

Legal Vacuum and Prudential Principles in MSME Financing under Article 249 P2SK Law

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ABSTRACT

This study analyzes the legislative ratio of Article 249 of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) in regulating MSME financing. Although the provision mandates easier access to financing for Micro, Small, and Medium Enterprises (MSMEs), it also requires the application of prudential principles and risk management practices. Normatively, the article does not clearly define the criteria for MSMEs eligible for financing, creating a legal vacuum and potential implementation inconsistencies. This research employs normative legal methods, drawing on statutory, conceptual, historical, and comparative approaches. The findings reveal a regulatory dilemma between financial inclusion and banking stability. The absence of standardised MSME financing criteria leads to disparities among financial institutions and increases credit risk exposure. The study proposes a prudential, proportional, and context-based financing model that emphasizes business sustainability, cash flow capacity, debtor integrity, and risk mitigation mechanisms to ensure inclusive yet stable financial system development.

Keywords:

MSME financing;
prudential principle;
risk management;
legal vacuum; P2SK
Law

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INTRODUCTION

As a democratic nation, Indonesia implements a welfare-state model, in which the state is responsible for the well-being of its citizens. This concept allows the state to participate in all societal affairs and activities while maintaining its inherent authority. The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) combines discussions of the national economy and social welfare, as seen in Chapter XIV. This integration is not without reason; the national economy is a primary supporter of efforts to achieve social welfare.

One concrete manifestation of Indonesia's implementation of a people-centred economy is the strengthening of Micro, Small, and Medium Enterprises (MSMEs). MSMEs play a strategic role as the backbone of the national economy, given their significant contribution to Gross Domestic Product (GDP), employment, and economic equality across regions. The locally based and labour-intensive nature of MSMEs makes them an effective instrument for achieving community economic independence while reducing social inequality.

The government's commitment to empowering MSMEs is also evident in Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law (the Job Creation Law). In the Job Creation Law, the government demonstrates a strong commitment to assisting and empowering Micro, Small, and Medium Enterprises (MSMEs) as a key pillar of the national economy. This law is based on the recognition that MSMEs make a significant

contribution to job creation, economic equality, and national economic growth, yet still face various structural barriers, particularly in access to formal financing.

In this regard, the government has passed Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK). The P2SK Law itself specifically reformulates access to financing for MSMEs in Chapter XIX, which consists of 3 (three) articles. Article 249 of the P2SK Law explains that MSMEs have the right to obtain easy access to financing, even in paragraph (2) it is explained that easy access to financing for MSMEs must be carried out by all banks and/or non-bank financial institutions by applying the principles of prudence and risk management. Article 249:

- (1) To increase national economic resilience by empowering Micro, Small and Medium Enterprises, it is necessary to facilitate access to financing for them.
- (2) Ease of access to financing for Micro, Small and Medium Enterprises as referred to in paragraph (1) must be carried out by all Banks and/or non-Bank financial institutions by applying the principles of prudence and risk management.
- (3) Further provisions regarding ease of access for Micro, Small and Medium Enterprises, as referred to in paragraph (2), are to be regulated by the financial sector authorities in accordance with their respective duties and authorities, after consultation with the DPR.

Based on these provisions, it is understandable that there is a legal vacuum regarding the principle of prudence. MSMEs have the right to easy access to financing. However, there is a problem with Article 249. The provisions of this article do not explain the criteria for MSMEs eligible for easy access to financing. Article 35 of Government Regulation No. 7 of 2021 only sets out the criteria for MSMEs based on capital and annual sales. However, the criteria for MSMEs eligible for financing, as mandated by Article 249 of the P2SK Law, are not explained. This clearly contradicts the principle of prudence as stipulated in banking law.

Banking institutions must adhere to the principle of prudence when granting credit agreements to borrowers. Within this prudence principle, banks must consider two key elements: they must not provide credit to business sectors deemed dangerous and likely to cause state losses. Furthermore, banks must refrain from lending to borrowers with poor track records. Furthermore, the principle of prudence, popularly known as the 5Cs, must also be reviewed to assess its relevance and appropriateness for MSME borrowers, given that MSMEs have unique characteristics and a distinct position relative to other borrowers.

MSMEs can be considered as debtors operating in the productive economic sector but with limited resources. Therefore, it is necessary to examine the most appropriate implementation of the prudential principle for MSMEs. In this context, risk management is a key instrument for banks in disbursing credit to MSMEs. Banking risk management functions not only to minimize potential losses due to default but also to ensure that credit distribution is carried out in a measured and sustainable manner. In MSME financing, risk management should not be solely oriented towards collateral or formal financial feasibility, but should also consider business characteristics, cash flow patterns, and the MSME's capacity to adapt to economic dynamics. Therefore, the applied risk management approach must be proportional and contextual, so that the goal of protecting banking stability is achieved without hindering MSMEs' access to financing.

METHOD

Study This study uses normative legal research, a scientific research stage aimed at obtaining truth based on scientific logic from a normative perspective. This research is also known as doctrinal legal research, a research method that uses primary and secondary legal materials as analytical tools to address a legal issue. In this case, the author identifies a legal issue: a gap in the norms governing the implementation of the precautionary principle in financing MSMEs, as set out in Article 249 of Law Number 4 of 2023.¹

The selection of the normative research method in this thesis is based on the scientific consideration that the problem under study focuses on the substance and legal ratio of a legal norm, rather than on its application in practice. Normative research enables the author to analyze the content and structure of the norm in depth, assess the consistency between laws and regulations, and examine the legal gaps identified in Article 249 of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector.²With this approach, the author can provide systematic and logical legal arguments for how the principles of prudence and risk management should be realised in the provisions of MSME financing, in accordance with the objectives of the law's formation (*legis ratio*) and the principles of national economic law.³

Approaches are used in research to discover the intended law. This research employs four approaches: statutory, conceptual, comparative, and historical.⁴Furthermore, the types and sources of legal materials used include primary, secondary, and tertiary legal materials. The legal materials search technique employed by the author in collecting legal materials is a literature study, conducted through online and offline searches. Furthermore, the author's legal analysis techniques include historical, systematic, and teleological interpretation.

RESULTS AND DISCUSSION

Indonesia, as a country that adheres to a people-centred economic system, places people at the centre of economic policy formulation. This economic system is based on the idea that economic activity should be directed towards meeting the interests and welfare of the wider community. One of the key figures who formulated the concept of a people-centred economy was Drs. Mohammad Hatta, the Proclaimer and first Vice President of the Republic of Indonesia, who emphasized that the people are the center of all economic activity. Therefore, the people's welfare is a fundamental goal in the national economy's implementation.

The principle of a people's economy is expressly stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. This provision affirms that the national economy is structured on the principle of kinship, with state control over land, water, and natural resources positioned as an instrument for the greatest possible prosperity of the people. Thus, the orientation of the national economy is not solely on economic growth, but also on equality and social justice. The regulation of a people's economy in the constitution provides a strong normative foundation for the state to ensure that

¹ Johnny Ibrahim, *Theory & Methodology of Normative Legal Research*. Malang: Bayumedia Publishing, 2007, p. 57.

² Amiruddin and Zainal Asikin. (2004). *Introduction to Legal Research Methods*. Jakarta: PT Raja Grafindo Persada.

³ M Nazir, *Research Methods*, Jakarta: Ghalia Indonesia, 2005, p. 35.

⁴ Peter Mahmud Marzuki, *Legal Research*, Jakarta: Kencana, 2007, p. 966.

all economic policies consistently favor the people's interests.⁵ Within the framework of a people's economy, Micro, Small, and Medium Enterprises (MSMEs) hold a highly strategic position as key players in the national economy. MSMEs represent the direct involvement of the people in productive economic activities, both at the household level and as independent businesses. The existence of MSMEs not only creates jobs but also promotes equitable income distribution and strengthens the economy at the grassroots level. Therefore, strengthening MSMEs is a concrete manifestation of the principles of a people's economy as mandated by the constitution.

Furthermore, the close relationship between MSMEs and the community makes them a crucial instrument in maintaining national economic resilience, particularly during economic crises. Throughout various crises, MSMEs have proven more adaptable than large-scale businesses, thanks to their flexibility and their connection to the community's basic needs. This situation reinforces the argument that MSME empowerment is not merely a sectoral economic policy, but rather part of the national strategy to realize a just and sustainable economy. However, in practice, MSMEs still face various structural barriers, including limited access to financing. Limited capital, low financial literacy, and administrative unpreparedness are often the main obstacles for MSMEs in obtaining support from formal financial institutions. Yet, adequate access to financing is a crucial prerequisite for MSMEs to increase production capacity, expand their businesses, and compete healthily in the national economy.⁶

In this context, the role of the state is crucial in bridging the principles of a people's economy with concrete policies in the MSME financing sector. The state functions not only as a regulator but also as a facilitator, ensuring that the financial system reaches MSMEs fairly and proportionately. Financing policies that favor MSMEs, including through special credit schemes, are a manifestation of the state's constitutional responsibility to realize the people's prosperity, as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. Furthermore, strengthening MSMEs through access to financing must still adhere to the principles of prudence and risk management in the banking sector. The challenge is to formulate financing policies that encourage MSME growth without neglecting financial system stability. Therefore, a balanced regulation is needed between the spirit of empowering MSMEs as actors in the people's economy and the obligation of banks to implement the principle of prudence. This balance is an important foundation in developing MSME financing policies in Indonesia.

1. Background to the Establishment of Article 249 in the Framework for Developing MSME Financing

a. Historical Background to the Formation of Law Number 4 of 2023

One concrete manifestation of the implementation of a people's economy is reflected in the business activities of Micro, Small, and Medium Enterprises (MSMEs). MSMEs are a form of economic activity directly driven by the community, growing from people's initiatives, and aimed at improving people's welfare. In practice, MSMEs serve as the primary means for communities to carry out economic activities to meet their basic needs, which, in later stages, can develop into larger-scale businesses. The development of MSMEs not only benefits individual entrepreneurs but also

⁵ Azkia, A. *Implementation of Prudential Banking Principles in Financing People's Business Credit (KUR) at Bank Syariah Indonesia*. Al-Mudharabah: Journal of Islamic Economics and Finance, 5(1), 2024, p. 12.

⁶ Darwin Syamsulbahri, MSMEs in the Perspective of Inclusive Financing in Indonesia, Journal of Economics and Development, 26(1), 2018, pp. 59–76.

contributes significantly to the national economy and the nation's interests at large.

The Indonesian government has fundamentally recognised that capital is a crucial factor for the sustainability and development of MSMEs. This awareness is reflected in the policy adopted through the ratification of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK). The ratification of the P2SK Law essentially demonstrates the state's commitment to comprehensive reform of the national financial sector, including strengthening access to financing for MSMEs. Historically and sociologically, financial regulations have largely been formulated in a context that is no longer fully relevant to current economic dynamics, creating various obstacles in their implementation. Therefore, regulatory updates and adjustments are inevitable, particularly to respond to technological developments and the complexity of the modern financial system.⁷

Several factors underlie the enactment of the P2SK Law. First, the need for comprehensive reform of the national financial sector. The P2SK Law was designed as a regulatory umbrella integrating various aspects of the Indonesian financial sector, which in practice is still dominated by the banking and capital markets sectors. Further review reveals that the previous banking regulation, Law Number 10 of 1998, had been in effect for more than two decades, leaving many of its provisions out of step with technological developments and the dynamics of the modern financial system. This situation has resulted in several field practices not being fully accommodated by the existing legal framework. Similar issues also arise in other financial sectors, particularly the capital markets. Law Number 8 of 1995 concerning Capital Markets is considered inadequate to accommodate the rapidly evolving innovations and practices, such as decentralized finance (DeFi), non-fungible tokens (NFTs), robo-advisors, and other forms of digital innovation.

The regulatory vacuum surrounding this phenomenon has the potential to create legal uncertainty and hinder the development of a financial sector that is adaptive to technological advances. This view aligns with that of Frederica Widayari Dewi, Chief Executive of the Financial Services Authority (OJK), who emphasized that many provisions in previous financial regulations need to be revised because they are no longer relevant to the development of the digital economy. According to her, various emerging innovations have not been adequately regulated under previous laws, necessitating an omnibus law for the financial sector that can comprehensively accommodate legal updates and needs. Second, Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK) can be seen as a form of regulatory renewal and breakthrough in the financial sector. In terms of its formal aspects, the P2SK Law was drafted as an omnibus law.⁸

This approach is a legislative technique that allows lawmakers to regulate, amend, or revoke provisions across multiple laws through a single, comprehensive law. The omnibus law method is generally used to accelerate regulatory reform, simplify the legal system, and address issues of overlapping and fragmented regulations. Etymologically, the term "omnibus" comes from Latin, meaning "for all," reflecting the law's characteristic of regulating diverse cross-sectoral issues within a

⁷ Chikmiyah, R.J. *Implementation of Inclusive Finance in Empowering Micro, Small and Medium Enterprises (UMKM) at Micro Waqf Banks*, SHARIA ECONOMICS: Journal of Economic Studies, 5(1), 2021, pp. 82–97.

⁸ Setiana, I. M. R., et al. *The Impact of Capital Access and Financial Management on the Development of MSMEs Receiving KUR*. Balance: Journal of Accounting and Management, 4(1), 2025, p. 44.

single legal instrument.

The omnibus law approach is commonly used to address complex, multidimensional regulatory issues, as it allows for the addition, amendment, or revocation of provisions across various pre-existing laws. This method is not only recognized in common law systems but has also been adopted in civil law systems, including in Indonesia.

In the financial sector, the P2SK Law clearly demonstrates the application of the omnibus law method. Under this law, the government and lawmakers implemented a massive regulatory overhaul by revoking one law, partially revoking provisions of another, and amending more than 20 laws, directly and indirectly related to the financial sector. This demonstrates that the P2SK Law was designed as an umbrella regulation that integrates nearly all aspects of financial-sector regulation into a single, coherent legal framework.⁹

The omnibus law approach in the P2SK Law offers significant benefits, particularly in efforts to simplify and harmonise regulations. Prior to the enactment of the P2SK Law, financial sector regulations were scattered across various laws drafted at different times and with varying interests, potentially leading to disharmony and inconsistent norms. Through the P2SK Law, various previously separate and potentially conflicting provisions have been harmonized into a more coherent regulatory system. Furthermore, the P2SK Law has increased legal certainty in the financial sector.

With a single, comprehensive legal framework, businesses, financial institutions, and the public at large will find it easier to understand and access applicable legal provisions. This regulatory harmonization is expected to create a more stable, adaptive, and responsive financial sector climate to economic dynamics, while also supporting national development goals, including expanding access to financing and strengthening legal protection.

b. The direction of state policy in strengthening MSMEs after the Job Creation Law

Following the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation, the direction of state policy in strengthening Micro, Small, and Medium Enterprises (MSMEs) has been significantly strengthened. This law affirms the state's commitment to making MSMEs a key pillar of the national economy and a strategic instrument for realizing a people's economy, as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. The policy of strengthening MSMEs after the Job Creation Law is not only oriented towards increasing the number of businesses, but also on improving the quality, competitiveness, and sustainability of MSMEs.

One of the main policy directions following the Job Creation Law is to simplify regulations and business licensing for MSMEs. The government is striving to eliminate administrative barriers that have been a major obstacle for MSMEs in starting and growing their businesses. Through a risk-based business licensing system, MSMEs have easier access to business legality, enabling them to operate formally and to broader access to government facilities, including financing, training, and business mentoring. Beyond licensing, government policy also aims to strengthen access to

⁹ Ramadhani, R. & Lestari, S. *Credit Risk Management Analysis in MSME Financing in Islamic Banking*, Journal of Islamic Accounting, Finance, and Banking, 8(1), 2023, pp. 48–60.

financing for MSMEs.¹⁰

The Job Creation Law encourages an increased role for financial institutions, both banks and non-bank financial institutions, in channeling financing to MSMEs. The government is striving to create a more inclusive financing ecosystem through various special credit schemes, financing guarantees, and interest subsidies. This policy is intended to address the classic challenges faced by MSMEs, which have traditionally struggled to obtain capital due to limited collateral and administrative capacity. Furthermore, the government has prioritised strengthening MSMEs' capacity and competitiveness as a key component of its post-Job Creation Law policy direction. This strengthening is achieved through increased MSME access to training, technology, and innovation. The government is encouraging MSMEs to transform to adapt to developments in the digital economy and changes in market structure. In this context, MSMEs are no longer viewed solely as objects of social policy but as economic entities that must compete sustainably.

The direction of state policy following the Job Creation Law is also reflected in efforts to expand market access for MSMEs. The state affirms that MSME products can enter national and global supply chains, including through government procurement policies that prioritize them. This policy aims to create stable, sustainable demand for MSME products, thereby increasing the scale of MSME businesses and their incomes. Furthermore, strengthening MSMEs after the Job Creation Law is inseparable from efforts to maintain financial system stability. The state recognizes that increasing access to MSME financing must be balanced with the application of prudential principles and risk management by financial institutions. Therefore, regulations on MSME financing continue to emphasise the importance of balancing expanded access to financing with credit risk management. This approach aims to prevent an increase in non-performing loans that could disrupt financial sector stability.

Overall, the direction of state policy following the Job Creation Law demonstrates a paradigm shift in strengthening MSMEs. The state plays not only a facilitator but also a director in creating a conducive business climate for MSMEs. MSME empowerment is integral to a sustainable, inclusive, and equitable national economic development strategy. Therefore, post-Job Creation Law policies are expected to transform MSMEs into a resilient and highly competitive national economic force.

From a utilitarian perspective, the direction of state policy in strengthening MSMEs following the Job Creation Law can be understood as an effort to achieve the greatest benefit for the greatest number of people (the greatest happiness of the greatest number). As sectors that absorb a large workforce and serve as a source of livelihood for the wider community, MSMEs are seen as having high social and economic utility. Therefore, policies to simplify licensing, expand access to financing, and affirm market opportunities for MSMEs reflect the state's rational choice to prioritize sectors capable of generating the broadest collective benefits for the national economy and public welfare.

Furthermore, a utilitarian approach is reflected in the design of MSME financing policies, which are not solely focused on increasing credit but also on the sustainability and stability of the financial system. Within a utilitarian framework, the short-term

¹⁰ Image Eleven Kharisma & Kartika Marella Vanni, *Sharia Banking Strategy in Supporting Micro, Small and Medium Enterprise Financing*, Journal of Business Economics, Management and Accounting, 4(1), 2022.

benefits of aggressive financing expansion can turn into collective losses if not balanced with the application of prudential principles and risk management. Therefore, the emphasis on balancing easy access to financing and credit risk control demonstrates the government's efforts to maximise long-term economic benefits while minimizing the potential for systemic losses that could harm society at large.¹¹

Thus, the policy of strengthening MSMEs following the Job Creation Law can be viewed as a manifestation of utilitarianism in the context of law and economic policy. The state not only pursues quantitative economic growth but also strives to ensure that the benefits of these policies are widely distributed, sustainable, and do not cause greater negative impacts in the future. Within this framework, the principles of prudence and risk management serve as utilitarian instruments to ensure that MSME-strengthening policies truly generate the maximum benefits for society and the national economy as a whole.

c. The Dilemma of MSME Financing: The Antinomy between Expanding Capital Access and Credit Risk Mitigation

Expanding access to financing for Micro, Small, and Medium Enterprises (MSMEs) is a strategic national agenda to promote inclusive economic growth. However, this policy presents a dilemma for the banking sector, as greater access to financing is directly correlated with greater exposure to credit risk. On the one hand, banks are encouraged to play an active role in channeling financing to MSMEs as a form of support for the people's economy, but on the other hand, banks remain burdened with the obligation to maintain financial health and the stability of the banking system.

This antinomy arises from the inherently higher risk characteristics of MSMEs compared to corporate borrowers. Limited capital, low managerial capacity, and a lack of collateral make MSMEs more vulnerable to business failure. Under these circumstances, banks find themselves in a difficult position, having to balance the demands of expanding financing policies with the obligation to implement prudential principles and strict credit risk management.¹²

In practice, the risk of default in MSME financing not only impacts debtors but also directly harms banks as creditors. Banks incur financial losses from bad debts, whether through declining asset quality, higher provisioning costs, or disrupted liquidity. Moreover, the uncontrolled accumulation of non-performing loans can threaten the continuity of banks' businesses and potentially pose systemic risks to the financial sector as a whole. Therefore, banks cannot be positioned solely as implementers of financing policies, but must also be recognized as entities whose interests must be protected. This situation is also in line with the mandate of Article 50 of the P2SK Law, which states:

Article 25O:

- (1) In the event of bad debts, there needs to be legal certainty in the handling of bad debts at banks and/or non-bank financial institutions, including state-owned enterprises, for Micro, Small and Medium Enterprises.
- (2) Bad debts at banks and/or non-bank financial institutions that are state-owned enterprises to Micro, Small and Medium Enterprises as referred to in paragraph (1) may be written off and

¹¹ Akbar, F. M. A., & Rosidta, A. *Development of Sharia Financing Model for MSMEs*. Ar-Rasyiid: Journal of Islamic Studies, 2(1), 2023, hlm 19.

¹² Putra, A. R. & Firmansyah, D. *Financial Inclusion and Access to Financing for MSMEs: Challenges and Policies in Indonesia*, Journal of Economics and Development Studies, 10(2), 2022, pp. 145–162.

written off to support the smooth provision of financing access to Micro, Small and Medium Enterprises.

Furthermore, credit defaults by MSMEs are often perceived as a failure of banks to perform their intermediary function. However, in many cases, these defaults are influenced by external factors beyond the banks' control, such as market fluctuations, economic crises, or policy changes. This situation demonstrates that credit risk in MSME financing is complex and cannot be fully transferred to banks. Therefore, a policy framework is needed that not only is oriented towards expanding access to capital, but also provides space for banks to implement risk mitigation in proportion.¹³

Therefore, the regulation of MSME financing must bridge the state's interest in encouraging financial inclusion with the needs of the community. bankto maintain financial health. An approach that overemphasizes financing expansion without considering the bank's risk management capacity is potentially counterproductive. An ideal MSME financing policy should provide clear criteria, risk-mitigation mechanisms, and supporting policies, so that banks are not the most disadvantaged when MSME empowerment goals are not achieved.

d. Position of Article 249 in the P2SK Law system

In relation to the government's policy in balancing interests between ease of access to financing and the obligation to maintain the health of financial institutions, this is basically contained in Article 249 of the P2SK Law, which reads:

Article 249:

- (1) To increase national economic resilience by empowering Micro, Small and Medium Enterprises, it is necessary to facilitate access to financing for them.
- (2) Ease of access to financing for Micro, Small and Medium Enterprises, as referred to in paragraph (1) must be carried out by all Banks and/or non-Bank financial institutions by applying the principles of prudence and risk management.
- (3) Further provisions regarding ease of access for Micro, Small and Medium Enterprises, as referred to in paragraph (2), are to be regulated by the financial sector authorities in accordance with their respective duties and authorities, after consultation with the DPR.

Article 249 of the P2SK Law normatively indicates a paradigm shift in MSME financing policy from a mere microeconomic approach to an instrument of national economic resilience. Paragraph (1) explicitly positions MSME empowerment as an integral part of the strategy to maintain national economic stability and resilience. With this construction, MSME financing is no longer understood as a sectoral policy, but rather as a macro policy with systemic implications for the national economy. This simultaneously strengthens MSMEs' position as strategic subjects in national financial policy.

Article 249, paragraph (2) contains an imperative norm that requires all banks and/or non-bank financial institutions (LKNB) to provide easy access to financing for MSMEs. However, this obligation is not absolute, as it is expressly limited by the requirement to apply the principles of prudence and risk management. This formulation reflects the legislator's efforts to balance two potentially conflicting interests: expanding access to financing for MSMEs on the one hand and maintaining the health of financial institutions on the other. Thus, Article 249 cannot be interpreted as legitimising the relaxation of credit standards, but rather as a financing mandate that remains within the framework of the prudential banking principle.

¹³ Soedarmono, W. *Banking Risk Management in Indonesia*. Jakarta: Publishing Institute of the Faculty of Economics, University of Indonesia, 2019.

Furthermore, the use of the phrase "must be carried out" indicates the binding and coercive nature of the norm, so banks and NBFIs lack discretion to ignore MSME financing. However, this provision also leaves considerable room for interpretation, as Article 249 does not explicitly specify concrete forms of applying prudential principles and risk management in MSME financing. This normative gap could lead to differences in implementation standards across banks, ultimately creating inconsistent practices and legal uncertainty.

Article (3) then delegates further technical arrangements to the financial sector authorities in accordance with their duties and authorities, after consultation with the DPR. Theoretically, this mechanism reflects the principle of delegated legislation, in which lawmakers provide space for technical authorities to formulate regulations that are more operational and adaptive to the financial sector's dynamics. However, from a normative legal perspective, this delegation also indicates that Article 249 functions as an umbrella provision that does not fully provide certainty regarding the parameters of access to financing for MSMEs.

Thus, Article 249 of the P2SK Law can be understood as a norm containing a policy antinomy, namely between the mandate to expand MSME financing and the obligation to mitigate financial institutions' risks. The absence of criteria for eligible MSMEs to receive financing and of concrete indicators for the application of prudential principles and risk management creates room for interpretation and implementation differences. This situation is relevant for further study, particularly in the context of the need to formulate clearer criteria and standards for MSME financing so that the goal of MSME empowerment can be achieved without sacrificing financial system stability.

e. The country's approach shifts from a facilitative to a risk-management-based one.

The formulation of Article 249 of the P2SK Law also marked a shift in the state's MSME financing policy, from a predominantly facilitative and affirmative stance to a more risk-management-based approach. In the previous phase, MSME financing policy tended to emphasize expanding access to capital as a form of state support for the people's economy, often neglecting comprehensive risk aspects. However, under Article 249, the state began to place MSME financing within the framework of financial system stability, requiring all banks and non-bank financial institutions to implement prudential principles and risk management. This shift indicates that the state no longer views MSME financing solely as a socio-economic instrument, but rather as a financial activity that carries the potential for systemic risk if not carefully managed. However, this change in approach has not been accompanied by the formulation of sufficiently operational norms.¹⁴

Article 249 imposes only normative obligations without providing clear indicators, criteria, or parameters for applying prudential principles and risk management to the characteristics of MSMEs. Consequently, a legal vacuum exists at the implementation level, as banks and NBFIs are left to interpret MSME financing risk standards in accordance with their respective internal policies. This vacuum could lead to inconsistent practices, differential treatment of MSME debtors, and legal uncertainty, ultimately hindering the primary objective of Article 249: increasing access

¹⁴ Azzahra, Y., & Wahidah, W. *Evaluation of the Feasibility of Islamic Bank Financing for MSMEs*. Central Publisher Journal, 3(3), 2025, p. 33.

to sustainable and sound financing for MSMEs without compromising the stability of the national financial system.

2. Legis Ratio of Prudential Principles and Risk Management in MSME Financing

a. The meaning of ratio legis in the formation of financing norms

The significance of the ratio legis in the formation of financing norms cannot be separated from the fundamental purpose of law as an instrument for regulating economic life. The ratio legis is the philosophical, sociological, and juridical foundation for the emergence of legal norms, including those governing financing. In the context of financing, the ratio legis serves as a normative guideline explaining why the state feels the need to intervene in the regulation of financing relationships between financial institutions and business actors. Thus, financing norms are not merely technical regulations but rather the embodiment of legal policies aimed at achieving specific goals within the national economic system.

Substantively, the legal ratio for establishing financing norms is closely related to the state's efforts to balance economic growth and financial system stability. Financing is necessary to stimulate business activity and economic productivity, but it also carries risks that can have systemic impacts if not adequately regulated. Therefore, the legal ratio in financing norms embodies the intention of lawmakers to ensure that funds are distributed responsibly, in a measurable manner, and in line with the principles of prudence and adequate risk management.¹⁵

From a sociological perspective, the ratio legis financing norm also reflects the state's response to society's real needs, particularly businesses that require access to capital to maintain and develop their economic activities. Financing norms are established to bridge the gap between the limited capital held by businesses and financial institutions' obligations to maintain the health and sustainability of their businesses. Thus, the ratio legis is oriented not only toward the interests of financial institutions but also toward the economic empowerment of society at large, including the Micro, Small, and Medium Enterprises (MSMEs) sector.¹⁶

From a legal standpoint, the enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) was motivated by the urgent need to restructure the national financial sector legal framework to ensure it remains relevant, adaptive, and able to respond to the dynamics of the modern economy. Prior to the enactment of the P2SK Law, financial sector regulations in Indonesia were scattered across various sectoral laws enacted at different times, under varying economic conditions, and amid technological developments. This fragmentation of regulations led to disharmony in norms, overlapping authorities, and regulatory gaps that potentially hampered the effectiveness of financial system supervision and stability.

From a historical-sociological perspective, the P2SK Law was enacted in response to fundamental changes in the financial ecosystem, particularly due to digitalization, innovation in financial products and services, and the increasing complexity of systemic risk. Many previously applicable financial regulations were no

¹⁵ Armaz, E., et al. *Risk Management Analysis of MSME Financing Contracts*. Scientific Journal of Management, Economics and Accounting, 3(1), 2023, p. 91.

¹⁶ Setiana, I. M. R., et al. *The Impact of Capital Access on MSME Productivity*. Balance: Journal of Accounting and Management, 4(1), 2025, p. 50.

longer able to accommodate these developments, creating a regulatory lag between law and practice. This situation necessitated a new legal framework that was not merely reactive but also proactive in anticipating risks and opportunities in the financial sector.

Furthermore, the P2SK Law's legislative rationale closely aligns with the state's efforts to strengthen the resilience and stability of the national financial system. The experience of the global financial crisis and various economic pressures, both global and domestic, demonstrates that an unregulated financial sector can have widespread systemic impacts. Therefore, the P2SK Law was drafted to strengthen the regulatory, supervisory, and coordination functions between authorities in the financial sector, while ensuring that financial sector growth is balanced with prudential principles and risk management.

From an economic policy perspective, the P2SK Law also reflects the state's desire to make the financial sector an instrument of inclusive national development. This regulation is aimed not only at maintaining macroeconomic stability but also at expanding access to financing for productive sectors, particularly Micro, Small, and Medium Enterprises (MSMEs). In this context, the P2SK Law's legal ratio reflects an effort to balance two primary interests: expanding financial access and maintaining the health of financial institutions as fund distributors.¹⁷ Thus, if we consider it as an *asbābul nuzūl* (a divine oracle), the P2SK Law was "passed down" due to objective conditions such as regulatory backwardness, regulatory fragmentation, rapid development of financial technology, and the increasing need for stability and inclusiveness in the financial sector. The P2SK Law is a normative response to these realities, aiming to build a more integrated, adaptive, and sustainable financial legal system.

In the context of financial sector regulatory reform, as reflected in Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, the *ratio legis* of financing norms affirms the state's policy orientation, which not only encourages expanded access to financing but also places prudential principles and risk management as its primary foundation. By understanding this *ratio legis*, financing norms can be seen as an instrument for balancing the interests of economic empowerment with the need to maintain financial system stability.

b. MSMEs as productive but risky debtors

Micro, Small, and Medium Enterprises (MSMEs) are essentially positioned as productive debtors in the banking financing system. This productive nature is reflected in the use of financing funds, which are directly allocated to business activities such as raw material procurement, development of production capacity, market expansion, and improvement of human resources. Unlike consumer financing, which is oriented toward meeting personal needs, MSME financing primarily aims to create additional economic value and stimulate real-sector growth.

As productive debtors, MSMEs play a strategic role in the national economy. This sector employs a large workforce, contributes to income equality, and is a key pillar of local economic activity. Therefore, the government and financial institutions have a significant interest in ensuring MSMEs have adequate access to financing. MSME financing not only impacts the sustainability of individual businesses but also

¹⁷ Kharisma, I. E., & Vanni, K. M. *Sharia Banking Strategies in Supporting MSME Financing*. Journal of Business Economics, Management and Accounting, 4(1), 2025, p. 26.

has a multiplicative effect on overall economic stability and growth.¹⁸ Despite their productive nature, MSMEs also face a relatively high level of risk as bank debtors. This risk stems primarily from the limitations of their business structure, including capital constraints, governance issues, and managerial capacity.

Many MSMEs are still run informally, lack proper financial records, and are dependent on fluctuating market conditions. This makes it difficult for banks to assess a business's feasibility and the borrower's capacity to repay loans. Furthermore, MSMEs generally rely heavily on short-term cash flow. Income instability, changes in raw material prices, and external disruptions, such as economic crises or natural disasters, can directly affect MSMEs' ability to meet financing obligations.

Unlike large corporate borrowers with liquidity reserves and diversified businesses, MSMEs tend to be more vulnerable to economic shocks, thereby increasing the risk of default. From a banking perspective, MSMEs' riskiness as borrowers is reflected in the high Non-Performing Loan (NPL) ratio in this sector compared to other credit segments. The relatively high NPL rate for MSMEs indicates that despite the productive nature of MSME financing, banks still face the potential for significant losses if risks are not adequately managed. This situation poses a dilemma for banks: between fulfilling their intermediary role in supporting MSMEs and their obligation to maintain financial health and stability. Furthermore, the risks of MSME financing are not only individual but can also become systemic if they occur on a massive scale. If non-performing loans in the MSME sector increase significantly, this could impact bank financial performance, undermine public confidence, and potentially disrupt the financial system's stability.

Therefore, although MSMEs are productive debtors that need to be encouraged, the financing approach applied cannot ignore the principles of prudence and risk management. In this context, a regulatory framework is needed that balances promoting access to financing with the need to mitigate credit risk. Legal norms governing MSME financing must allow banks to implement proportionate risk management without hindering the goal of MSME empowerment.

MSME financing cannot be treated the same as financing for large corporations, but it also cannot be completely separated from the prudential standards that underpin the banking system. Therefore, MSMEs can be understood as debtors with two faces: first, as productive economic drivers that need support, and second, as a debtor segment that carries inherent risks that cannot be ignored. Understanding this dual nature is crucial for formulating financing policies at both the regulatory and practical levels of banking, so that the goals of economic development and financial system stability can proceed in tandem.

In this regard, the Indonesian Government, through Finance Minister Purbaya Yudhi Sadewa, has taken a strategic step by allocating Rp 200 trillion in government funds to five state-owned banks (Himbara) as part of an effort to strengthen the banking system's liquidity and encourage broader credit distribution to productive sectors. Funds that would normally be held as budget balances at Bank Indonesia have been transferred to Bank Mandiri, Bank Rakyat Indonesia (BRI), Bank Negara Indonesia (BNI), Bank Tabungan Negara (BTN), and Bank Syariah Indonesia (BSI), with the hope that the availability of higher liquidity will encourage credit growth to

¹⁸ Kou, G., et al. *FinTech and SMEs Financing: A Systematic Literature Review*. Digital Business, 3(2), 2023, hlm 60.

households and businesses, particularly in the real sector such as MSMEs, industry, and other productive businesses.¹⁹

This policy is designed to prevent banks from using funds to purchase government securities, and instead to actively support credit expansion, thereby enhancing the banking sector's role in spurring national economic growth. The placement of these funds serves not merely as a liquidity injection but also as a fiscal policy instrument to accelerate credit flows, which have been deemed suboptimal. By stipulating that these funds cannot be used to invest in financial instruments such as securities, the government emphasizes that its primary objective is to channel financing to productive sectors, thereby directly impacting real economic activity. Finance Minister Purbaya even implemented a fee mechanism for banks that do not disburse credit promptly, creating a strong incentive for banks to immediately channel funds to real economic sectors in need of capital.

The impact of this policy is also evident in improvements to national liquidity indicators. The placement of IDR 200 trillion in funds contributed to the growth of the money base (M0) and the expansion of the money supply (M2), indicating an increased ability of banks to support broader economic activity. Furthermore, this policy represents a form of coordination between fiscal and monetary policies to maintain the momentum of economic recovery and boost growth. However, some observers note that the credit distribution response has not been fully optimal, prompting the government to continue reviewing the implementation and the possibility of expanding financial support to other banking sectors.

At a macro level, this funding disbursement policy is intended to lower banks' cost of funds and encourage them to be more aggressive in channeling credit to MSMEs and productive businesses. Expanded distribution of productive credit is expected to create a multiplier effect on the economy, particularly by increasing production capacity, employment, and aggregate demand. Thus, this policy not only strengthens banks' role in their intermediate function but also advances the goal of more inclusive and sustainable economic development.

c. The rationality of combining financing access and risk mitigation

Combining policies to expand access to financing and mitigate risk is a rational and inseparable choice in designing MSME financing, particularly within the context of a modern banking system. On the one hand, the government has an interest in expanding access to financing for MSMEs, which serve as the driving force of the people's economy and the national productive sector. However, banks, as financial intermediaries, have a fundamental obligation to maintain financial health, system stability, and business sustainability through sound risk management.²⁰

The rationale for combining these two approaches lies in recognising that expanding financing without adequate risk mitigation can create systemic vulnerabilities, such as increased non-performing loans (NPLs), ultimately harming banks and threatening the stability of the financial sector as a whole. Therefore, access to financing cannot be interpreted as an absolute relaxation of standards but must be

¹⁹ Debrinata Rizky & Erlangga Djumena. *Having already disbursed Rp 200 trillion, Purbaya added Rp 76 trillion for Himbara*. Kompas.com, 19 November 2025. <https://money.kompas.com/read/2025/11/19/070700126/sudah-gelontorkan-rp-200-t-purbaya-tambah-rp-76-triliun-untuk-himbara>

²⁰Kharisma, I. E., & Vanni, K. M. *Risk-Based MSME Financing Strategy*. Journal of Business Economics, Management and Accounting, 4(1), 2025, p. 30.

accompanied by risk-mitigation mechanisms that are adaptive and proportionate to the characteristics of MSMEs as productive yet risky debtors.

Within this framework, risk mitigation is not intended as a tool to restrict access to financing, but rather as a safeguard to ensure that credit expansion remains within prudent principles. This rationale positions risk management as a bridge between the interests of economic development and banking stability. Banks are encouraged to continue disbursing credit to MSMEs, but with a tailored risk-management approach that includes cash-flow-based business feasibility assessments, guarantee schemes, cluster-based financing, and government policy support through interest subsidies or fund placements.

Thus, integrating financing access and risk mitigation reflects a normative balance between the social function of banking and its prudential function, where MSME financing is not only directed at encouraging short-term economic growth but also at maintaining the sustainability of the financial system in the long term.

3. Legislative Ratio of Regulation of Criteria for MSMEs in Article 249

a. Criteria for MSMEs as a Manifestation of the Principle of Prudence in Access to Financing

The principles of prudence and risk management, as mandated in Article 249 of the P2SK Law, are key to achieving the goal of balancing the interests of MSMEs and banks. In the context of MSME financing, the principle of prudence cannot be understood as an abstract value or merely a normative obligation for banks. Instead, it must be embodied in concrete, operationalized instruments, one of which is through the formulation of criteria for MSMEs eligible for financing.

The characteristics of MSMEs, which generally have limited assets, simple financial records, and fluctuating levels of business resilience, require a different prudent approach than corporate borrowers. Therefore, the application of prudent principles in MSME financing is irrelevant if it relies solely on general banking standards, such as the generic 5Cs. Instead, prudence must be manifested through criteria specifically designed to assess MSME eligibility based on business capacity, sustainability, and the risk profile inherent in the small-scale productive sector.²¹

Upon closer examination, there are already provisions regarding MSME criteria as stipulated in Government Regulation Number 7 of 2021. However, these criteria cannot serve as a reference for banks in granting credit to MSMEs, as the criteria in Government Regulation Number 7 of 2021 are based solely on the MSME's capital and annual revenue. These criteria only classify MSME groups. In the context of MSME credit, this does not guarantee that MSMEs with greater capital and annual revenue are less risky than those with lower capital and annual revenue. This is because many factors and assessment instruments are needed to assess the level of credit risk for MSMEs, not just based on capital and annual revenue.

With clear and measurable criteria, banks not only obtain objective guidelines in assessing MSME financing applications but are also protected from the risk of non-performing loans that could potentially harm the health of financial institutions. Furthermore, these criteria provide legal certainty for MSMEs regarding the requirements for obtaining financing, thereby avoiding subjective and inconsistent assessment practices. Thus, the formulation of MSME criteria for accessing financing

²¹ Azzahra, Y., & Wahidah, W. *Evaluation of the Feasibility of Islamic Bank Financing for MSMEs*. Central Publisher Journal, 3(3), 2025, p. 33.

is a concrete manifestation of the prudential principle, as it functions as a preventive mechanism to mitigate risks from the initial stage of fund disbursement, while ensuring that the policy of expanding MSME financing is implemented sustainably without compromising financial system stability.

b. Legal consequences of general norms (legal vacuum)

Legal norms formulated in general and abstract terms are essentially intended to provide flexibility in their application. However, when these norms are not accompanied by adequate operational regulations, this situation creates a legal vacuum at the implementation level. A legal vacuum does not necessarily mean a complete absence of norms; it can also involve a lack of clarity regarding the standards, criteria, or mechanisms for implementing a legal obligation.

In such a context, general norms may fail to achieve their stated objectives because they provide no concrete guidance to legal entities on how to fulfil their obligations or claim their rights. One of the primary consequences of a legal vacuum is a decline in legal certainty. When a norm lacks clear boundaries or parameters, those implementing it, whether state institutions or business actors, will interpret the provisions based on their own internal policies or interests. Consequently, the application of the norm becomes inconsistent and prone to disparate treatment of legal entities in similar circumstances.²²

This situation contradicts the principle of equality before the law and can undermine public trust in the legal system. Furthermore, overly general norms also open up room for excessive discretion. In the financial sector, discretion not constrained by clear legal standards can increase the risk of abuse of authority, either through overly restrictive or overly lax practices.

On the one hand, financial institutions may choose to tighten financing disbursement to protect their own interests, thus failing to achieve the goal of expanding access to financing. On the other hand, relaxing standards without clear guidance can actually increase the risk of non-performing loans and threaten the stability of the financial system. Furthermore, a legal vacuum also impacts weak legal accountability. When norms lack clear benchmarks, assessing compliance or violations becomes difficult. This situation complicates supervisory authorities' evaluation and enforcement efforts, as there are no normative standards to base assessments on. As a result, supervisory mechanisms lose their effectiveness, and the law ceases to function as a behavioral control instrument.

In the long term, the existence of general norms without further regulation has the potential to lead to legal ineffectiveness. Norms that cannot be operationalized tend to be merely symbolic and lack real impact in practice. Therefore, legal reform through the formulation of derivative norms or technical standards is an urgent need to fill this legal vacuum. Without more detailed regulations, the primary objective of establishing norms, including in the context of sustainable and prudent MSME financing, risks not being optimally achieved.

c. The tension between the goals of easy financing and legal certainty

The provisions regarding easy access to financing for MSMEs, as stipulated in Article 249 of the P2SK Law, essentially reflect a normative tension between the goal of expanding economic benefits and the demand for legal certainty. On the one hand,

²² Goodman, N. T. *Principles of Prudence and Legal Certainty in Bank Credit*. Widya Yuridika: Journal of Law, 3(2), 2020, p. 92.

the state seeks to promote the broadest possible access to financing for MSMEs as the driving force of the national economy, with the hope of achieving collective benefits in the form of increased productivity, job creation, and economic growth.²³

This approach aligns with utilitarian theory, which evaluates a policy based on its ability to generate the greatest benefit for the greatest number of people. However, on the other hand, facilitating financing without clear legal standards has the potential to compromise legal certainty, both for financial institutions as providers of funds and for MSMEs as recipients of financing. From a utilitarian perspective, the short-term benefit of increased credit distribution can turn into a collective loss if legal uncertainty triggers an increased risk of non-performing loans, weakens the stability of the financial system, and ultimately harms society at large. Therefore, the tension between facilitating financing and legal certainty cannot be resolved by prioritizing one objective to the other; instead, it must be managed through the formulation of norms that balance both.

Legal certainty is instrumental in ensuring that easy financing truly produces sustainable utilitarian benefits, not merely short-term gains that lead to systemic risk. Therefore, within a utilitarian framework, establishing clear and measurable MSME financing norms is not an obstacle to expanding access to financing, but rather a prerequisite for such policies to truly achieve the goal of maximizing benefits for society and the national economy.

CONCLUSION

Based on the results of research on the implementation of prudential principles and risk management in providing financing to MSMEs under Article 249 of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, several conclusions can be drawn as follows. Normatively, Article 249 of Law Number 4 of 2023 contains a legislative ratio to expand access to financing for MSMEs as part of a strategy to strengthen national economic resilience. However, this provision does not provide adequate regulations regarding the criteria for MSMEs eligible for financing based on prudential principles and risk management. This lack of clarity creates a normative vacuum that has the potential to create legal uncertainty for banks and financial institutions in disbursing financing. On the one hand, banks are required to expand access to financing, but on the other hand, they must maintain financial system stability through the application of prudential principles. This situation creates a regulatory dilemma between the goals of financial inclusion and credit risk mitigation.

The implementation of prudential principles and risk management in MSME financing practices is currently sector-specific and not nationally standardized. Each bank and financial institution sets different criteria for determining the eligibility of MSME borrowers, including business age, financial capacity, credit reputation, and administrative requirements. These differences in policy indicate that the implementation of prudential principles still relies on the internal policies of each institution, rather than a uniform regulatory framework. Consequently, there is disparity in access to financing for MSMEs and variations in credit risk levels, reflected in the

²³ Hasan, I., et al. *Financial Development and Legal Certainty in SME Finance*. International Review of Economics & Finance, 88, 2023, hlm 225.

high Non-Performing Loan (NPL) ratio in the MSME sector. This condition indicates that the implementation of risk management has not been fully effective in balancing the goals of MSME empowerment with protecting banking stability. This study reconstructs a model of prudential principles-based MSME financing criteria that is more proportional and contextual to the characteristics of MSMEs. The model emphasizes a comprehensive assessment of business feasibility, not only based on collateral, but also on business sustainability, cash flow generation capacity, debtor integrity, and business track record. This approach aligns with trust theory and modern risk management principles, which prioritize cash flow as the primary source of loan repayment. With a clear and measurable criteria model, it is hoped that MSME financing can be distributed more precisely, inclusively, and sustainably, without compromising the stability of the national financial system.

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