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Reconstruction of Legal Certainty and Local Government Discretionary Authority in MSME Empowerment

Rekonstruksi Kepastian Hukum dan Kewenangan Diskresi Pemerintah Daerah dalam Pemberdayaan UMKM

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Abstract

Micro, Small, and Medium Enterprises face acute structural vulnerabilities because rigid formal positivism and the Online Single Submission regime under Government Regulation Number 28 of 2025 fail to provide effective preventive legal protections. This study employed an empirical legal methodology, examining statutory frameworks, philosophical doctrines, and administrative friction. The findings reveal that nationwide licensing simplification, when divorced from local preventive architecture, generates severe legal uncertainties and penalizes grassroots enterprises under automated compliance mechanisms. Consequently, substantive justice is compromised for procedural fetishism. To resolve this pathological gap, this research argues that local government discretionary authority must be actively operationalized as an instrument of social engineering. Grounded in Mochtar Kusumaatmadja's Theory of Development Law, proactive administrative safeguards and accountable local policies bridge regulatory vacuums, transforming the legal framework from a punitive instrument into a sustainable infrastructure empowering grassroots economic competitiveness within the national digital economic transformation era of modern legal governance systems.

Abstrak

Usaha Mikro, Kecil, dan Menengah menghadapi kerentanan struktural akut karena positivisme formal yang kaku serta rezim Online Single Submission berdasarkan Peraturan Pemerintah Nomor 28 Tahun 2025 gagal memberikan perlindungan hukum preventif yang efektif. Penelitian ini menggunakan metodologi yuridis empiris, dengan menelaah kerangka peraturan, doktrin filosofis, dan gesekan administratif. Temuan menunjukkan bahwa simplifikasi perizinan nasional, ketika terlepas dari arsitektur preventif lokal, menghasilkan ketidakpastian hukum parah serta menghukum entitas akar rumput melalui mekanisme kepatuhan otomatis. Akibatnya, keadilan substantif mutlak dikorbankan demi fetisisme prosedural. Untuk mengatasi kesenjangan patologis tersebut, riset ini berargumen bahwa kewenangan diskresi pemerintah daerah wajib dioperasionalkan secara aktif sebagai sebuah instrumen utama rekayasa sosial. Berlandaskan Teori Hukum Pembangunan Mochtar Kusumaatmadja, pengamanan administratif proaktif serta kebijakan lokal akuntabel menjembatani kekosongan regulasi, mentransformasikan kerangka hukum dari instrumen punitif menjadi infrastruktur berkelanjutan yang memberdayakan daya saing ekonomi kerakyatan di dalam era transformasi ekonomi digital nasional dari sistem tata kelola hukum modern saat ini.

A. INTRODUCTION

1. Background

Micro, Small, and Medium Enterprises (MSMEs) operate as foundational entities and primary pillars within the national economic architecture, contributing significantly to employment, Gross Domestic Product (GDP), and the equitable distribution of social welfare. Philosophically and constitutionally, the existence of MSMEs is a direct manifestation of Article 33 of the 1945 Constitution of the Republic of Indonesia. This provision mandates that the national economy be organized upon economic democracy, rooted in the principles of mutual cooperation, equitable efficiency, sustainability, environmental insight, and self-sufficiency, while safeguarding the balance of progress and national economic unity. While empirical history demonstrates that MSMEs possess extraordinary resilience against global economic turbulence—ranging from the 1997 Asian financial crisis to the recent pandemic-induced recession—the structural vulnerabilities these enterprises face within modern commercial ecosystems remain an acute, comprehensively unresolved issue.[1]

The fundamental issues persistently overshadowing this grassroots economic sector stem from asymmetrical access to justice, the complexities of centralized licensing bureaucracies, an absence of adequate regulatory literacy, and weak institutional safeguards against monopolistic and hegemonic anti-competitive practices. The law, therefore, cannot merely operate as a passive, rigid, and elitist regulatory instrument; it must radically transform into a proactive catalyst for empowerment. Within the discourse of welfare state governance, the government—particularly at the local level, given its closer jurisdictional proximity to the community—bears an absolute constitutional responsibility. Local authorities must ensure that enacted sectoral regulations are not solely oriented toward procedural administrative ease, but effectively embody the principles of genuine distributive justice.

The urgency of this study centers on the critical need to redefine and reconstruct the legal protection framework for MSME actors amid the transition to a digital economy and the implementation of a novel licensing regime. To establish a robust epistemological foundation, this article extensively explores and dissects contemporary literature. To

[1] Saadan Mohamed Senin et al., "Small and Medium Enterprises Survival during the Global Crises: A Systematic Review of Theoretical Perspectives of Building Resilience in the Time of Crisis," *Cogent Business & Management* 11, no. 1 (December 31, 2024), https://doi.org/10.1080/23311975.2024.2395428.

satisfy academic novelty requirements, however, it analytically reviews five prior studies to delineate the state of the art for this research.

First, the discourse advanced by Rahman et al. (2024) examines how intellectual property (IP) protection and capital access constitute endemic challenges for small business entities, noting that the absence of IP safeguards effectively stifles local innovation.[2] Second, research by Andriana et al. (2026) incisively corroborates the premise that the central government historically exhibits a policy bias, affording substantially greater attention, incentives, and regulatory leniency to macro-scale enterprises or corporate conglomerates. This paradigm frequently marginalizes MSMEs from the foundational statutory protections.[3] Third, the socio-legal analysis presented by Delfyrah et al. (2024) offers troubling empirical evidence of highly disproportionate enforcement of legal instruments in Indonesia. The state has demonstrably failed to provide effective *ex ante* safeguards across digital platforms, thereby relegating business actors to time-consuming and cost-prohibitive *ex post* enforcement mechanisms.[4] Fourth, an administrative assessment by Lathifah and Frinaldi (2024) dissects the necessity of discretionary power—or *Freies Ermessen*—for local government officials within the framework of good governance. Crucially, they note that such latitude requires rigorous oversight, radical transparency, and strict accountability to mitigate the abuse of power, or maladministration.[5] Fifth, the contemporary study by Leonardi and Tundjung (2025) sharply evaluates the pathologies of the electronically integrated business licensing system (Online Single Submission, or OSS). The authors highlight that rather than delivering legal certainty, this transitional system has generated operational inefficiencies and jurisdictional ambiguity between central and local authorities.[6]

[2] Ardi Abdillah Rahman et al., "Perlindungan Hukum Terhadap Pelaku Usaha UMKM," *Jurnal Kajian Hukum Dan Kebijakan Publik* 1, no. 2 (May 10, 2024): 146–47, https://doi.org/10.62379/mj2ebf28.
[3] Andriana Andriana, Liza Marina, and Ani Purwati, "Perlindungan Hukum Pelaku Usaha Terhadap Ulasan Digital Menyesatkan: Rekonstruksi Tanggung Jawab Platform Di Indonesia," *SENTRI: Jurnal Riset Ilmiah* 5, no. 2 (2026): 2327–44, https://doi.org/10.55681/sentri.v5i2.5861.
[4] Putri Delfyrah et al., "Analisis Perlindungan Hukum Bagi UMKM: Pembebasan Hak Guna Pelaku UMKM Dengan Membebaskan Regulasi Perdagangan," *Indonesian Journal of Law and Justice* 2, no. 2 (November 28, 2024): 7, https://doi.org/10.47134/ijlj.v2i2.3370.
[5] Hilma Lathifah and Aldri Frinaldi, "Analisis Mengenai Diskresi Dengan Freies Ermessen," *Al-DYAS* 3, no. 2 (April 1, 2024): 581–89, https://doi.org/10.58578/aldyas.v3i2.2852.
[6] Leonardi Leonardi and Tundjung Tundjung, "Reconstruction of Business Licensing Governance Through Online Single Submission (OSS) from the Perspective of Efficiency and Legal Certainty," *Indonesian Journal of Law and Economics Review* 20, no. 4 (November 26, 2025): 10.21070/ijler.v20i4.1391, https://doi.org/10.21070/ijler.v20i4.1391.

Building upon the synthesis and deconstruction of these five prior studies, the novelty of this research lies in its holistic approach. It integrates a critical evaluation of the latest regulatory regime—namely, Government Regulation Number 28 of 2025 on Risk-Based Business Licensing—with the dialectics of local government discretionary authority. This framework is constructed upon Mochtar Kusumaatmadja's Theory of Development Law, Gustav Radbruch's Theory of Justice, and Philipus M. Hadjon's Theory of Legal Protection. This article moves beyond merely reiterating narratives of bureaucratic deficiency. Instead, it theoretically and empirically demonstrates that nationwide digital licensing simplification—when unaccompanied by the development of local preventive architectures and devoid of accountable local policy discretion—will solely precipitate the commodification of law and introduce new administrative uncertainties that stifle MSME growth.

The findings of this research indicate that the implemented framework of grassroots economic law in Indonesia continues to suffer from the pathological syndrome of excessively rigid and mechanistic positivism. Factually, legal protections for MSMEs remain trapped in an elitist phase of reactive enforcement, while preventive shielding instruments are virtually inoperative. In the realm of licensing administration, although Government Regulation Number 28 of 2025 was enacted with the ambition to revolutionize governance via a comprehensive risk-based approach, systemic synchronization between central computational platforms and local regulatory ecologies remains disconnected. This disjointedness triggers legal status ambiguities that directly prejudice small business actors. Ultimately, the existence of discretionary space for local governments has proven sociologically to be a vital key. This discretion must be activated proportionally and measurably to bridge legal vacuums—thereby positioning the law not merely as a framework for penal sanctions, but as an empowering infrastructure that emancipates the grassroots economic class.

2. Research Questions

To systematically deconstruct this complex paradigm, the core inquiries of this research are consolidated into the following unified framework: How are the rationalization of legal certainty and *ex ante* legal protections operationalized for MSME actors confronting the disruptive forces of hegemonic market competition; to what extent does the transformation of business licensing governance—facilitated by the Online Single Submission (OSS) scheme pursuant to Government Regulation Number 28 of

2025—effectively eradicate cross-sectoral legal ambiguities; and how can local government discretionary authority be optimized as an instrument of social engineering, grounded in the Theory of Development Law, to sustainably accelerate MSME competitiveness.

3. Research Methods

To dissect these complexities through a comprehensive, structured, and scientific framework, this study employs a socio-legal (empirical legal) methodology. The adoption of this paradigm is grounded in a specific philosophical rationale. Rather than confining the inquiry to normative legal dogmatism and the theoretical reading of statutory texts (*das sollen*), empirical legal research scrutinizes, observes, and evaluates how these legal instruments operate, materialize, and intersect with socio-economic realities on the ground (*das sein*). As emphasized in contemporary legal methodology literature, socio-legal inquiry is imperative; legal analysis relying exclusively on normative doctrine often suffers from myopia, failing to capture the structural disparities, implementation anomalies, and institutional pathologies pervasive among enforcement apparatuses in practice. Furthermore, this study consistently juxtaposes written legal norms against the actual conduct of legal subjects and governmental authorities. This approach assesses legal efficacy, sociological barriers, and the degree of public acceptance regarding top-down regulatory mandates.[7]

This methodology is underpinned by a highly stratified framework for data collection and analysis. The foundational data is rigorously extracted through advanced literature reviews of primary and secondary legal materials, sourced exclusively from globally reputable academic databases. This strict data selection protocol ensures the validity, citation integrity, and authenticity of every contested legal reference. Operationally, this study deploys multiple analytical approaches simultaneously. First, the statutory approach is utilized to analyze the anatomy, hierarchy, and synchronization of fundamental regulations. These include Law Number 20 of 2008 on MSMEs and the Job Creation Law alongside its extensive derivative regulations, serving specifically as a precursor to a technical evaluation of Government Regulation Number 28 of 2025 on Risk-Based Business Licensing. Second, the conceptual approach is employed to

[7] Nabiyla Risfa Izzati, "Eksistensi Yuridis Dan Empiris Hubungan Kerja Non-Standar Dalam Hukum Ketenagakerjaan Indonesia," *Masalah-Masalah Hukum* 50, no. 3 (July 31, 2021): 290–303, https://doi.org/10.14710/mmh.50.3.2021.290-303.

scrutinize and contextualize legal-philosophical doctrines. This encompasses the concept of *Freies Ermessen* (discretionary power) in administrative law, Gustav Radbruch's antinomies of justice, Philipus M. Hadjon's postulates of preventive and repressive legal protection, and the principle of legitimate expectation within licensing frameworks. Third, an empirical case approach is applied. Drawing from sectoral phenomena—such as capital access challenges, inefficiencies in intellectual property registration, and friction in digital platform adaptation—this approach traces the systemic patterns of legal failure in providing security for MSME actors.

The applied data analysis technique is descriptive-evaluative qualitative analysis. The entire corpus of primary and secondary legal materials, consolidated through data reduction, undergoes rigorous selection. This process is followed by a thematic classification of field findings based on the formulated research questions. Data interpretation focuses on unraveling the highly complex causal links between central government deregulation policies, the fragmentation of regional bureaucratic authority, and their direct socio-economic implications on legal certainty, compliance costs, and the competitive climate for MSME entities in the era of digital economic transformation. Verification and conclusion-drawing are subsequently executed by triangulating legal norms, philosophical theories, and sociological realities. This synthesis produces a comprehensive, robust, and verifiable academic postulate.

B. DISCUSSION

1. The Dialectics of Justice, Legal Certainty, and the Illusion of Ex Ante Safeguards for MSMEs

The massive shift of the global economic landscape toward a digitized equilibrium effectively places Micro, Small, and Medium Enterprises (MSMEs) at a highly ambivalent and precarious crossroads. On one side of the equation, digitalization and its attendant infrastructure promise a lucrative expansion of boundless global market inclusion for grassroots economic actors. Conversely, the inadequacy of domestic legal infrastructure combined with a stark digital literacy gap engenders massive structural vulnerability. Within the pinnacle of modern legal philosophical discourse, prominent thinker Gustav Radbruch posits a timeless fundamental doctrine: a comprehensive, ideal, and functional legal system must preserve the highly delicate equilibrium among three foundational legal values (the antinomies of law): justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and social utility (*Zweckmäßigkeit*). Justice embodies the proportionality of ethical treatment; certainty relies on the predictability of statutory texts and procedural clarity; while utility centers on a teleological objective—whether the law yields productive outcomes for the public welfare.[8]

The reality of commercial law enforcement and licensing administration in Indonesia—derived from an extensive analysis of various trade cases and regulatory conflicts—consistently demonstrates that law enforcement apparatuses and technical drafting committees frequently descend into a fetishization of formal certainty. Legal certainty is erroneously reduced and narrowly construed as blind textual adherence to statutory procedures (pure legalism). This rigid interpretation, in turn, brutally distorts substantive justice and amputates the economic utility meant for micro-enterprises. Such rigid legal application fundamentally causes the law to fail in its role as a protective shield.[9]

As a profound empirical illustration, MSME entities are frequently ensnared in situations where state instruments mandate compliance with industrial standard regulations. These include obligatory Indonesian National Standard (SNI) certification, distribution permits from the Food and Drug Supervisory Agency (BPOM), and costly, highly bureaucratic halal certifications. Fundamentally, the architecture of these requirements is engineered using the logic and rationality of macro-scale corporate capacities. When financially strained MSMEs fail to meet these formal licensing standards due to technical and financial limitations, the state's response is not corrective guidance, but punitive sanction. Their products are confiscated, their businesses are criminalized, or their production facilities are forcibly shuttered under the guise of law enforcement.[10] This dynamic generates a paradoxical anomaly within a welfare state. The law—which ought to distribute utility by safeguarding the existence and economic sustainability of the grassroots—instead morphs into an instrument of institutional oppression that legitimizes the eradication of small businesses. Proceeding from the deconstructive framework of Radbruch's theory, legal reform for MSMEs must no longer sacrifice

[8] Muklis Al'anam, "Teori Keadilan Perspektif Gustav Radbruch: Hubungan Moral Dan Hukum," *Jurnal Humaniora : Jurnal Ilmu Sosial, Ekonomi Dan Hukum* 9, no. 1 (April 30, 2025): 119–33, https://doi.org/10.30601/humaniora.v9i1.6393.

[9] Muhammad Bintang Firdaus, "Dialektika Keadilan, Kepastian, Kemanfaatan Hukum Dalam Perspektif Gustav Radbruch Pada Hukum Indonesia," *Jurnal Kajian Hukum Dan Kebijakan Publik* 3, no. 1 (December 7, 2025): 357–67, https://doi.org/10.62379/qy4b6z80.

[10] I Nyoman Sukayasa, "Peran Regulasi Hukum Bisnis Dalam Mendorong Kepatuhan Usaha Mikro, Kecil, Dan Menengah (UMKM): Review Jurnal Sistematis," *Journal of Economics Research and Policy Studies* 5, no. 2 (August 21, 2025): 559–71, https://doi.org/10.53088/jerps.v5i2.2078.

substantive justice at the altar of procedural certainty. The law must be recalibrated and restored to its ethical orientation. It must mandate affirmative action through regulatory leniency, tax incentives, administrative fee waivers, and persistent developmental guidance, enabling MSMEs to grow organically without the constant fear of legal ignorance.

Furthermore, fulfilling the constitutional rights of MSME actors within the realm of commercial law must be clinically dissected and evaluated using the Theory of Legal Protection postulated by administrative law scholar Philipus M. Hadjon. Hadjon precisely constructs that a genuine rule of law state (*Rechtsstaat*) must facilitate two complementary dimensions of protection: preventive (*ex ante*) and repressive (*ex post*). The essence of this dual framework centers on an uncompromising respect for the dignity of every legal subject. The *ex ante* protective dimension aims to preemptively avert disputes, damages, or prohibitions by establishing clear regulatory boundaries, embedding safeguards during the legislative drafting phase, and providing proactive assistance before an adverse policy is executed by state apparatuses. Tragically, various empirical studies and recent jurisprudence confirm that Indonesia's legal protection architecture is excessively reactive. Operating much like a "firefighting" apparatus, it relies heavily on *ex post* enforcement mechanisms. The state intervenes—whether through civil litigation or the imposition of criminal sanctions—only after tangible harm has already afflicted grassroots economic actors.[11]

The absence of holistic *ex ante* instruments proves highly destructive across two vital ecosystem domains: the protection of Intellectual Property (IP) rights, and safeguards against digital platform (marketplace) competition operating under predatory pricing schemes. Derivative products, traditional heritage recipes, geographical indications, and innovative concepts from regional MSMEs have been massively pirated, counterfeited, or commercially exploited without a modicum of material compensation by irresponsible actors. The root of this cultural catastrophe lies in an IP registration procedure that is highly elitist and chronically delayed, coupled with a lack of proactive legal education interventions from relevant ministries. Rather than the state taking the proactive initiative to facilitate and finance collective patent or trademark registrations

[11] Kornelis Bediona et al., “Analisis Teori Perlindungan Hukum Menurut Philipus M Hadjon Dalam Kaitannya Dengan Pemberian Hukuman Kebiri Terhadap Pelaku Kejahatan Seksual,” *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (January 12, 2024), https://journal.forikami.com/index.php/dassollen/article/view/557.

at the village level or within production centers, MSMEs are left to wage heroic yet futile battles before the Commercial Court panel of judges (*ex post* enforcement) when their commercial rights are usurped by foreign entities backed by massive law firms and infinite capital. The lack of robust normative drafting standards regarding the obligation of e-commerce companies to verify digital transactions, the void in protecting against information asymmetry between consumers and small producers in marketplaces, and the state's negligence in establishing instantaneous administrative dispute resolution schemes (online dispute resolution) glaringly evidence the practical failure to implement Hadjon's theory.[12]

The paradigm for reconstructing the MSME legal protection system must not stagnate at political rhetoric. Rather, it demands the dismantling and rebuilding of a legal ecosystem that radically prioritizes *ex ante* safeguards. This entails institutionalizing legal compliance assistance, providing full subsidies for quality certification costs, disseminating massive literacy campaigns on contractual risk mitigation, and, most critically, enforcing progressive, uncompromising sectoral antitrust regulations to ensure a level playing field for grassroots business entities.

2. Critical Evaluation of Business Licensing Transformation: OSS Dynamics and the Paradoxical Implications of Government Regulation Number 28 of 2025

Within the hierarchy of legal systems and comparative economic law, formal legal standing serves as both a prerequisite instrument and a vital gateway (*conditio sine qua non*) for any commercial economic entity to achieve de jure recognition, expand operations, and access the spectrum of state-administered facilities. Legal standing unlocks subsidized bank credit lines, serves as a mandatory threshold for multi-trillion-rupiah government procurement tenders, and acts as a passport for entry into export supply chains within the global market. Responding to international pressures regarding the ease of doing business and aiming to eradicate a bureaucratic licensing culture historically burdened by stigmas of delay, corruption, transactional friction, convoluted procedures, and overlapping vertical and horizontal agency jurisdictions, the government instituted a radical institutional breakthrough by creating the Online Single Submission (OSS) digital platform. The evolutionary trajectory of this digital bureaucratic system can

[12] Hassanain Haykal and Shelly Kurniawan, "Collateral Chaos: How Inefficiencies in Mortgage Law Enforcement Threaten The Stability of Indonesian Banking," *Veredas Do Direito* 23, no. 4 (2026): e234921, https://doi.org/10.18623/rvd.v23.n4.4921.

be chronologically traced from the enactment of Government Regulation Number 24 of 2018. This was subsequently overhauled fundamentally through the omnibus regulatory regime of the Job Creation Law—manifested in Government Regulation Number 5 of 2021 on Risk-Based Business Licensing—culminating in its latest comprehensive harmonizing iteration under Government Regulation Number 28 of 2025.

Doctrinally, the paradigm shift in licensing—moving away from a system predicated on indiscriminate, blanket compliance with a single prerequisite (*license approach*) toward a framework based on the classification of threat risk levels (*risk-based approach*)—is philosophically a progressive modernization and efficiency milestone in public administrative governance. In theory, micro-enterprises operating at a low risk level (such as street vendors, local handicraft artisans, or home-based culinary producers) can register within minutes to obtain a Business Identification Number (*Nomor Induk Berusaha*, or NIB). Legally, this NIB functions concurrently and absolutely as a singular distribution permit, a foundational environmental clearance, and an initial endorsement for self-declared halal certification. Nevertheless, examinations of administrative law dogmatics alongside audits of governance sociology reveal a massive deficit in fulfilling expectations of legal certainty and the erosion of the principle of *legitimate expectation* for applicants in the field.[13]

Within the initial architectural framework of the OSS, the government adopted a revolutionary mechanism whereby business licenses were instantaneously issued via machine-generated decisions immediately after business actors completed online application forms. However, this issuance was tethered to the trap of *ex post* "commitment fulfillment" requirements (obligatory obligations to be satisfied at a later date). Paradoxically, these business licenses—which ontologically qualify as Administrative State Decisions (*Keputusan Tata Usaha Negara*, or KTUN)—conferred nothing more than a false and highly illusory sense of security. When MSME actors, who inherently grapple with bureaucratic illiteracy, a lack of legal staff, and limited technical capacity, failed to satisfy a stack of rigid sectoral commitment requirements within very tight deadlines—such as specific environmental impact analyses, spatial planning technical studies from local agencies, or building feasibility certifications—the OSS system algorithm

[13] Desi Arianing Arrum, "Kepastian Hukum Dalam Perizinan Berusaha Terintegrasi Secara Elektronik (Online Single Submission) Di Indonesia," *Jurist-Diction* 2, no. 5 (September 11, 2019): 1631, https://doi.org/10.20473/jd.v2i5.15222.

unilaterally and automatically revoked and canceled their previously acquired licenses. This practice of post-investment, machine-discretionary license revocation constitutes a blatant violation of the principles of good governance (AUPB), particularly the principle of legitimate expectation. Furthermore, it fatally shatters cash flow projections, ruins the credibility of MSMEs before banking institutions, and paralyzes the business operations that serve as families' economic lifelines.

Responding to this institutional crisis, Government Regulation Number 28 of 2025 on Risk-Business Licensing was enacted as a regulatory minesweeper. Its purpose is to revise the chaos, refine algorithmic loopholes, and synchronize technical licensing complexities that its predecessor, Government Regulation Number 5 of 2021, demonstrably failed to resolve. The essence of implementing Government Regulation Number 28 of 2025 is expected to usher in a breath of bureaucratic rationalization through the integration of more legally binding ministerial systems. One of its crucial leaps forward is the mandatory, host-to-host integration of Environmental Approval parameters—overseen by the Ministry of Environment's Amdalnet portal—directly into the core processing and permit issuance dashboard of the OSS RBA user interface, thereby ending the exhausting era of separate registrations.

To present a complete dogmatic analysis and comparative overview of how this bureaucratic framework has mutated, the analytical mapping of Indonesia's evolving licensing regulatory regimes is structured in the following table:

Table 1. Comparative Evolution of Electronically Integrated Business Licensing Regimes (OSS) in Indonesia

Evaluation Parameter Dimension	Regime: Government Regulation Number 24 of 2018 (Initial OSS Transition)	Regime: Government Regulation Number 5 of 2021 (Early RBA Scheme Era)	Latest Innovation: Government Regulation Number 28 of 2025 (Comprehensive Harmonization)
Philosophical Approach Foundation	Centralization of digital authority & ongoing commitment fulfillment doctrine	Integration based on scale risk classification (Risk-Based Approach - RBA)	Refinement of RBA parameters, mandatory real-time cross-sectoral technical system harmonization
Technical System Integration Architecture	Dispersed and systemically isolated between central investment portals and sectoral technical ministry approval systems	Normatively integrated (Job Creation Law), though sociologically overlapping severely in practice	Absolute requirement for unconditional interconnectivity (mandating Amdalnet gateway integration directly into the OSS architecture)
Jurisdiction & Local Government	Frequently clashed with and was unilaterally annulled by restrictive	Imposed an obligation on local governments to update their Detailed	Strict enforcement of hierarchical jurisdictional boundaries and activation of

Position	local Regional Regulations (*Perda*)	Spatial Plans (*RDTR*) into digital formats	regional supervisory oversight within digital layout zoning
Implications for Legal Certainty Guarantee	Exceptionally low guarantee level (high rates of mass automatic cancellations due to failure in fulfilling commitment requirements)	Moderate guarantee level (processing medium- and high-risk classifications frequently stagnated for years on local verifiers' desks)	Certainty levels claimed to rise sharply via instantaneous visibility of sectoral approval statuses (SLA tracking) for applicants

Despite the architectural construction of Government Regulation Number 28 of 2025 appearing academically promising in terms of boosting efficiency and governance standards, a critical perspective rooted in the sociology of law and investigations into bureaucratic realities reveals that its implementation continues to trigger acute bureaucratic bottlenecks at the grassroots level. A wide gap persists between elite normative formulations in the capital and execution capabilities across thousands of tier-two regional government offices. Technical infrastructural constraints remain a paralyzing specter: unstable internet backbone infrastructure in remote regions, server downtime during peak registration traffic, and widespread confusion among frontline verification apparatuses regarding standard operating procedures for these new regulatory adaptations lead many traditional MSME actors to struggle and become frustrated when attempting to register their business entities simply to obtain a Business Identification Number (NIB).

More crucial and fundamental than hardware issues, the problem of regional legal autonomy remains unresolved. Not all administrative nomenclature at the regency/city level has successfully aligned its local legal instruments—such as Regional Regulations (*Perda*) or Regional Head Regulations (*Perkada*) concerning Spatial Utilization Activity Conformity (*KKPR*), licensing control retributions, or specific trade sector requirements—to be compatible with the matrix parameters of the central OSS system. Hierarchical inconsistencies in applying this legal discretion generate an administrative disaster: NIB documents of national standing, legally and validly issued by the Ministry of Investment, are frequently ignored, obstructed, or even refused recognition by regional government bureaucratic authorities under the obsolete pretext of lacking specific local permits or claiming that the region has not completed drafting its digital RDTR Regional Regulations. The direct consequence is that the ethos of convenience and licensing efficiency is distorted and neutralized. Instead of receiving integrated services from a single virtual window, MSME applicants find themselves held hostage in a bureaucratic limbo, forced to step backward by conducting manual administrative clarifications while hauling stacks of files from one agency desk to another—precisely replicating the corrupt and inefficient conventional bureaucratic patterns of the past. Reading this legal anomaly, the alignment and rationalization of licensing governance must urgently be bolstered by establishing an electronic administrative dispute resolution unit (*e-objection mechanism*) functionally embedded directly within the dashboard of the OSS platform. This must proceed in tandem with integrated legal assistance programs and technical competency training commanded directly for all frontline administrative apparatuses.

3. Social Engineering Through Regional Government Discretion: An Elaboration of Mochtar Kusumaatmadja's Theory of Development Law

The reality of dissonance, fragmentation, and regulatory misalignment between central legislative mandates and local implementation ecologies in orchestrating MSME governance generates a regulatory void (*vacuum of rules*) and an authoritative vacuum. This administrative paralysis threatens to crush the backbone of grassroots community economies. In responding to and remedying this systemic stagnation, administrative law offers a vital, noble instrument imbued with teleological values of justice: administrative discretion, rooted in the doctrinal term *Freies Ermessen*.

Conceptually and dogmatically, administrative discretion delegates legitimate jurisdictional authority, granting local government officials (regional heads and their bureaucratic apparatuses) the autonomy, independent initiative, and latitude to render rational decisions, formulate concrete policies, and execute decisive actions. This mechanism responds to dynamic phenomena unaddressed by the rigid, general, and abstract text of statutes. Discretion also functions as a safety valve within the legal system when the rigid application of written regulations would otherwise generate a tyranny of injustice that offends common sense and erodes the principle of public utility.

Within the strategic agenda of MSME empowerment, discretion is not merely a supplementary instrument; it constitutes the foundation and backbone of true regional autonomy. Relying entirely on regulatory blueprints originating from central institutions in Jakarta—whose formulation paradigm is heavily tainted by a uniformity bias rooted in a Java-centric rationality—proves to be an epistemological fatal error. The realities of topography, geography, infrastructure disparities, commercial cultural typologies, diverse local wisdom, and massive gaps in technological adoption capacity among MSMEs across the Indonesian archipelago reflect a deeply fragmented and heterogeneous landscape.[14] Navigating this ocean of demographic complexity necessitates innovative regional protection policies. Exclusive policy interventions—such as the design and facilitation of regional enterprise-owned e-commerce platforms that waive server fees for micro-industries, the provision of massive cross-subsidies for creative economy exhibition spaces, the injection of mandatory local procurement quotas for regional government operations bypassing cumbersome tender bureaucracies, and proactive literacy programs for digital payment adoption and big data marketing targeting vulnerable segments (such as retired women or remote rural merchants)—are absent from central statutes. Instead, they represent the brilliant empirical manifestation of intelligent, courageous, and forward-looking discretionary policy execution. The logical conclusion is that, without the moral courage and governance competence of local governments in practicing the philosophy of *Freies Ermessen*, regional civil apparatuses will remain permanently indentured, reducing themselves to robotic executors of administrative routines. Concurrently, local MSME entities will fall further behind, languishing and ultimately becoming alienated from the mainstream whirlpool of globalized economics.[15]

This radical yet progressive interpretation of state administrative discretion possesses a profound and robust ontological and epistemological foundation when viewed through the analytical lens of the Theory of Development Law, pioneered by Indonesia's preeminent legal scholar, Prof. Dr. Mochtar Kusumaatmadja. Historically, Mochtar Kusumaatmadja introduced a comprehensive conception that dismantled classical perspectives on the nature of law. He posited that "law as a tool of social engineering" serves as a state instrument tasked with directed and systematic responsibilities.[16] Within the framework of national development, the function of law is not merely to preserve colonial-era status quo structures or act as an instrument of oppression; rather, it actively restructures, engineers, and navigates the cultural mindsets

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[14] Willya Achmad, "The Role of Policies Made by the Government Towards Empowering Local Communities," *International Journal of Science and Society* 6, no. 2 (March 19, 2024): 158–65, https://doi.org/10.54783/ijsoc.v6i2.1120.
[15] Steffi Seline Maryanne et al., "The Urgency of Discretionary Powers by Regional Heads to Achieve Equitable Public Service Policies," in *Proceedings of the 1st International Conference on Social Environment Diversity (ICOSEND 2024)*, 2025, 505–13, https://doi.org/10.2991/978-2-38476-366-5_47.
[16] Fakhruddin Al-Ghiffari, "Implementasi Teori Hukum Pembangunan Mochtar Kusumaatmadja Dalam Aspek Digitalisasi Pelayanan Publik," *Jurnal Hukum Lex Generalis* 6, no. 8 (2025): 1–16, https://ojs.rewangrencang.com/index.php/JHLG/article/view/2026.

of conservative societies toward the dawn of modernization and industrialization—without uprooting or destroying the sociological roots and ancestral cultural values of the nation.[17]

When this brilliant doctrine is examined, dialecticized, and confronted with the anxieties of the Society 5.0 era and the dominance of digital economy corporate platforms, the application of the Theory of Development Law provides an unambiguous directive: the law must not falter or passively react to technological explosions like a detached bystander. Instead, the law demands discretionary authority to guide, moderate, and regulate the integration of technological innovations into the community's economic lifeblood ethically, proportionally, and equitably. The tangible implementation of Mochtar's philosophy should be transparently reflected in the absolute moral obligation of local governments to unhesitatingly formulate a series of protective companion regulatory instruments. These regulations must proactively safeguard MSME capital resilience as these vulnerable economic groups are driven to undergo a revolutionary migration into intangible banking services (digital wallets or fintech) and cross-border e-commerce models whose inherent tendencies often prove predatory, disrupting the stability and pricing of local artisanal real goods.[18]

In spirit, Development Law strictly mandates that the physical development of high-speed technological infrastructure must always, and without compromise, be preceded or accompanied by the development of mental fortitude, literacy, and commercial legal awareness architectures at the grassroots level. Regional jurisdictional discretion, at this juncture, is operationalized as a sharp vanguard to execute the spirit of the Theory of Development Law with precision and micro-surgical application at the most granular policy levels. This can be realized by providing facilitative justice—such as legal aid and pro bono advocacy by regional legal units for small merchants entangled in IP disputes against heavily capitalized entities; deploying task forces to provide door-to-door guidance through complex and confusing OSS bureaucratic procedures; and enacting spatial planning regulatory discretion (*RTRW*) that deliberately imposes radius

[17] Rachmat Iskandar et al., "Madzhab Hukum Pembangunan Mochtar Kusumaatmadja Dalam Dinamika Hukum Indonesia Masa Kini : Perspektif Budaya Hukum Dan Kesadaran Masyarakat," *QONUN: Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 2 (December 19, 2025): 191–212, https://doi.org/10.21093/qj.v9i2.12225.

[18] Hasrin Jamrudin, Biantara Albab, and Yeni Widowaty, "Conformity of Green Fintech Law with the Principles of Sustainable Investment in Indonesian Law," ed. N.A. Rakhmawati et al., *E3S Web of Conferences* 660 (November 10, 2025): 03004, https://doi.org/10.1051/e3sconf/202566003004.

restrictions on mega-retail corporate outlets. Such measures actively safeguard exclusive land use allocations to preserve the heartbeat of communal traditional markets and local commodity suppliers whose sociological survival is increasingly choked by the aggressive expansion of conglomerate shopping malls.[19]

Although discretionary power holds a critically vital civilizational role in theoretical discourse, it is equally crucial to recognize that the inherent pathological potentials of power remain latently embedded within it. The probability of massive abuse of authority (*détournement de pouvoir* or maladministration) and corrupt practices tending toward structured, systematic, and massive criminal acts of corruption represents a default threat of power. Empirically and morally, this threat cannot be ignored within the bureaucratic constellation of developing nations. The extensive historiography of state governance records in crimson ink that unchecked concentrations of power among regional officials—unfortified by a robust, sharp, and independent institutional checks and balances architecture—almost naturally culminate in a chronic tragedy: the exploitation of licensing authority to accommodate private economic interests, foster political extortion, and perpetuate the financial gains of local political-economic oligarchic clan networks.

For this fundamental reason, the academic research findings of Lathifah and Frinaldi (2024) urgently and decisively remind policymakers that every instance of discretionary authority infused with the spirit of *Freies Ermessen* must be supported, fortified, and blanketed by principles of radical, seamless digital transparency. The mandatory drafting of measurable standard operating procedures grounded in empirical data analytics, the integration of full public participation rights within regulatory consultation frameworks, and the existence of an absolute mechanism for institutional legal accountability before truly independent and interference-free administrative courts constitute non-negotiable prerequisites to preserve the dignity of public administration. Through the institutionalization of holistic functional accountability, the pendulum of state bureaucratic power intervention and discretion can gradually shift in meaning: moving away from an instrument of domination used merely to "command, prohibit, and punish," and transforming grandly into a commitment to "serve, facilitate, and empower."

[19] Iriansyah Iriansyah and Yalid Yalid, "Normative Inconsistencies in Indonesian Investment Law: Implications for Legal Certainty and the Investment Climate," *Corporate Law & Governance Review* 8, no. 1 (2026): 88–99, https://doi.org/10.22495/clgrv8i1p7.

Achieving this equilibrium will ultimately erect the pillars of genuine rule of law across the archipelago, elevating MSMEs from passive objects of regulation to empowered actors who secure preventive protections, administrative legal certainties, and tangible, sustainable welfare benefits that reinforce the sovereignty of the national economic architecture against an uncompromisingly volatile future.

C. CONCLUSION

Micro, Small, and Medium Enterprises (MSMEs) in Indonesia remain structurally vulnerable because rigid formal positivism and flawed digital licensing regimes—such as the Online Single Submission framework under Government Regulation Number 28 of 2025—fail to provide adequate *ex ante* legal protections against hegemonic market competition. The persistence of cross-sectoral legal ambiguities and administrative bottlenecks demonstrates that central deregulation alone is insufficient without localized structural harmonization and substantive justice. Consequently, optimizing local government discretionary authority (*Freies Ermessen*) as an instrument of social engineering, grounded in Mochtar Kusumaatmadja's Theory of Development Law, is imperative to bridge these regulatory vacuums. By operationalizing proactive administrative safeguards and accountable local policies, the legal architecture can successfully transition from a punitive mechanism into an empowering infrastructure that accelerates sustainable MSME competitiveness.

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