (three thousand rupiah) is retained by the marketplace as commission.¹³

9 DetikFinance, "Dampak Buruk Pabrik Jualan Langsung ke Konsumen di E-Commerce," accessed August 6, 2024, <https://www.detik.com/jabar/bisnis/d-6938595/dampak-buruk-pabrik-jualan-langsung-ke-konsumen-di-e-commerce>.

10 Andyna Susiawati Achmad and Astrid Athina Indradewi, "Kedudukan Hukum Dan Tanggung Gugat Pedagang Perantara, Distributor, Dan/Atau Agen Dalam Jalur Distribusi Barang," *Jurnal Hukum Magnum Opus* 4, no. 2 (2021): 193-203, <https://doi.org/10.30996/jhmo.v4i2.5294>.

11 Mohamad Firdaus, Aditya Herliawan, and Indra Bakti, "PKM Pengenalan Pengelolaan Marketplace Kepada Warga Komplek Kebersihan RT 13 RW 10 Cengkareng," *Jurnal Hasil Kegiatan Pengabdian Masyarakat Indonesia* 1, no. 4 (2023): 205-212. <https://doi.org/10.59024/faedah.v1i4.369>

12 Tokopedia, "[Biaya Layanan] Terupdate! Cek Detail Biaya Layanan Per Kategori Produk Terjual," accessed August 6, 2024, <https://seller.tokopedia.com/edu/biaya-layanan-tokopedia/>.

13 Sugeng Wibowo, "Cara Menentukan Harga Jual di Marketplace Shopee," accessed August 6, 2024, <https://www.youtube.com/watch?v=rbFjtd-9LI>.

Marketplaces generate profits from buyers by imposing additional charges on top of the listed product price. Although the term for this fee differs among platforms, Tokopedia refers to it as the "Application Service Fee".¹⁴ For instance, if a product is priced at IDR 100,000,00 (one hundred thousand rupiah) on the marketplace, the buyer is not charged exactly that amount. Instead, they are required to pay an extra fee, such as IDR 3,000.00 (three thousand rupiah), bringing the total payment to IDR 103,000.00 (one hundred three thousand rupiah).

Referring to the explanation above, in the case of a product priced at IDR 100,000 with a 3% service fee and an application service fee of IDR 3,000.00 (three thousand rupiah), the marketplace earns a total of IDR 6,000.00 (six thousand rupiah) as revenue for facilitating the transaction between the seller and the buyer through its platform. This amount consists of IDR 3,000.00 (three thousand rupiah) collected from the seller as a service fee and IDR 3,000.00 (three thousand rupiah) collected from the buyer as an application service fee.

Regarding the profits earned by marketplaces from sellers, this has recently become a concern raised by several merchants on privately-owned marketplaces in Indonesia. The issue arises because the service fees, or in other words, the commission taken by the marketplace company from each sold product, have increased. This has particularly affected sellers on one of the most widely used marketplaces in Indonesia, Shopee¹⁵ and Tokopedia¹⁶. They have complained about the fee increases because, as merchants, they are left with very little net profit after these marketplace fees are deducted. This problem makes it difficult for small businesses to grow into larger enterprises and even threatens the continuity of their operations, with some facing the risk of closure.

Promoting the general welfare is one of the fundamental objectives of the Indonesian nation, as outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia. General welfare means prosperity for all citizens, not just for a portion of the population. This aligns with the concept of a welfare state, which implies that the state is responsible for ensuring the well-being of all its people. Recently, several regional governments in Indonesia have created marketplaces aimed at empowering MSMEs.

Therefore, this research focuses on the specific issue of whether and how local government-owned marketplaces can serve as a more equitable alternative to private marketplaces, particularly in protecting the sustainability of MSMEs affected by rising service fees and direct producer competition on private platforms. This research specifically examines the empowerment of MSMEs given the characteristics possessed by MSMEs, with the establishment of a marketplace by the Regional Government and provides recommendations for maximizing the potential possessed by the Regional Government's marketplace in the context of empowering MSMEs, to increase business continuity against marketplace competencies. The research problem lies in identifying the legal framework and state responsibilities that can support the establishment of public digital marketplaces as a reflection of the welfare state in the economic empowerment of MSMEs.

¹⁴ Tokopedia, "Syarat Dan Ketentuan Biaya Jasa Aplikasi," accessed August 6, 2024, <https://www.tokopedia.com/help/article/syarat-dan-ketentuan-biaya-jasa-aplikasi>.

¹⁵ Maymunah Nasution, "Dikeluhkan Seller, Ternyata Segini Kenaikan Biaya Administrasi Shopee," accessed August 6, 2024, <https://bisnis.solopos.com/dikeluhkan-seller-ternyata-segini-kenaikan-biaya-administrasi-shop-ee-1520850>.

¹⁶ Khadijah Shahnaz Fitria, "Biaya Layanan Tokopedia Naik per 2 Januari, Penjual Menjerit," accessed August 6, 2024, <https://teknologi.bisnis.com/read/20221213/266/1608129/biaya-layanan-tokopedia-naik-per-2-januari-penjual-menjerit>.

This research adopts a normative juridical approach, which focuses on legal analysis through the use of secondary data sources. These data sources include primary legal materials, secondary legal materials, and tertiary legal materials.¹⁷ One of the primary sources of law is the 1945 Constitution and Law Number 20 of 2008 on MSMEs. One source of secondary law is journals related to MSMEs, and a source of tertiary law is MSME news on news portals. The secondary data that has been collected is then systematically categorized and analyzed qualitatively using a descriptive approach with logical analysis. After that, conclusions are drawn deductively to inductively to address the issues being researched.

2. ANALYSIS AND DISCUSSION

2.1. Regulation of Goods Distribution in Indonesia for the Empowerment of Micro Small and Medium Enterprises

Trade refers to a system of activities involving the exchange of Goods and/or Services, both domestically and internationally, with the objective of transferring ownership in return for payment or other forms of compensation. At its core, trade encompasses a sequence of actions related to the distribution and delivery of goods or services.¹⁸ One of the activities within trade is distribution. Distribution is the activity of delivering Goods either directly or indirectly to consumers. Distribution channels serve as the specific intermediaries between consumers and producers. This means that without distribution channels, the goods produced by producers would not reach consumers. A direct distribution channel is one that connects the producer directly with the end consumer/user without any intermediaries, while an indirect distribution channel involves one or more intermediaries. Distribution channels play a crucial role in trade activities.¹⁹ Indirect distribution is carried out through a general distribution chain, allowing each distribution actor to obtain:

- 1) margin (distributors, sub-distributors, supplying producers, retailers, and street vendors); and/or
- 2) commission (agents, sub-agents, and street vendors)

The legal relationship arising in a trading activity is a relationship between two or more parties that gives rise to rights and obligations for the parties.²⁰ In trade activities, the parties involved are essentially the producers (those who produce goods or services), intermediaries in the distribution process (agents or distributors and their networks), and consumers as users of goods or services. However, in addition to these three parties, there is another involved party in Indonesia: the Government. The Government plays roles as a regulator, dynamist, and facilitator in trade activities.

In its role as a regulator, the Government is responsible for guiding development efforts by issuing policies and regulations that ensure balance in implementation. It establishes a legal and structural framework that serves as a tool for organizing various

¹⁷ Muhammad Siddiq Armia, *Penentuan Metode Dan Pendekatan Penelitian Hukum* (Banda Aceh: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022), 8. <https://repository.ar-raniry.ac.id/id/eprint/22862/>

¹⁸ Veni Gerhana Putri, et.al., "Analisis Penerapan Sistem Informasi Manajemen terhadap Kinerja Pegawai Usaha Daster Dasby'D", *Jurnal Ekonomi, Manajemen, Bisnis Dan Sosial (Embiss)* 3, no. 2 (2023): 151-157.

¹⁹ Tabina Syafira et al., "Analisis Pengaruh Saluran Distribusi Untuk Peningkatan Volume Penjualan Domba Pada Taznika Farm," *JUBIKIN: Jurnal Bisnis Kreatif Dan Inovatif* 1, no. 2 (2024): 64-72. <http://dx.doi.org/10.61132/jubikin.v1i2.94>

²⁰ Abdul Rauf, et.al., "Tanggung Jawab Para Pihak Dalam Perdagangan Secara Online", *Sisiti* 13, no. 2 (2024): 1-9. <https://ejurnal.undipa.ac.id/index.php/sisiti/article/view/1592>.

empowerment-related activities within society. As a dynamist, the Government functions to motivate and activate public participation, particularly when challenges arise in the development process, in order to sustain momentum and progress. This is carried out by offering targeted guidance and support, often through advisory teams or designated institutions that provide training and capacity-building. Meanwhile, as a facilitator, the Government fosters a supportive environment for development by mediating between different societal interests to maximize outcomes. This facilitation includes initiatives such as training, education, skill development, and financial support or capital assistance directed toward community empowerment programs.²¹

As part of its role as a regulator, Indonesia has established the Trade Law through Law Number 7 of 2014 on Trade and its implementing regulations. The purpose of this Trade Law is to ensure that Indonesia's national trade activities reflect a series of economic activities that can achieve general welfare and social justice for all Indonesian people. As stated in the 1945 Constitution, this can be realized through economic political support that provides greater opportunities, support, and development for the people's economy, including cooperatives and MSMEs, as the main pillars of national economic development.

Political support that provides opportunities, support, and development for the people's economy, including MSMEs, is reflected in several articles of the Trade Law and its implementing regulations. Articles related to government support for MSMEs in goods distribution are found in Article 55(1) and Article 58 of Government Regulation No. 29 of 2021 on Trade Sector Administration, which is an implementing regulation of the Trade Law. Article 55(1) states that producers, distributors, and wholesalers are prohibited from distributing goods directly to consumers. Meanwhile, Article 58 permits producers operating as micro small and medium-scale businesses, along with those producing perishable goods or items with a shelf life of under seven days, to engage in direct sales to consumers without the involvement of distributors, agents, or their respective networks.

2.2. The Role of the Welfare State in Regulating and Empowering Micro, Small, and Medium Enterprises (MSMEs) in Indonesia

The definitions and classification criteria for Micro, Small, and Medium Enterprises (MSMEs) differ across countries.²² In Malaysia, MSMEs are categorized into the manufacturing sector and the services and other sectors. Micro enterprises are defined as businesses with an annual sales turnover not exceeding RM300,000 or employing fewer than five workers. Small enterprises have a sales turnover ranging from RM300,000 to RM15 million or employ between 5 and 75 individuals. Meanwhile, medium enterprises are those with a sales turnover between RM15 million and RM50 million or a workforce of 75 to 200 employees.²³ As in India, MSMEs are classified based on the maximum investment limit and annual turnover, applicable to all sectors (manufacturing and services) i.e. Micro Enterprises: Investment \leq ₹1 crore and turnover \leq ₹5 crore, Small

²¹ Muhammad Aldiansyah Wibisono and Ratna Januarita, "Kegiatan Investasi Yang Dilakukan Secara Online Dihubungkan Dengan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Elektronik," Bandung Conference Series: Law Studies 2, no. 2 (August 3, 2022): 995–996, <https://doi.org/10.29313/bcls.v2i2.2526>

²² Asmaira Munthe, M. Yarham, and Ridwana Siregar, "Peranan Usaha Mikro Kecil Menengah Terhadap Perekonomian Indonesia," *Jurnal Ekonomi Bisnis, Manajemen Dan Akuntansi* 2, no. 3 (2023): 593–614, <https://doi.org/10.61930/jebmak.v2i3.321>.

²³ Maizaitulaidawati Md Husin and Razali Haron, "Micro, small and medium enterprises' competitiveness and micro-tak'ful adoption", *ISRA International Journal of Islamic Finance* 12, no. 3 (2020): 367-380. <https://doi.org/10.1108/IJIF-03-2019-0038>

Enterprises: Investment \leq ₹10 crore and turnover \leq ₹50 crore, and Medium Enterprises: Investment \leq ₹20 crore and turnover \leq ₹100 crore.²⁴

In Indonesia, the definition and criteria for Micro, Small, and Medium Enterprises (MSMEs) are regulated by Law Number 20 of 2008 on MSMEs ((MSME Law) and its implementing regulations, including Government Regulation Number 7 of 2021 on Ease, Protection, and Empowerment of Cooperatives and MSMEs. The definition of MSMEs in Government Regulation on MSMEs is as follows:

Article 1 point (1)

“Micro Enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises as regulated in the Government Regulation on MSMEs.”

Article 1 point (2)

“Small Enterprises are independent productive economic activities conducted by individuals or business entities that are not subsidiaries or branches of businesses owned, controlled, or part of, either directly or indirectly, Medium or large enterprises, and that meet the criteria for Small Enterprises as defined in the Government Regulation on MSMEs.”

Article 1 point (3)

“Medium Enterprises are independent productive economic activities conducted by individuals or business entities that are not subsidiaries or branches of businesses owned, controlled, or part of, either directly or indirectly, Small or large enterprises, and that meet the criteria for Medium Enterprises as regulated in the Government Regulation on MSMEs.”

Based on Article 35 of the Government Regulation on MSMEs, MSMEs are categorized based on criteria such as business capital or annual sales results. Furthermore, Article 36 of the Government Regulation states that “for specific purposes, in addition to the criteria of business capital and annual sales as referred to in Article 35 paragraph (1), ministries/agencies may use criteria such as turnover, net worth, investment value, number of employees, incentives and disincentives, local content, and/or application of environmentally friendly technology according to the criteria of each business sector.” The business capital criteria are used for the establishment or registration of business activities, while the annual sales criteria are used for the provision of ease, protection, and empowerment of MSMEs by the government.

According to the Government Regulation on MSMEs, the criteria for MSMEs based on business capital are as follows:

Article 35 paragraph (3) letter a

“Micro Enterprises have business capital of up to a maximum of IDR 1,000,000,000 (one billion rupiah), excluding land and buildings used for the business.”

Article 35 paragraph (3) letter b

“Small Enterprises have business capital of more than IDR 1,000,000,000 (one billion

²⁴ Ajit Singh, “MSMEs Sector in India: Current Status and Prospect”, *International Journal of Innovative Research in Engineering & Management (IJIREM)* 8, no. 4 (2021): 42-45, <https://doi.org/10.21276/ijirem.2021.8.4.7>

rupiah) up to a maximum of IDR 5,000,000,000 (five billion rupiah), excluding land and buildings used for the business;”

Article 35 paragraph (3) letter c

“Medium Enterprises have business capital of more than IDR 5,000,000,000 (five billion rupiah) up to a maximum of IDR 10,000,000,000 (ten billion rupiah), excluding land and buildings used for the business.”

Based on annual sales results, MSMEs are categorized as follows:

Article 35 paragraph (5) letter a

“Micro enterprises have annual sales of up to a maximum of IDR 2,000,000,000 (two billion rupiah);”

Article 35 paragraph (5) letter b

“Small enterprises have annual sales of more than IDR 2,000,000,000 (two billion rupiah) up to a maximum of IDR 15,000,000,000 (fifteen billion rupiah);”

Article 35 paragraph (5) letter c

“Medium enterprises have annual sales of more than IDR 15,000,000,000 (fifteen billion rupiah) up to a maximum of IDR 50,000,000,000 (fifty billion rupiah).”

In addition to MSMEs, there is also a business category mentioned in MSME Law, that is large enterprises. Based on Article 1 point 4 of the MSME Law, a Large Enterprise is a productive economic activity conducted by a business entity with net assets or annual sales greater than that of a Medium Enterprise, which includes national businesses owned by the state or private sector, joint ventures, and foreign businesses engaged in economic activities in Indonesia. Large companies generally have a wide scale of operations, a large number of employees, access to international markets and the application of advanced technology.²⁵

This classification and regulation framework reflects Indonesia's commitment to building an inclusive and supportive economic structure, an embodiment of its status as a welfare state. The state's responsibility in empowering MSMEs through legal categorization, protection, and facilitation mechanisms is part of its broader function as a welfare state, aimed at reducing inequality and promoting national economic resilience. The concept of the classical rule of law, where the state's function is limited to maintaining security and order, and is thus interpreted as a night-watchman state, has resulted in a significant impact, that is the widening gap between the rich and the poor. This concept of the rule of law is based on the principles of liberalism and individualism. In this model, the government only reacts when there is a disruption of security and order, placing more emphasis on the protection of political freedom. Outside of dealing with security and order issues, other sectors such as the economy, education, health, poverty, and trade are not interfered with by the state. It is as if the state functions merely as a night watchman, ensuring that each home is safe from theft or robbery, but not addressing issues such as hunger, lack of education, unemployment, malnutrition,

²⁵ Francesco Ciampi, et.al., “The co-evolutionary relationship between digitalization and organizational agility: Ongoing debates, theoretical developments and future research perspectives”, *Technological Forecasting and Social Change* 176, (2022): 1-17, <https://doi.org/10.1016/j.techfore.2021.121383>

and so on. This model of the classical rule of law can also be referred to as a static rule of law, an old model of the rule of law, a pluralist state, or a formal rule of law.²⁶

The principles of the rule of law have always evolved in line with the development of society and the state.²⁷ Social inequality as a product of the static rule of law model has triggered a strong reaction, leading to the emergence of a new concept of the rule of law, that is the welfare state (dynamic or material rule of law). In this model, the state or government is no longer just a night watchman, merely maintaining security and order, but is required to be concerned with and intervene in all societal issues, such as socio-economic matters, poverty, ignorance, unemployment/job creation, health, and others.²⁸ The welfare state concept is fundamentally defined by the government's responsibility to guarantee the well-being of its citizens. In essence, the concept of a welfare state represents a tangible shift from the principle of *staatsonthouding*, which restricts state involvement in the economic and social affairs of society, toward *staatsbemoeienis*, which calls for active government participation in those areas as part of the effort to realize public welfare, alongside maintaining order and security.²⁹

Indonesia adopts the concept of a welfare state, a principle that can be implicitly found in the general elucidation of the 1945 Constitution. Indonesia is one of the adherents of the welfare state concept, which can be implicitly found in the general explanation of the 1945 Constitution (*UUD 1945*). A comprehensive reading of the Constitution affirms that Indonesia holds the responsibility to promote public welfare and ensure social justice for all its citizens.³⁰ In line with this, the fourth paragraph of the Preamble to the 1945 Constitution explicitly mandates that one of the primary roles of the government is to achieve the nation's objectives, i.e.: "to protect the entire Indonesian nation and all Indonesian territory, and to promote the general welfare, educate the nation's life, and contribute to the establishment of world order based on independence, eternal peace, and social justice." This provision clearly emphasizes the duty of state officials to continuously pursue the advancement of public welfare. As such, it constitutes a binding constitutional mandate that obliges all state officials to uphold and realize the well-being of the people, a responsibility they cannot neglect or avoid.³¹

2.3. Empowerment of MSMEs as an Implementation of the Welfare State Through Business Climate Development and Infrastructure Support

The goal of national development is to build a society that is just and prosperous, both in material and spiritual terms, grounded in Pancasila and the 1945 Constitution of the Republic of Indonesia. This development takes place within the framework of an independent, united Unitary State of the Republic of Indonesia, founded on popular sovereignty, and carried out in a peaceful, orderly, and dynamic national life, within a free, amicable, and harmonious environment. National development, which encompasses all aspects of national life, is carried out collectively by society and the government. Society is the main actor in development, and the government has the duty

26 Merlien Irene Matitaputty et al., *Hukum Administrasi Negara* (Bandung: Widina Media Utama, 2024), 200.

27 Tubagus Muhammad Nasarudin, "Konsepsi Negara Hukum Pancasila Dan Implementasinya Di Indonesia", *Pranata Hukum* 15, no. 1 (2020): 43-52. <https://doi.org/10.36448/pranatahukum.v15i1.217>.

28 Tubagus Muhammad Nasarudin.

29 Gede Wirata, *Kebijakan Sosial: Kebijakan Pemerintah Untuk Peningkatan Kesejahteraan Masyarakat Dan Pengentasan Kemiskinan* (Jawa Tengah: CV Pena Persada, 2022), 35.

30 V. Hadiyono, "Indonesia Dalam Menjawab Konsep Negara Welfare State Dan Tantangannya," *Jurnal Hukum Politik Dan Kekuasaan* 1, no. 1 (August 2020): 23-33. <https://doi.org/10.24128/jhpk.v1i1.2672>.

31 V. Hadiyono.

to guide, direct, protect, and create an environment and business climate that supports this process. The community's contribution to development is not just involvement in determining the direction, strategy and policies of the government but also includes involvement in carrying the burden and reaping the results or benefits of development.³²

MSMEs are business entities that contribute significantly to expanding job opportunities and providing broad-based economic services to society. This means MSMEs have the potential to absorb a large labor force, especially among populations with lower levels of education.³³ They also play a key role in redistributing and increasing income, driving economic growth, and supporting national stability.³⁴ In addition, MSMEs serve as one of the foundational pillars of the national economy and therefore must be given priority in terms of opportunities, support, protection, and comprehensive development. This reflects a concrete commitment to advancing people-centered economic activities, while still acknowledging the importance of large-scale and state-owned enterprises.

Despite their proven contribution, MSMEs continue to face various internal and external challenges, ranging from issues in production, marketing, human resources, and technology, to limited access to capital and an unsupportive business climate, infrastructure, and facilities. To strengthen the capacity and institutional role of MSMEs within the national economy, targeted empowerment efforts are necessary. Empowerment is pursued not only through business development efforts but also by fostering a supportive business climate.

These efforts have been supported by various national and regional policies. At the central level, for example, Presidential Regulation Number 2 of 2022 concerning the Development of National Entrepreneurship for 2021-2024 outlines key directives for empowering MSMEs through increased access to financing, market facilitation, capacity building, and regulatory reform. Similarly, Law No. 11 of 2020 concerning Job Creation (the Omnibus Law) and its implementing regulations simplify licensing procedures and aim to increase investment inclusiveness, which directly benefits MSMEs.

Meanwhile, at the regional level, local governments have also initiated empowerment programs within their respective jurisdictions. For example, Governor Regulation of the Special Capital Region of Jakarta Province Number 2 of 2020 concerning the Implementation of Integrated Entrepreneurship Development, provides integrated training, mentoring, and access to business capital for micro small and medium businesses. The legal and policy framework demonstrates that the government, both central and regional, has played an active role in fostering a conducive ecosystem for MSMEs, in line with the mandate of the MSME Law and the broader vision of equitable national development.

By empowering micro small and medium enterprises, they are expected to be resilient, independent, and can also develop into medium and large enterprises. Micro small and medium enterprises that are resilient, independent, and growing will automatically increase the national product, job opportunities, exports, and the equitable distribution of development results, which will contribute more significantly to state revenue. Furthermore, the empowerment of MSMEs will enhance their position and role in the

32 Seli Yulia and Endang Supriatna, "Kontribusi Masyarakat Dalam Menentukan Arah Pembangunan Ekonomi Global Yang Berkelanjutan Di Indonesia", *Educatus: Jurnal Pendidikan* 2, no. 2 (2024): 1-8, <https://doi.org/10.69914/educatus.v2i2.6>

33 Siti Khusnul Khotimah and Edy Surhatono, "Pengaruh Umkm Dan Tenaga Kerja Terhadap Pertumbuhan Ekonomi Kabupaten Tuban", *Jurnal Apresiasi Ekonomi* 11, no. 1 (2023): 73-82, <https://doi.org/10.31846/jae.v11i1.536>

34 Asmaira Munthe, et.al., "Peranan Usaha Mikro Kecil Menengah Terhadap Perekonomian Indonesia", *Jurnal Ekonomi Bisnis, Manajemen Dan Akuntansi* 2, no. 614-593 : (2023) 3, <https://doi.org/10.61930/jebmak.v1i3.321>

national economy, leading to a healthier and more robust national economic system. The regulation of MSME empowerment in Indonesia is spread across several laws, including Law Number 9 of 1995 on Small Enterprises, which has been repealed by the MSME Law, Law Number 5 of 1984 on Industry, Law Number 7 of 1992 on Banking, and Law Number 25 of 1992 on Cooperatives, which are interconnected and complementary.

Economic empowerment is essentially a strategic effort aimed at increasing the economic capacity of business actors.³⁵ According to Article 1, point 8 of the MSME Law, "empowerment is an effort made by the Government, Regional Governments, the Business World, and the community in a synergistic manner in the form of fostering a business climate and developing enterprises for MSMEs so that they can grow and develop into resilient and self-reliant businesses." From this definition of empowerment in the MSME Law, it can be seen that MSME empowerment is carried out in two forms: fostering a business climate and providing business development.

Article 1, point 9 of the MSME Law states that "the Business Climate is the condition sought by the Government and Regional Governments to empower MSMEs synergistically through the establishment of various laws and policies in different aspects of economic life so that MSMEs receive support, certainty, opportunities, protection, and extensive business support." Additionally, Article 1, point 10 of the MSME Law mentions that "development is an effort made by the Government, Regional Governments, the Business World, and the community to empower MSMEs through the provision of facilities, guidance, mentoring, and strengthening assistance to foster and enhance the capabilities and competitiveness of MSMEs." The core distinction between the two forms of MSME empowerment fostering a business climate and business development is that fostering a business focuses on creating legal and policy frameworks, whereas business development centers on delivering facilities, guidance, mentoring, and support to enhance the capacity and competitiveness of MSMEs.

From Article 1, point 8 of the MSME Law, it can also be seen that the parties obligated to carry out MSME empowerment are the Government, Regional Governments, the Business World, and the community. According to Article 1, point 6 of the MSME Law, "the Central Government, hereafter referred to as the Government, is the President of the Republic of Indonesia who holds the power of government of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia." Furthermore, according to Article 1, point 7 of the MSME Law, "Regional Governments are Governors, Regents, or Mayors, and regional officials as elements of local government administration." Additionally, Article 1, point 5 of the MSME Law states that "the Business World consists of Micro Enterprises, Small Enterprises, Medium Enterprises, and Large Enterprises that conduct economic activities in Indonesia and are domiciled in Indonesia."

Although the regulation regarding MSME empowerment is embodied in Law Number 20 of 2008, which is titled 'MSMEs,' it appears that the forms of empowerment provided to Micro Enterprises, Small Enterprises, Medium Enterprises, or Large Enterprises are sometimes similar and sometimes different. For example, Article 9 of the MSME Law mentions that 'The aspect of facilities and infrastructure is aimed at providing public infrastructure that can encourage and develop micro small and medium enterprises and offering tariff reductions for certain infrastructure for Micro Small and Medium Enterprises.' Meanwhile, Article 17 of the MSME Law states that "The Government

³⁵ Johar Putra, et.al., "Pemberdayaan Ekonomi Umat: Strategi Menuju Kemandirian dan Kesejahteraan", *Merenda: Jurnal Penyuluh Agama* 1, no. 1 (2020): 9-11. <https://jurnal.peneliti.net/index.php/MJPA/article/view/9392>.

facilitates development in the fields of production and processing by improving production and processing techniques as well as management capabilities for MSMEs.” Article 9 of the MSME Law indicates that the form of empowerment carried out by the Government through tariff reductions is specifically aimed at micro small and medium enterprises, while medium and large enterprises do not receive government support in terms of tariff reductions. On the other hand, Article 17 of the MSME Law shows that facilitation for development in production and processing by improving production and processing techniques as well as management capabilities is stated by the government to be intended for all categories of businesses, including Micro Enterprises, Small Enterprises, Medium Enterprises, and Large Enterprises.

The disparity in government support between MSMEs and medium and large enterprises aligns with the concept of social justice as an effort to achieve general welfare which is where the Government's greater partiality is given to MSME actors as weak business actors compared to medium business actors and large businesses that are stronger than MSME actors, which aims to ensure justice in order to avoid inequality in the distribution of national wealth so that the general welfare can be enjoyed by all people. Therefore, to achieve general welfare as the goal of the Pancasila economic system, the government must prioritize justice in empowering MSMEs by providing greater support to them compared to medium and large enterprises.

Related to the concept of the welfare state, the empowerment of MSMEs is not only the scale of business that dominates the number in Indonesia, but also the main focus of the reason for empowering MSMEs is that these businesses are weak and require protection from the state to ensure they continue to have opportunities to succeed, thereby achieving welfare. The welfare state concept practically features at least one fundamental principle: the state is required to intervene, especially when the sense of justice for the people is at risk. The state must not allow its less fortunate citizens to be crushed by market mechanisms, especially those of 19th-century capitalism, where the strong prey on the weak and the weak are exploited by those holding capital. Therefore, an open and transparent mechanism is needed so that this intervention is not an invisible hand and does not serve the interests of a few actors.³⁶ However, the state should not make its citizens dependent, lazy, and reliant on the state for everything. The welfare state concept based on Pancasila is aimed at ‘growth’ to improve the welfare of its people, rather than widening the sharp gap between the rich and the poor. It directs the concept of ‘equity’ to achieve social justice, rather than making the poor dependent and lazy or depriving the rich of their fundamental rights under the pretext of income distribution.³⁷

The goal of the welfare state is essentially to achieve balance and prevent excessive social inequality. Proponents of capitalism believe that unrestricted market competition will naturally create balance. However, human nature, which can be likened to the notion of ‘man as a wolf to man’ (*homo homini lupus*), sometimes makes this balance difficult to achieve. The welfare state does not prohibit market freedom; it simply imposes certain limits. These limits are meant to ensure that the freedom of others is considered and not disrupted.³⁸

In this context, empowerment becomes the concrete manifestation of welfare state principles, especially when implemented through efforts to support and strengthen

³⁶ Aburizal Bakrie, *Merebut Hati Rakyat Melalui Nasionalisme, Demokrasi Dan Pembangunan Ekonomi*, (Jakarta: Intisari Mediatama, 2011), 181.

³⁷ Ade Komarudin, *Politik Hukum Integratif UMKM, Kebijakan Negara Membuat UMKM Maju Dan Berdaya Sain*, (Jakarta: RMBOOKS, 2014), 82.

³⁸ Ade Komarudin.

MSMEs. "Empowerment is an effort made by a person or group through various activities to provide skills, develop knowledge, strengthen abilities or potential that support the creation of independence."³⁹ The empowerment of micro small and medium enterprises is pursued not only through business development efforts but also by fostering a supportive business climate. As defined in Article 1 point 9 of the MSMEs Law, the business climate is defined as "the condition sought by the Government and Regional Governments to empower MSMEs synergistically through the establishment of various regulations and policies in different aspects of economic life, so that MSMEs receive extensive support, certainty, opportunities, protection, and assistance in their business activities."

In the MSMEs Law, the development of the business climate is regulated in Chapter 5, from Article 7 to Article 15. Article 7 of the MSMEs Law states that "the Government and Regional Governments foster the business climate by establishing laws, regulations, and policies covering aspects such as funding; infrastructure and facilities; business information; partnerships; business licensing; business opportunities; trade promotion; and institutional support." In relation to fostering a business climate in the aspect of facilities and infrastructure, Article 9 of the MSME Law states that "the aspect of facilities and infrastructure is intended for providing public infrastructure that can encourage and develop the growth of Micro Small and Medium Enterprises; and granting tariff reductions on specific infrastructure for Micro Small and Medium Enterprises."

The MSME Law does not provide a clear distinction between the term 'facility' and 'infrastructure'. In law, there is a concept known as legal interpretation, which can be applied when trying to determine the meaning of a regulation, but the legal basis of the rule is unclear.⁴⁰ One of the methods of legal interpretation according to Sudikno Mertokusumo and A. Pitlo is comparative interpretation. Comparative interpretation, or comparison, is a method of interpretation carried out by comparing several legal rules.⁴¹ Based on this, there are regulations outside the MSME Law and its derivatives that provide an explanation of the difference in definition between the terms 'facilities' and 'infrastructure', which can be found in the Regulation of the Minister of Forestry of the Republic of Indonesia Number P.68/MENHUT-II/2009 of 2009 on Standards for Office Facilities and Infrastructure within the Ministry of Forestry. In Article 1, section 2, it is stated that Facilities are movable goods or items that can be used as tools in the execution of tasks and functions of an organizational unit. Then in Article 1, section 3, it is stated that Infrastructure are immovable goods or items that can support the execution of tasks and functions of an organizational unit. Furthermore, in Article 3, paragraph 1, it is stated that Work facilities within the Ministry of Forestry include office equipment, transportation tools, communication equipment, and other tools that support the execution of tasks and functions of an organizational unit. And in Article 3, paragraph 2, it is stated that Work infrastructure within the Ministry of Forestry includes land, buildings, office spaces, or buildings used to support the execution of

³⁹ Lara Ayu Lestari, "Pemberdayaan Ukm Melalui Penumbuhan Iklim Usaha Oleh Dinas Koperasi Dan Ukm Kabupaten Sleman", *Jurnal Enersia Publika* 5, no. 1 (2021): 382-395. https://ejournal.up45.ac.id/index.php/Jurnal_Enersia_Publika/article/view/856/634.

⁴⁰ Dian Ratu Ayu Uswatun Khasanah and Anggita Doramia Lumbanraja, "Perkembangan Interpretasi Hukum Oleh Hakim Di Indonesia Dalam Dominasi Tradisi Civil Law System," *Jurnal Ius Constituendum* 7, no. 2 (2022): 232-245, <https://doi.org/10.26623/jic.v7i2.4799>

⁴¹ Hukumonline, "6 Metode Penafsiran Hukum Sudikno Mertokusumo Dan A. Pitlo," accessed August 12, 2024, <https://www.hukumonline.com/berita/a/metode-penafsiran-hukum-mertokusumo-pitlo-lt6331ab71b-721c/?page=3>.

tasks and functions of an organizational unit, as well as land and buildings for official residences or staff housing.

If Article 1 and Article 3 of the Regulation of the Minister of Forestry of the Republic of Indonesia Number P.68/MENHUT-II/2009 of 2009 on Standards for Office Facilities and Infrastructure within the Ministry of Forestry are linked to Article 9, paragraphs 1 and 2 of the MSME Law, then in carrying out empowerment in the form of fostering a conducive business climate related to aspects of facilities and infrastructure, the Government and Regional Governments are required to provide public infrastructure (land or buildings) that can encourage and develop the growth of Micro Small and Medium Enterprises. In using this public infrastructure, Micro Small and Medium Enterprises receive a reduction compared to its use by Medium and Large Enterprises. The criteria for micro, small, medium, or large enterprises used are based on annual sales turnover, not on business capital criteria. This is because, according to Article 35 of the MSME Government Regulation, "the sales turnover criterion is used for providing ease, protection, and empowerment of MSMEs by the government, while the business capital criterion is used for the establishment or registration of business activities."

Growing the MSME business climate is also one of the Action Programs for Poverty Alleviation through empowering MSMEs through the conducive business climate action program aims to create a business environment that promotes economic efficiency, fair competition, and non-discriminatory practices to support the sustainability and enhancement of MSME performance.⁴² The business environment climate is also one of the important factors in the survival of MSMEs and the business climate is inseparable from government policies, political situations and several other things directly or indirectly.⁴³

2.4. Formation of Marketplaces as Implementation of MSMEs Empowerment by Regional Governments

MSMEs are the backbone of the regional and national economy, contributing to economic growth. Therefore, good governance by local governments is crucial to enhancing competitiveness more effectively by providing easier access to various facilities needed by MSMEs, particularly market access facilities. Based on Article 71 (f) of Government Regulation No. 7 of 2021 on Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises, it states: "Marketing of products from Micro Enterprises and Small Enterprises through electronic/non-electronic commerce includes: Providing promotional spaces and development opportunities for Micro Enterprises and Small Enterprises; facilitating domestic and international exhibitions; developing logistics capacity; digital and non-digital literacy; and developing online business aggregators to assist in online marketing and sales."

To assist with online marketing, the Regional Government has established a marketplace aimed at empowering MSMEs. This marketplace serves as a platform for business development for MSMEs to optimize online marketing and sales, as well as improve operational efficiency. Utilizing the marketplace allows MSMEs to have additional channels to sell their products because marketplace users continue

⁴² Supriyanto, "Pemberdayaan Usaha Mikro, Kecil, Dan Menengah (UMKM) Sebagai Salah Satu Upaya Penanggulangan Kemiskinan", Jurnal Ekonomi & Pendidikan 3, no. 1, (2006): 1-16. <https://doi.org/10.21831/jep.v3i1.627>

⁴³ Dian Wulan Sari and Rizkha Afrianto, "Berbagai Faktor Yang Mempengaruhi Keberlangsungan Hidup UMKM di Wilayah Kota Bengkulu", Journal of Management and Innovation Entrepreneurship (JMIE) 1, no. 1 (2023): 1-19. <https://doi.org/10.59407/jmie.v1i1.170>

to increase, do not require large capital, easy transaction processes, and can monitor business growth.⁴⁴

In addition to being the responsibility of the central government, MSME development is also the responsibility of local governments, which have a large role and authority in regulating regional autonomy.⁴⁵ Regional Governments (Governors, Regents, or Mayors, and regional officials as elements of local government administration) have the obligation to empower MSMEs based on Article 1 of the MSME Law. As an implementation of this obligation, several Regional Governments in Indonesia have established marketplaces aimed at empowering MSMEs. The idea of creating marketplaces by Regional Governments is an excellent approach to assist MSME operators who face marketing challenges.

In accordance with the authority mandated by the MSME Law and the principle of regional autonomy under Law Number 23 of 2014 concerning Regional Government, the institution responsible for establishing and operating these markets is ideally the Regional Government through relevant technical agencies, such as the Regional Trade Office, the Cooperatives and MSMEs Office, or the Regional Communications and Informatics Office. These agencies have the institutional mandate, access to regional budget allocations (*APBD*), and policy-making authority to support digital transformation and MSME marketing empowerment at the regional level.

This responsibility rests with local governments because they are the closest authorities to the MSMEs operating in their jurisdiction. This proximity allows them to better understand the region's economic potential, marketing constraints, and digital readiness, enabling them to design more targeted and contextual empowerment programs. Furthermore, local governments have the administrative tools and regulatory autonomy to integrate MSME market initiatives into the broader regional development planning and budgeting framework. Therefore, regional-level market initiatives not only fulfill the legal obligation to empower MSMEs but also serve as strategic instruments for inclusive and locally based economic development.

For example, NTB Mall is a marketplace created by the West Nusa Tenggara Provincial Government. The NTB Mall program⁴⁶ is a form of hybrid commerce owned by the West Nusa Tenggara Trade Office, which was officially launched on Indonesia's Independence Day, August 17, 2020, and is funded through the NTB Provincial Budget (*APBD*).⁴⁷ The inauguration of NTB Mall was conducted directly by the Governor of West Nusa Tenggara, Dr. H. Zulkieflimansyah, S.E., M.Sc., following the 75th Independence Day ceremony.⁴⁸ NTB Mall represents the commitment of the NTB Provincial Government to implement NTB Governor Regulation Number 43 of 2020 concerning the Empowerment of MSMEs through the Support and Purchase of Local Products.⁴⁹ The Head of the NTB

⁴⁴ Andita Dani Achmad, et.al., "Pemanfaatan Marketplace dalam Pengembangan Bisnis Kuliner pada Kelurahan Mappasiale Kabupaten Pangkep", *Journal Of Training And Community Service Adpertisi (JTCSA)* 2, no. 2 (2022): 1-8. <http://jurnal.adpertisi.or.id/index.php/JTCSA/>

⁴⁵ Marantika Fibrianti Sumadi and Ananta Prathama, "Peran Pemerintah Daerah Dalam Pengembangan Usaha Mikro Kecil Dan Menengah (UMKM) Handycraft Limbah Kayu Jati Sebagai Produk Unggulan Kabupaten Bojonegoro", *Syntax Literate: Jurnal Ilmiah Indonesia* 6, no. 5 (2021): 1-14. [10.36418/syntax-literate.v6i5.2701](https://doi.org/10.36418/syntax-literate.v6i5.2701)

⁴⁶ Koran NTB, "Sepanjang Tahun, UMKM Di NTB Mall Mengalami Tren Peningkatan," accessed August 11, 2024, https://korannth.com/2022/02/08/sepanjang-tahun-umkm-di-ntb-mall-mengalami-tren-peningkatan/#google_vignette.

⁴⁷ Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi Republik Indonesia, "NTBMall.Com," accessed August 11, 2024, <https://jippnas.menpan.go.id/innovasi/59>.

⁴⁸ NTB Mall, "Tentang NTB Mall," accessed August 11, 2024, <https://ntbmall.com/about#:~:text=NTB%20Mall%20secara%20resmi%20diluncurkan,Hari%20Kemerdekaan%20RI%20ke%2D75>.

⁴⁹ Hayatun Sofian, "NTB Mall Dan Desa Wisata Antarkan NTB Provinsi Terinovatif IGA 2023," accessed August 11, 2024, <https://www.rri.co.id/ntb/daerah/479345/ntb-mall-dan-desa-wisata-antarkan-ntb-provinsi-terino>

Provincial Trade Office, H. Fathurrahman, who is the initiator of NTB Mall, stated that the marketplace serves as a platform for NTB MSMEs to market their products through an online application.⁵⁰ NTB Mall accommodates all MSME operators in NTB to elevate their businesses by selling their products both online and offline, from local markets to international markets, in line with NTB Mall's vision of 'Becoming the Number 1 Marketplace for MSME Products in Indonesia.' The concept of hybrid commerce means that NTB Mall has both an offline store and an online store. The offline store of NTB Mall is located at the NTB Provincial Trade Office. Meanwhile, the NTB Mall online store can be accessed through the website <https://www.ntbmall.com/> or the NTB Mall app, available for download on IOS and Android smartphones. Products sold in the offline store are also available in the NTB Mall online store.⁵¹

Other examples of marketplaces established by regional governments for MSMEs empowerment include *SiBakulJogja* (Yogyakarta Special Region Provincial Government), *E-Order* (DKI Jakarta Provincial Government), *Sosialita* (Tanah Laut Regency Government), *Plaza Banten* (Banten Provincial Government), *E-Peken* (Surabaya City Government), *Blangkon* (Central Java Provincial Government), *Jatim Bejo* (East Java Provincial Government), and *Jabar Berdering* (West Java Provincial Government).

2.5. Private Company-Owned Marketplaces: Opportunities and Threats for Micro Small and Medium Enterprises

In Indonesia, there are several marketplaces widely used by the public, including the Tokopedia marketplace owned by PT Tokopedia and the Shopee marketplace owned by PT Shopee International Indonesia, both of which are the largest marketplace companies in Indonesia.⁵² Although it provides convenience for business actors facing marketing challenges, trade activities through marketplaces also pose a threat to small business owners. The first issue is related to the actions of factories (producers) that sell their products directly to consumers on the marketplace, bypassing the distribution chain (agents or distributors) that has traditionally been handled by MSMEs. According to the Director of the Center of Economic and Law Studies, if this continues, many small distributors will go out of business because they will not be able to compete. This is because consumers tend to buy products sold by the factories (producers), as the prices offered by the factories (producers) are certainly lower than those sold by distributors⁵³ because distributors need to earn a profit from the price difference between the price they obtain from the factory (producer) and the retail selling price,⁵⁴ which results in the price of goods sold by distributors being higher compared to the price of goods sold directly by the factory (producer).

The actions of large producers (factories) marketing their products directly to consumers on marketplaces are also supported by the weak regulations on private company-owned marketplaces in Indonesia, which make it very easy for sellers to start marketing on these platforms. For example, to join as a seller on the Tokopedia

vatif-iga-2023.

50 NTBPress.com, "Gubernur Launching NTB Mall," accessed August 11, 2024, <https://ntbpress.com/2020/12/17/gubernur-launching-ntb-mall/>.

51 NTB Mall, "Syarat Dan Ketentuan," accessed August 11, 2024, <https://ntbmall.com/terms-and-conditions>.

52 Demis Rizky Gosta, "Raja Ecommerce RI Shopee Atau Tokopedia? Cek Data Terbaru," accessed August 6, 2024, <https://www.cnbcindonesia.com/tech/20230616135225-37-446593/raja-ecommerce-ri-shopee-atau-tokopedia-cek-data-terbaru>.

53 Detik Finance, Loc. Cit.

54 Andyna Susiawati Achmad and Astrid Athina Indradewi, "Kedudukan Hukum Dan Tanggung Gugat Pedagang Perantara, Distributor, Dan/Atau Agen Dalam Jalur Distribusi Barang," *Jurnal Hukum Magnum Opus* 4, no.2 (2021): 193-202, <http://DOI:10.30996/jhmo.v4i2.5294199>

marketplace, prospective sellers are required to provide a phone number, email address, a photo of their ID card, and a selfie/photo of their face.⁵⁵ Similarly, on the Shopee marketplace, to join as a seller, prospective sellers must provide a copy of their ID card, a selfie/photo of their face, a phone number, and an email address.⁵⁶ With the few required documents needed for prospective sellers to market on Tokopedia and Shopee, anyone who provides these documents can become a seller on the Tokopedia and Shopee platforms.

The second issue is related to the commission fees taken by the marketplace each time a seller's product is sold. Several traders on popular marketplaces in Indonesia, such as Shopee and Tokopedia, have complained about the rising costs because they end up with very little net profit after deducting the marketplace fees. In addition to the increase in sales commission cuts taken by private company-owned marketplaces (Tokopedia and Shopee), the author found that there is no differentiation in fee rates based on the criteria of each seller. For example, the commission fee charged by Tokopedia from sellers as intermediaries in the buying and selling process is referred to as 'Service Fees.' On January 2, 2023, Tokopedia issued new service fee regulations as follows:⁵⁷

Table 1. Service Fees in Tokopedia

Category Group	Service Fee (per product sold)	
	Power Merchant PRO & Power Merchant	Regular Merchant (After the 100th transaction)
Category Group 1	4,5%	3,8%
Category Group 2	3,8%	3%
Category Group 3	3,1%	2,6%
Category Group 4	1,8%	1,6%
Category Group 5	2%	1%

Table 2. Differences in Service Fees Based on Group Category in Tokopedia

The differences between category groups 1 through 5 are as follows:⁵⁸

Category Group 1	Category Group 1 includes Books, Kitchen, Electronics, Children's & Baby Fashion, Muslim Fashion, Men's Fashion, Women's Fashion, Mobile Phones & Tablets, Mother & Baby, Cameras, Beauty, Toys & Hobbies, Food & Beverages, Office & Stationery, Sports, Automotive, Body Care, Party & Craft Supplies, Tools, Other Products, Household, Tour & Travel, and Wedding.
Category Group 2	Category Group 2 includes Kitchen, Electronics, Movies & Music, Gaming, Mother & Baby, Cameras, Health, Computers & Laptops, Toys & Hobbies, Food & Beverages, Office & Stationery, Automotive, Pet Care, Party & Craft Supplies, and Tools.

⁵⁵ Tokopedia, “[Buka Toko] Langkah Mudah Buka Toko Di Tokopedia,” accessed August 12, 2024, <https://seller.tokopedia.com/edu/cara-buka-toko/>.

⁵⁶ Shopee, “Mulai Berjualan Di Shopee,” accessed August 12, 2024, <https://seller.shopee.co.id/edu/article/464>.

⁵⁷ Tokopedia, “[Biaya Layanan] Terupdate! Cek Detail Biaya Layanan Per Kategori Produk Terjual.”, Op.Cit.

⁵⁸ Tokopedia, “[Biaya Layanan] Terupdate!.

Category Group 3	Category Group 3 includes Kitchen, Electronics, Children's & Baby Fashion, Women's Fashion, Gaming, Mobile Phones & Tablets, Mother & Baby, Cameras, Beauty, Computers & Laptops, Precious Metals, Food & Beverages, Sports, Automotive, Tools, and Property.
Category Group 4	Category Group 4 includes Mobile Phones & Tablets
Category Group 5	Category Group 5 includes Automotive

On December 1, 2023, Shopee Marketplace issued new administrative fee regulations as follows:⁵⁹

Table 3. Service Fees in Shopee

Product Categories	Administrative Fee (per product sold)	
	Non-Star Sellers (after the 50th transaction)	Star and Star+ Sellers
Kategori A	6%	6,5%
Kategori B	5%	5,5%
Kategori C	3,5%	4%

Table 4. Differences in Service Fees Based on Group Category in Shopee

The meaning of the product categories that fall under Category A, Category B, and Category C is as follows:⁶⁰

Category A	Category A includes Health, Fashion Accessories, Electronics, Men's Clothing, Men's Shoes, Mobile Phones & Accessories, Muslim Fashion, Luggage & Travel Bags, Women's Bags, Women's Clothing, Women's Shoes, Men's Bags, Watches, Audio, Food & Beverages, Personal Care & Beauty, Mother & Baby, Baby & Children's Fashion, Cameras & Drones, Home Supplies, Sports & Outdoor, Books & Stationery, Hobbies & Collectibles, Cars, Motorcycles, Tickets, Vouchers & Services, and Books & Magazines.
Category B	Category B includes Electronics, Mobile Phones & Accessories, Audio, Gaming & Consoles, Cameras & Drones, Cars, Motorcycles, Computers & Accessories, Health, Food & Beverages, Pets, Mother & Baby, Home Supplies, Sports & Outdoor, and Hobbies & Collectibles.
Category C	Category B includes Fashion Accessories, Electronics, Mobile Phones & Accessories, Baby & Children's Fashion, Cameras & Drones, Computers & Accessories, Food & Beverages, Mother & Baby, and Home Supplies.

59 Shopee, "Biaya Administrasi Penjual Shopee," accessed August 6, 2024, <https://seller.shopee.co.id/edu/article/7187>.

60 Shopee, "Rincian Biaya Penjual Shopee per Kategori Produk," accessed August 6, 2024, <https://seller.shopee.co.id/edu/article/15965>.

On Tokopedia Marketplace, sellers are categorized into Regular Merchant, Power Merchant, and Power Merchant Pro. These categories indicate the facilities and support provided to the sellers by Tokopedia. Sellers in different categories receive varying levels of support, such as enhanced marketing support for Power Merchant and Power Merchant Pro categories. Additionally, only Power Merchant and Power Merchant Pro sellers have the opportunity to upload product videos, whereas Regular Merchant sellers cannot upload product videos. The granting of the Power Merchant and Power Merchant Pro categories on Tokopedia Marketplace depends on the seller's willingness to market their products and join the Power Merchant or Power Merchant Pro membership. However, every seller with the Power Merchant or Power Merchant Pro category starts as a Regular Merchant. To become a Regular Merchant, Power Merchant, or Power Merchant Pro, it is not determined based on whether the seller qualifies as an MSME or not. Sellers of any business criteria can choose to become a Regular Merchant, Power Merchant, or Power Merchant Pro.

From the service fee regulations imposed on sellers marketing their products on Tokopedia, it is evident that Tokopedia does not provide special treatment to different types of businesses (micro, small, or medium) regarding service fees. The service fees charged to sellers are determined based on the type of goods and the membership category chosen by the seller (Regular Merchant, Power Merchant, Power Merchant Pro), regardless of whether the seller is a micro, small, or medium enterprise. For instance, within the Regular Merchant category, a micro business seller might incur the same percentage service fee as sellers categorized as small, medium, or large businesses. The same applies to the Power Merchant and Power Merchant Pro memberships.

In another private marketplace, Shopee, seller memberships are divided into several types: Non-Star, Star, and Star +. Similar to Tokopedia, sellers with Star and Star + memberships receive more benefits compared to Non-Star sellers. For sellers marketing on Shopee, there are several types of fees imposed, including administrative fees, payment fees, and service fees. Among these fees, the administrative fee is charged to all sellers, regardless of their membership status—Non-Star, Star, or Star +. This is because payment fees are charged to sellers with Shopee Mall membership, and service fees are imposed on sellers participating in the Cashback XTRA and Gratis Ongkir XTRA programs. This study will focus solely on administrative fees, which are charged to sellers of all membership types. Administrative fees represent the main revenue for Shopee Marketplace as the intermediary between sellers and buyers, similar to Tokopedia's "Service Fee."

Similar to Tokopedia Marketplace, sellers with Star and Star + memberships all start as Non-Star sellers. Becoming a Star or Star + seller is not mandatory but is an option for Non-Star sellers who wish to upgrade their membership to receive more marketing support from Shopee Marketplace. The categorization into Non-Star, Star, and Star + is not determined by whether the seller is classified as a micro, small, or medium enterprise. Sellers of any business size micro, small, medium, or large can choose to be Non-Star, Star, or Star + and will face the same commission fees.

Problems arising from trading activities through private marketplaces such as Tokopedia and Shopee create legal complexities that touch on a number of important aspects, namely the protection of MSMEs, fair business competition, and state authority in regulating platform-based digital commerce. One of the issues that needs attention is the absence of differentiation or differentiation in marketplace commission rates based on business scale classification. The uniform commission model applied by platforms

such as Tokopedia and Shopee shows the inequality of legal treatment of MSMEs, even though normatively, the government is obliged to favor MSME actors. This is clearly regulated in the MSME Law, which mandates that the growth of the business climate must be carried out with institutional support, including through regulations that favor MSMEs.

Commission rates charged to business actors should consider their business category. However, private marketplaces such as Shopee and Tokopedia as business entities are not normatively bound to provide different treatment unless there is regulatory intervention from the state. The main legal issue that arises is the absence of an obligation to differentiate treatment (especially commissions or service fees) based on business classification in the marketplace. The legal ecosystem of digital trade in Indonesia is still general in nature and has not been responsive to the vulnerability of MSMEs in unbalanced competition with large producers or business actors who are also present in the same marketplace.

2.6. Efforts to Optimize the Potential of Regional Government-Owned Marketplaces in Indonesia to Empower Micro Small and Medium Enterprises

The empowerment of micro small and medium enterprises (MSMEs) represents a governmental initiative to realize public welfare, in accordance with the mandate of the 1945 Constitution. Based on Article 1 point 8 of Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises, empowerment refers to efforts undertaken collaboratively by the Government, Regional Governments, the business community, and society to foster a supportive environment and enterprise development, enabling MSMEs to grow, strengthen, and achieve independence. From this definition, it can be seen that one of the parties obligated to undertake empowerment is the regional government. Article 1, number 7 of MSME Law defines Regional Governments as governors, regents, or mayors, and regional officials as elements of local government administration.

Recently, several regional governments in Indonesia have established marketplaces funded by the Regional Budget (APBD) with the aim of empowering MSMEs, such as the NTB Mall marketplace managed by the Trade Office of West Nusa Tenggara, which acts as the institutional operator responsible for managing the platform's functions, regulations, and support for local micro small and medium enterprises.⁶¹ The creation of marketplace facilities by Regional Governments is a form of MSME empowerment in the context of business development, as outlined in Article 1, number 10 of MSME Law, because a marketplace is considered a facility.

Regarding the first issue raised by several traders about private company marketplaces, where there is concern over manufacturers (producers) marketing directly to consumers, Article 58 of Government Regulation No. 29 of 2021 on Trade Administration (PP 29/2021) clarifies this situation. According to this regulation, producers are indeed allowed to market their products directly to consumers without going through a distribution chain. However, this direct marketing is restricted to certain types of producers. Specifically, Article 58 of PP 29/2021 states that only producers of micro small and medium-scale businesses, as well as producers of goods that are perishable or have a shelf life of less than seven days, are permitted to sell their products directly

⁶¹ Al Ulya, Nurul Rizka. *NTB Mall sebagai Media Strategi Komunikasi Pemasaran Dinas Perdagangan Provinsi NTB dalam Mempromosikan Produk UMKM Lokal*. S1 thesis, Universitas Mataram (2024): 2, <http://eprints.unram.ac.id/id/eprint/44802>

to consumers without involving distributor or agent networks. Based on Article 58, this exception applies specifically to micro small and medium businesses, as well as producers of perishable goods with a shelf life of less than seven days. In contrast, medium and large-scale producers are not permitted to sell directly to consumers and must distribute their products through distributors or agents. Meanwhile, distributors are only authorized to supply goods to sub-distributors, wholesalers, bulk suppliers, and/or retailers, and are not allowed to conduct direct sales to consumers. Thus, both producers and distributors face restrictions on direct consumer sales, with the sole exception being micro small and medium-scale producers.

To market products on a marketplace, there are usually a number of requirements and documents that prospective sellers must fulfill. Therefore, marketplaces established by various Regional Governments in Indonesia should implement policies regarding the requirements and documents needed for prospective sellers. These policies should align with the concept of empowering micro small and medium enterprises (MSMEs) in the context of goods distribution. In practice, the criteria for seller registration on marketplace platforms can function as a filtering mechanism to ensure that only micro small and medium-scale producers, along with producers of perishable goods with a shelf life of less than seven days, are permitted to sell directly to consumers without the involvement of distributors or agent networks. In other words, these marketplaces should facilitate direct sales by MSMEs, given that the nature of a marketplace is to break the distribution chain through intermediaries (distributors).

Related to the issue of the increase in commission deductions taken by marketplaces owned by private companies every time a seller's product is sold and the absence of differentiation of Tariff reductions determined in accordance with the specific business scale or classification of each seller, Article 7 in conjunction with Article 9 of the MSME Law states that "the Government and Regional Governments are responsible for fostering a business climate by establishing regulations and policies that include aspects of facilities and infrastructure." These regulations are intended to provide public infrastructure that can encourage and develop the growth of micro small and medium enterprises and offer fee relief for such enterprises. Therefore, Regional Governments that engage in MSME empowerment by providing public infrastructure, such as marketplaces, should also establish policies for the use of these marketplaces. This includes offering fee relief for micro small and medium enterprises, meaning that the cost policies for using the marketplace should reflect the different criteria of each business. In other words, the marketplace usage fees should be adjusted to provide financial relief to weaker businesses compared to larger ones.

According to Sudikno Mertokusumo and A. Pitlo, in addition to comparative interpretation, there is also another method of legal interpretation called teleological interpretation. Teleological or sociological interpretation is a method that determines the meaning of a law based on its societal purpose. Using this method, laws that are still in effect but have become outdated are applied to current needs or interests, regardless of whether those needs were recognized at the time the law was enacted. In other words, old (still valid) legal regulations are adjusted to new circumstances or updated. This approach adapts the regulations to new social situations.⁶² Based on the teleological interpretation, a marketplace can be considered as infrastructure as defined in Article 1,

⁶² Hukumonline, "6 Metode Penafsiran Hukum Sudikno Mertokusumo Dan A. Pitlo.", Accessed August 12, 2024. <https://www.hukumonline.com/berita/a/metode-penafsiran-hukum-mertokusumo-pitlo-lt6331ab71b721c/?page=3>.

number 3, and Article 3, paragraph 2 of the Indonesian Ministry of Forestry Regulation Number P.68/MENHUT-II/2009 of 2009 on Office Infrastructure Standards within the Ministry of Forestry. A marketplace essentially serves the same function as a traditional market (building), given that the regulation was established in 2009 when marketplaces were not yet recognized. Since the purpose of both is to facilitate trade activities, a marketplace can be deemed infrastructure according to the phrases in Article 7 in conjunction with Article 9 of the MSME Law based on teleological interpretation.

The two arguments provided by the author regarding the efforts that local governments in Indonesia can make to maximize the empowerment of micro small and medium enterprises (MSMEs) on marketplaces they establish are based on Article 1, number 8 of the MSME Law, which states that MSME empowerment is not only carried out through business development but also through creating a favorable business climate. According to Article 1, number 9 of the MSME Law, “a business climate is the condition that the government and local governments strive to create to empower MSMEs synergistically by establishing various laws and policies across different aspects of economic life so that MSMEs receive preference, certainty, opportunities, protection, and comprehensive support.” Therefore, policies on marketplaces established by local governments should also aim to empower MSMEs based on Indonesian legislation related to MSME empowerment, ensuring preference, certainty, opportunities, protection, and broad support for MSMEs. This contrasts with the policies on private company-owned marketplaces, which are primarily aimed at profit rather than empowering MSMEs.

3. CONCLUSION

The implementation of welfare state principles requires the state to play an active role in protecting and empowering Micro, Small, and Medium Enterprises (MSMEs), including by facilitating fair and accessible marketing channels. In response to the growing imbalance in the digital trade ecosystem, characterized by the dominance of private markets, high commission fees, and direct competition from large producers, local governments have begun establishing their own region marketplaces. These government-owned platforms are intended to be a fairer alternative that supports the sustainability of MSMEs and addresses their marketing challenges.

Such regional marketplaces offer MSMEs a space for product promotion, online transactions, and operational efficiency improvements, while minimizing their exposure to unfair market practices. To ensure these public marketplaces effectively empower MSMEs, local governments must implement inclusive and protective policies. These policies include strict eligibility criteria that prioritize micro and small enterprises, especially producers of perishable goods, and commission structures differentiated based on business capacity, where small businesses receive reduced or even waived service fees. In essence, the establishment and regulation of local government-owned marketplaces serve not only as an instrument for MSME empowerment but also as a concrete manifestation of the state's constitutional obligation to advance the general welfare and uphold economic justice.

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