



SIMBUR CAHAYA

Fakultas Hukum Universitas Sriwijaya

Alamat Redaksi: Fakultas Hukum Universitas Sriwijaya, Jalan Srijaya Negara, Bukit Besar, Palembang, Sumatera Selatan 30139, Indonesia.

Telepon: +62711-580063 Fax: +62711-581179

E-mail: simburcahaya@fh.unsri.ac.id

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The Problems of Business Competition Supervisory Commission's Authority of Core-Plasma Partnership Agreements

Elisatris Gultom^a, Ananda Syifa Kamillah^b

^a Doctor of Law, Lecturer of the Faculty of Law, Department of Economic Law, Universitas Padjadjaran, Jatinangor, Kabupaten Sumedang, Jawa Barat 45363, Indonesia, Email: elisatris68@gmail.com

^b Bachelor of Law, Universitas Padjadjaran, Jatinangor, Kabupaten Sumedang, Jawa Barat 45363, Indonesia, Email: anandasyifa67@gmail.com

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Abstrak

Salah satu upaya pemerintah untuk meningkatkan kemampuan Usaha Mikro, Kecil dan Menengah (UMKM) dalam menjalankan kegiatan usaha adalah menggulirkan pola kemitraan antara Usaha Besar dan UMKM. Dalam praktik, masih dijumpai pelanggaran dalam pelaksanaan kemitraan antara Usaha Besar dan UMKM sehingga dibutuhkan adanya pengawasan yang baik dari instansi terkait. Tulisan ini mengkaji dasar hukum kedudukan dan kewenangan Komisi Pengawas Persaingan Usaha (KPPU) dalam mengawasi pelaksanaan kemitraan antara Usaha Besar dan UMKM serta bentuk pengawasan yang dilakukan KPPU terhadap pelaksanaan kemitraan inti plasma pelaku usaha besar seringkali melakukan tindakan eksploitatif terhadap UMKM, sehingga pola kemitraan seringkali menimbulkan sejumlah masalah yang menyengsarakan petani plasma karena kedudukan antara UMKM dan Usaha Besar dalam melaksanakan kegiatan kemitraan tidak memiliki kedudukan hukum yang setara. Sebagaimana dalam Putusan KPPU Nomor 03/KPPU-K/2021, PT STP selaku inti melakukan tindakan eksploitatif terhadap Koperasi THB selaku plasma dalam pelaksanaan kemitraan perkebunan kelapa sawit, dengan cara belum memenuhi kewajiban pemenuhan 20% pemberian lahan yang diusahakan kepada Plasma. Jenis penelitian ini adalah yuridis normatif dengan mempergunakan sumber data sekunder sebagai dasar dalam melakukan pengkajian. Penelitian ini menyimpulkan beberapa hasil temuan. Pertama, kedudukan KPPU yaitu berwenang dalam mengawasi pelaksanaan kemitraan antara Usaha Besar dan UMKM yakni dengan mengawasi perjanjian antar pelaku usaha yang dapat mengakibatkan terjadinya praktek monopoli dan atau persaingan usaha tidak sehat, mengambil

tindakan sesuai wewenang KPPU, dan memberikan saran dan pertimbangan terhadap kebijakan Pemerintah yang berkaitan dengan praktek monopoli dan atau persaingan usaha tidak sehat. Kewenangan KPPU dalam penegakan hukum dipertegas dengan adanya pemeriksaan dugaan pelanggaran kemitraan inti plasma perkebunan sawit antara PT STP dan Koperasi THB dan pemberian sanksi kepada PT STP untuk memenuhi kewajiban 20% lahan plasma dan menyempurnakan mekanisme transparansi terkait laporan keuangan. Kedua, bentuk pengawasan atas pelaksanaan kemitraan yang dilakukan KPPU meliputi pemberian konsultasi, evaluasi, saran dan pertimbangan terkait kebijakan pemerintah, harmonisasi kebijakan dan penegakan hukum.

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Abstract

One of the government's efforts to improve the ability of Micro, Small, and Medium Enterprises ("MSMEs") to conduct business activities is to execute a partnership system between Large Enterprises and MSMEs. In practice, violations are still found in the implementation of partnerships between Large Enterprises and MSMEs, the appropriate supervision is required from the relevant institutions. This paper examined the legal basis of the position and authority of Business Competition Supervisory Commission ("KPPU") in supervising the implementation of partnerships between Large Enterprises and MSMEs as well as the form of supervision conducted by KPPU on the implementation of inti-plasma's partnerships, Large enterprises frequently conduct exploitative actions against MSMEs. Thus, the partnership pattern often develops issues that cause plasma farmers to be miserable because the position between MSMEs and Large Businesses in carrying out partnership activities needs an equal legal position. As in KPPU Decision Number 03/KPPU-K/2021, PT STP, as the core, carried out exploitative actions against the THB Cooperative as Plasma in the implementation of the oil palm plantation partnership by not fulfilling the obligation to fulfil the 20% grant of cultivated land to Plasma. The research used a normative juridical by using secondary data sources. This study concludes with several results. Firstly, the position of the KPPU is that it has the authority to supervise the implementation of partnerships between Large Enterprises and MSMEs, namely by supervising agreements between business actors, which can result in monopolistic practices and unfair business competition, taking action by the authority of the KPPU, and providing advice and consideration of existing Government policies related to monopolistic practices and unfair business competition. The KPPU's law enforcement authority was reinforced by examining alleged violations of the core plasma palm oil plantation partnership between PT STP and the THB Cooperative. It imposed sanctions on PT STP to fulfil its 20% plasma land obligation and improved transparency mechanisms regarding financial reports. Secondly, the form of supervision over implementing partnerships

carried out by KPPU includes consultations, evaluations, suggestions and considerations related to government policy, policy harmonization and law enforcement.

INTRODUCTION

Competition law has many benefits both micro and macro, for this reason, business competition is expected to occur at all levels, including Micro, Small and Medium Enterprises (“MSMEs”), as illustrated in the purpose of establishing Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (“**Law Number 5 of 1999**”), it is: “to provide a conducive business climate through stipulation of fair business competition, to ensure the equal business opportunities for MSME.”¹

As one of the national economic actors, MSMEs become a prominent position in national economic growth, considering that MSMEs have a strategic position, role, and potential to establish a more balanced, developed, and fair national economic structure.² Evidently, at the outbreak of Covid-19 pandemic, the national economy's growth rate experienced a descent.³ Even though, MSMEs are still the central component of the national economy because they are the largest contributor to Gross Domestic Product,⁴ and contribute to reducing the national unemployment rate while increasing social welfare. This is because the many established MSMEs could employ millions of workers who were originally unemployed. Hence, people's welfare would increase and become more secure.⁵

Shih and Montez also recognized the important role of MSMEs for the state by citing the results of publications from the OECD in 2004, even though in the era of globalization, MSMEs are required to improve their capabilities, in their opinion:⁶

“MSMEs place a highly incredible role in every developing country. Opening countries’ frontiers and globalization have brought a complicated paradigm to

¹ Article 3 paragraph b Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

² Elya Kurniawati and Adi Setiawan, ‘The Role of Indonesian Micro, Small, and Medium Enterprises Owners in Choosing e-Commerce Strategy in the Global Market’ (2019) 320 1st International Conference on Social Knowledge Sciences and Education (ICSKSE 2018). Atlantis Press.[192].

³ Feni Freycinetia Fitriani, ‘Bank Dunia Ramal PDB Indonesia 2020 “Nol Persen”’ *Bisnis.com* (2020) <www.ekonomi.bisnis.com>. accessed on November, 12th 2022.

⁴ Andi Ahmad Rivai, ‘Wadah UMKM Kemennkeu, Aplikasi Model Satu Paket Kemudahan Sistem Untuk Kesejahteraan Bangsa’ *Kemenkeu RI* (2022) <djkn.kemenkeu.go.id>. accessed on 10 July 2022.

⁵ Ai Siti Farida, *Sistem Ekonomi Indonesia* (Pustaka Setia 2011).[42].

⁶ Wurong Shih and Julián Nevárez, ‘The Individualization of Erp in Smes for Sustainable Development’ (2022) 5 International Journal of Small and Medium Enterprises 1.[2].

MSMEs and trade. It is hard for companies to strive for cheap imports and variance in the market prices and foreign competitors. Hence, the best way to encourage and promote fundamental changes in MSMEs is to provide adequate training and tools for fair competition in this globalized era and its challenges.”

During its genuinely important role in supporting the national economy, MSMEs business activities still encounter various obstacles, including limited professional human resources, lack of capital, and limited marketing scope. Endeavor to increase the ability of MSMEs to have high competitiveness as well as being able to take part in a global scope are not only a national but also an international issue as this issue has been the subject of discussion in international forums at the Entrepreneurship Summit which took place on 26-27 April 2010 in Washington DC, United States. Sandiaga Uno, Indonesia's representative at the forum, stated: ⁷

"By organizing the MSMEs empowerment program as a global movement, the power of MSMEs empowerment will be even greater. This movement aims to encourage the emergence of large entrepreneurs who originally started small and medium businesses."

Building MSMEs as economic actors that are globally competitive only by relying on the existing capabilities of the MSMEs themselves is difficult to realize, especially amid the various obstacles they encounter. Therefore, the appropriate way to increase the ability of MSMEs is to conduct business cooperatively through partnership agreements with large Enterprises. Through a partnership pattern between MSMEs and Large Enterprises, every obstacle that MSMEs encounter would be resolved because the partnership provided benefits of; skills transferred in processing and production, human resources, capital, marketing, and technology.

The concern of MSMEs are depended on Large Enterprises to be able to develop their business is appropriate because Large Enterprises are valued as having several advantages, such as large assets, broad market penetration capabilities, and the ability to devote the principles of efficiency and effectiveness in managing companies and having genuine access to capital. ⁸ However, behind the concern that Large Enterprises are capable of upgrading the MSMEs, it must be emphasized there are still challenges that must go through when executing partnerships. As stated by Rothkegel, et al. by quoting the opinion of Borys and Jemison: ⁹

⁷ Edj, “‘Angkat UKM Di Obama Entrepreneurship’” (*Kompas.com*, 2010) <www.nasional.kompas.com>, accessed on March 3rd, 2022.

⁸ Dandan Irawan, ‘Pengembangan Kemitraan Koperasi, Usaha Mikro Dan Kecil (KUMK) Dengan Usaha Menengah/Besar Untuk Komoditi Unggulan Lokal’ (2019) 9 *Coopetition : Jurnal Ilmiah Manajemen* 53.[54].

⁹ Senad Rothkegel, [*et.,al.*], ‘Strategic Alliances between SMEs and Large Firms: An Exploration of the Dynamic Process’ (2006) 17 *Management Revu.*[52].

“Partners often possess different targets not only for themselves but also for the strategic alliance. Further, partners require to work with potentially other operating procedures, cultures, and governance structures. Such challenges are possibly more complicated in strategic partnerships between MSMEs and Large Enterprises due to the differences in scope and power asymmetries.”

The implementation of partnerships between MSMEs and Large Enterprises does not only benefit MSMEs as parties whose capabilities are upgraded but also Large Enterprises who become MSME partners because, through a partnership pattern, Large Enterprises also receive various incentives and conveniences in the form of: funding in a fast, accurate, inexpensive, and non-discriminatory manner; permits and tariff reduction for facilities and infrastructure.¹⁰

In addition to providing incentives and convenience, from a social perspective, the partnership pattern could minimize the potential for conflict between Large Enterprises and the community (social risk), which usually perceives that Large Enterprises do not concern to the welfare of the surrounding community. In practice, building partnerships purposefully to increase the capabilities of MSMEs accompanied by the recognition of an equal position between MSMEs and Large Enterprises is not lenient to realize due to the wide gap between MSMEs and Large Enterprises, especially from the perspective of available resources of each party. This condition further positions MSMEs as if they are the party that requires a lot of assistance from Large Enterprises so that psychologically MSMEs are "under" Large Enterprises.

Inequality position between MSMEs and Large Enterprises is often a triggering factor for the emergence of exploitative behavior from Large Enterprises towards MSMEs, which results in MSMEs not experiencing an increase in their business activities even though the implementation of the partnership has been running for a long time. In fact, in certain circumstances, the conditions are "worse" than before the implementation of the partnership agreement, such as MSMEs having to carry a lot of debt to other parties as a result of implementing the partnership agreement or assets belonging to MSMEs are reduced/disappeared because they become collateral for MSME debts to third parties.

The exploitative behaviour of Large Enterprises toward MSMEs could be analyzed to the contents of the partnership agreement signed by both parties, in which the obligation of MSMEs obligations seems to be greater than Large Enterprises, whereas the rights attached to MSMEs are

¹⁰ Article 102 paragraph (2) Government Regulation Number 7 of 2021 on the Ease, Protection, and Empowerment of Cooperatives and MSMEs.

smaller than the rights owned by Large Enterprises. This inequality naturally occurs considering that Large Enterprises prepare the partnership agreement between Large Enterprises and MSMEs in a standard contract. As aforementioned, MSMEs have to agree or accept the agreement's contents. As usually perceived, a standard contract possesses many disadvantages because it is just organized by one of the parties and leaves slight space or no options for another party to negotiate the agreement's clause.¹¹

The system of the partnership is diverse, though what is generally implemented in the management of oil palm plantations is the core-plasma system. Core-plasma is a partnership system where larger businesses are the core and smaller businesses become the plasma. As stated in the KPPU Decision Number 03/KPPU-K/2021, KPPU decided that PT Suryabumi Tunggal Perkasa ("**PT STP**") has legally and convincingly violated Article 35 paragraph (1) of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises ("**Law Number 20 of 2008**"), because PT STP (as the core) took action to control the partner Koperasi THB (as the plasma) in implementing oil palm plantation partnerships, by not fulfilling the 20% fulfillment obligation granting cultivated land to plasma.¹²

An equal position between MSMEs and Large Enterprises in the implementation of partnerships is a mandate of law, as stated in Article 36 paragraph (1) of Law Number 20 of 2008: "In carrying out partnerships, the parties have an equal legal position...". As aforementioned, it is appropriate that the exploitative behavior by one of the parties in implementing the partnership agreement is prohibited. Moreover, one of the principles underlying the partnership agreement is consolidation, which means that each party in carrying out the partnership must place the partner in a "strengthened," not "weakened" position.

Supervision of the implementation of partnerships between MSMEs and Large Enterprises from the potential for exploitative behavior must be carried out properly. Thus, the partnership's objectives could be achieved. Moreover, the partnership patterns built between MSMEs and Large Enterprises are relatively large in quantity (number of business activities) and quality (type or form of partnership pattern). These are the strategic position of the Business Competition Supervisory Commission ("**KPPU**") during the supervision of partnerships until the partnerships could

¹¹ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Sinar Grafika 2018).[140].

¹² Decision of the Business Competition Supervisory Commission Number 3/KPPU-K/2021.

contribute to increasing the ability of MSMEs while simultaneously making Large Enterprises constructive partners in developing the national economy.

Even though KPPU has made various efforts to supervise partnerships, "lawsuits" against KPPU's authority in carrying out partnership supervision are still emerging because Law Number 5 of 1999 did not stipulate the authority of KPPU to supervise partnerships. Consequently, in the monitoring process carried out by KPPU, parties still question the legality of the KPPU's actions. In more extreme conditions, certain parties do not recognize the existence of KPPU in carrying out supervision over the implementation of partnerships. Thus, any decisions made by KPPU related to partnerships are not recognized.

To avoid the rejection from certain parties of KPPU toward the authority and decision that has been decided by KPPU in supervising the partnerships, the KPPU's decisions not having legal certainty simultaneously as part of reinforcing the legal protection for the parties. Accordingly, it is necessary to clarify the position of KPPU in exercising its authority as the supervisor on the implementation of the partnership.

Based on the background mentioned earlier, the legal problems that arise are:

1. How is the KPPU's position in supervising the implementation of the partnership between Large Enterprises and MSMEs?
2. How is the form of the KPPU's supervision toward the partnership implementation between Large Large Enterprises and MSMEs?

METHOD

This research method used normative juridical by utilizing secondary data sources to conduct studies from primary, secondary, and tertiary legal materials.¹³ This method carried out by researching and studying library materials or secondary data, especially written legal materials. Thus, the normative method is legal research examining library materials or secondary data.

The legal norms that are the main reference in research are:

- a. Law Number 11 of 2020 concerning Job Creation, Law Number 20 of 2008 concerning Micro, Small and Medium Scale Enterprises;

¹³ Ronny Hanitijo Sumitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Ghalia Indonesia 1990) 30.

- b. Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition;
- c. Government Regulation Number 7 of 2021 on the Ease, Protection, and Empowerment of Cooperatives and MSMEs;
- d. Regulation of The Commission for the Supervision of Business Competition Number 4 of 2019 concerning Procedures for the Supervision and Handling of Partnership Cases.

This research uses an approach by studying and analyzing using the statute approach and case approach. As an implementation, this research uses the statute approach and case approach to study and examine legal principles and legal norms contained in laws and regulations related to the implementation of partnerships between Large Enterprises and MSMEs to be then linked to legal issues from a business competition law perspective to avoid exploitative behaviour in the form of not implementing principles of partnerships and healthy business ethics in establishing cooperation which often violates by large businesses due to an unbalanced agreement position. . The typology of research used descriptive-analytical, which describes comprehensively the authorities of KPPU in supervising business competition in Indonesia specifically to analyze the implementation of partnerships.

DISCUSSION AND ANALYSIS

KPPU's Position in Supervising the Implementation of Partnerships between Large Enterprises and MSMEs

Explaining the implementation of partnerships between Large Enterprises and MSMEs could not be separated from the laws and regulations that underlie the emergence of Partnerships, namely Law Number 20 of 2008 from Article 25 to Article 37. Furthermore, based on Article 37 of the Law Number 20 of 2008 it states: "Further provisions regarding the partnership pattern as referred to in Article 26 are regulated in Government Regulations." The government regulation that regulates partnerships is PP Number 7 of 2021 starting from Article 102 to Article 117.

The enactment of Law Number 11 of 2020 concerning Job Creation ("**Law Number 11 of 2020**") brought changes to the existing norms in the MSME Law, even though the changes were partial because they solely changed and deleted several provisions. The definition of partnership, according to Article 1 number 13 of Law Number 11 of 2020, is: "Cooperation in business

relations, both directly and indirectly, on the basis of the principles of mutual need, trust, consolidation, and mutual benefit involving MSME and Large Enterprises."

This definition has similarities with the definition of partnership as referred to in Article 104, paragraph (1) and (2) GR Number 7 of 2021. Based on the definition above, it emerges that the spirit of partnership is illustrated by using the word "mutual," which brings consequences for both parties. This principle for MSMEs and Large Enterprises is to contribute actively and constructively to the business. Partnerships between Large Enterprises and MSMEs, under Article 26 Law Number 20 of 2008, conducted by several systems:¹⁴

- a. core-plasma;
- b. subcontract;
- c. franchise;
- d. general trade;
- e. distribution and agency; and
- f. other forms of partnership, such as: profit sharing, operational cooperation, joint venture, and outsourcing

Partnership systems that are practiced under Article 87 Law Number 11 of 2020, though the partnership under this regulation has different from the previous provisions that are the systems of:¹⁵

- a. Core-Plasma;
- b. Subcontract;
- c. Franchise;
- d. General Trade;
- e. Distribution and Agency;
- f. Supply Chain; And
- g. Other Forms of Partnership.

Meanwhile, Article 106 of GR Number 7 of 2021, as the implementing regulation of Law Number 11 of 2020, states that the partnership pattern includes:¹⁶

- a. Core-Plasma;
- b. Subcontract;
- c. Franchise;
- d. General Trade;
- e. Distribution and Agency;
- f. Supply Chain; and
- g. Other Forms of Partnership.

¹⁴ Article 26 Law Number 20 of 2008 Concerning Micro, Small and Medium Scale Enterprises.

¹⁵ Article 87 Law Number 11 of 2020 Concerning Job Creation.

¹⁶ Article 106 Government Regulation Number 7 of 2021 on the Ease, Protection, and Empowerment of Cooperatives and MSMEs.

Other forms of partnership, as referred to in letter g, at least:

- a. Profit sharing;
- b. Operational cooperation;
- c. Joint Venture; and
- d. Outsourcing.

Based on GR Number 7 of 2021, several partnership patterns that have existed thus far are not eliminated but are included in other partnership patterns. Consequently, these changes are not substantial. The partnership is an arrangement of business cooperation between Large Enterprises and MSMEs based on mutual need, trust, consolidation, and benefit principles. Partnerships are built based on both parties' free will (voluntary) to work together to achieve certain targets without positioning one party higher than the other (subordination).¹⁷ Therefore, to properly implement partnerships to benefit the parties involved, partnerships must be carried out based on partnership principles and establish fair business ethics. Otherwise, partnerships are attempts to exploit one of the parties, in this case, MSMEs, by Large Enterprises for the benefit of Large Enterprises.

Heretofore, KPPU has been positioned as an institution that supervises the implementation of partnerships, even though Law Number 5 of 1999 as the juridical basis of KPPU in implementing its duties and authorities does not explicitly mention KPPU as an institution that supervises the implementation of the Partnership. This provision referred to Article 35 of Law Number 5 of 1999, which states the KPPU's duties in supervising agreements between business actors, including:

- a. Evaluate agreements that may result in monopolistic practices and/or unfair business competition;
- b. Undertake action following the authority of the Commission;
- c. Provide advice and considerations on Government policies related to monopolistic practices and/or unfair business competition;

Similarly, Law Number 20 of 2008 as the juridical basis for the implementation of partnerships does not explicitly mention KPPU as the institution that supervises the implementation of partnerships, as stated in Article 36 paragraph (2) of the Law Number 20 of 2008: "The implementation of partnerships shall be supervised in an orderly and regular manner by an institution formed and serving to supervise business competition as stipulated in laws and regulations." However, under Article 119 paragraph (2) GR Number

¹⁷ Cinde Semara Dahayu, [*et.,al.*], 'Tinjauan Yuridis Tentang Pelaksanaan Perjanjian Kerjasama Kemitraan (Studi Kasus Di Brownies Cinta Cabang Sragen)' (2020) 8 Jurnal Privat Law, [21].

of 2021 as the implementing regulation of Law Number 11 of 2020, it is explicitly stated: "KPPU implements supervision of partnerships in accordance with statutory provisions."

Based on the provisions above, the KPPU's authority to supervise the implementation of partnerships is explicitly mentioned and does not require to be debated. Even though KPPU's authority to implement partnership supervision already has a firm juridical basis, in implementing partnership supervision, KPPU does not execute individually but coordinates with the relevant institution. Coordination between KPPU and relevant institutions is necessary, considering that the implementation of partnerships has overlapping roles with other institutions. Coordination between institutions is also important to avoid overlapping authorities between institutions, which can disrupt the supervisory process.

Coordination implemented by KPPU with relevant institutions could be executed in various ways, consisting of: meetings, letters of notification, exchange of data and/or information, field supervision, and/or other forms of coordination. The form of coordination used is very diverse because it adapts to conditions in the field. Occasionally, the first step to executing partnership supervision, KPPU sufficiently writes a letter to the relevant institutions. Otherwise, in the case of further supervision requiring more complex steps, of course, the KPPU requires coordination by holding joint meetings or exchanging data/information.

For the supervision over the implementation of partnerships by KPPU to function properly and have legal certainty, it is necessary to build provisions concerning the procedures for supervising the implementation of partnerships, which is based on Article 119 paragraph (3) GR Number 7 of 2021, regulated by the Regulations of the Commission for the Supervision of Business Competition. This provision is aligned with one of the duties of the KPPU, as regulated in Article 35 letter f Law Number 5 of 1999, to prepare guidelines and/or publications related to this Law.

Before the issuance of GR Number 7 of 2021, procedures for supervising partnerships are regulated based on Regulation of the Commission for the Supervision of Business Competition Number 1 of 2015 concerning Procedures for Supervision of the Implementation of Partnerships (**"KPPU Regulation Number 1 of 2015"**) which was later amended by Regulation of the Commission for the Supervision of Business Competition Number 4 of 2019 regarding concerning Procedures for Monitoring the Implementation of Partnership (**"KPPU Regulation Number of 2019"**).

Under Article 1 number 12 KPPU Regulation Number 4 of 2019 defines Partnership Supervision, namely: "a series of activities conducted by investigators to oversee the implementation of the Partnership according to the Partnership system adhered by the principles of Partnership and sound business ethics in accordance with the provisions of laws and regulations."

Regarding the existence of initial allegations of violations of the implementation of the Partnership, it could be sourced from:

- a. Reports, i.e., everyone who understands that there has been or should be suspected of violating partnership implementation.
- b. Initiatives of the Commission, based on data and/or information on alleged violations of Partnership implementation. This data and/or information could be obtained from results of supervision, results of studies, findings in the inspection process, results of hearings held by the Commission, and results of coordination with relevant agencies, incomplete reports, news in the media, and/or data and/or other information which can be accounted for.

The KPPU regulations concerning the implementation of partnership supervision have undergone several amendments, and the latest is KPPU Regulation Number 4 of 2019. Based on KPPU Regulation Number 4 of 2019 confirms the authority of the KPPU to supervise the implementation of partnerships, as seen in Article 2 paragraph (1), which states: "The Commission conducts Partnership Supervision carried out by micro, small and medium businesses with large businesses and/or those with carried out by micro and small businesses with medium enterprises.

In contrast to several previous KPPU regulations, KPPU Regulation Number 4 of 2019 explicitly states the authority of the KPPU to supervise the implementation of partnerships. Thus, the issuance of KPPU Regulation Number 4 of 2019 could refute various "lawsuits" that thus far have been addressed to KPPU regarding its position in supervising the implementation of partnerships. Hence, KPPU has increasingly had a strong legal basis in its duty. One form of popular partnership in oil palm plantations is the core plasma, though the core plasma partnership often harms the Smallholders/Palm Cooperatives who are MSME actors.¹⁸ The partnership agreement between large enterprises as the core and MSMEs as plasma is stated in a written

¹⁸ Revy Ardiansyah, [*et.,al.*], 'Identifikasi Faktor-Faktor Kunci Keberhasilan Pola Kemitraan Inti Plasma' (2020) 17 Jurnal Kalibrasi. [51].

agreement that at least regulates each party's business activities, rights and obligations, the form of development, period, and dispute resolution.¹⁹

The core plasma partnership pattern implemented by state-owned companies has contributed to improving the welfare of farmers by providing benefits in the form of income, employment, increased knowledge, and managerial administration and skills. However, this is different from the core plasma system conducted by private companies, which tends to harm their partners.²⁰ Examination of the partnership case implementation was preceded by allegations of violations committed by one of the parties. This alleged could be conveyed by the public who submit reports to KPPU and from commission initiatives.²¹

KPPU's position as an institution authorized to oversee the implementation of partnerships is strengthened by the KPPU's Decision Number 03/KPPU-K/2021 regarding the violations of Article 35 paragraph (1) of Law Number 20 of 2008 regarding the implementation of partnerships by PT STP with its partner Koperasi THB in terms of cooperation in implementing oil palm plasma plantation development projects, particularly the development of plasma plantations belonging to the Koperasi THB.²²

During the trial, the Commission Council found that PT STP had an obligation to control 948.42 hectares of land by plasma (20% of the 4,742.14 hectares of land cultivated by PT STP). However, the THB Cooperative has only received 790.1 hectares of land, so there is still a shortage of land that PT STP should have given to the THB Cooperative, totaling 158.32 hectares. Commission Council stated that there is a lack of plasma land fulfillment covering an area of 158.86 ha because the THB Cooperative has not yet received approval for the release of Forest Area land from the Ministry of Environment and Forestry or other land use areas.²³

Based on Article 35 paragraph (1) of Law Number 20 of 2008, the obligation to fulfill 20% of the grant of cultivated land to plasma could be declared as an act of controlling legally over business activities undertaken by micro, small and medium enterprises that are partners.²⁴ Thus,

¹⁹ Rai Mantili, 'Model Of Partnership Agreement Between Medium Small Businesses (Smes) And Big Businesses In Realizing Joint Welfare' (2020) 3 Sociological Jurisprudence Journal. [31].

²⁰ Syifawaru, [*et.,al.*], *Op.Cit.* [21].

²¹ Article 7 Regulation of The Commission for the Supervision of Business Competition Number 4 of 2019 Regarding Procedures for the Supervision and Handling of Partnership Cases.

²² Consideration Number 5 Partnership Agreement Number 22, Dated 9 August 2010, Made from Notary Kasmuri, S.H., Notary in Kotabaru, South Kalimantan.

²³ Decision of the Business Competition Supervisory Commission Number 3/KPPU-K/2021, *Op.cit.* [278].

²⁴ *Ibid.*

in the *a quo case*, based on the facts of the trial, the Commission Council stated that PT STP was legally and convincingly proven to have violated Article 35 paragraph (1) of Law Number 20 of 2008.²⁵

As mentioned in *a quo case*, KPPU's supervision in partnership agreements is necessary. Thus, MSMEs and large enterprises have an equal position in executing partnership agreements and apply the principle of mutual need in a partnership relationship, not to dominate each other.²⁶ Especially in the core plasma partnership, it is expected that the supervision carried out by KPPU could create a capability of business climate of stimulating the establishment of a solid business partnership among all economic actors based on the principle of mutual benefit to accelerate the realization of an independent and reliable national economy as a common endeavour based on the principles of the family system.²⁷

Form of KPPU's Supervision of Partnership Implementation

KPPU is the appropriate institution to resolve business competition issues which has a multifunction role and expertise. Thus, it is deemed capable of resolving and accelerating the case-handling process.²⁸ Placing the role of KPPU as a multifunction institution is not exaggerated, especially when observing the duties and authorities stipulated to KPPU as regulated in Article 35 and Article 36 of Law Number 5 of 1999.²⁹

The role of KPPU in the context of enforcing business competition law emerges as highly comprehensive because it functions from upstream to downstream, consisting of receiving reports, researching, investigating, and examining, until deciding a case, even notifying decisions to business actors who are suspected of carrying out monopolistic practices and or competition unhealthy business. For KPPU, this multifunction role has a positive impact on the continuity of conducting tasks because it could minimize the occurrence of refraction during the examination process because during the examination process until the decision's reading, it is enforced by

²⁵ *Ibid*, [288].

²⁶ Gede, Agung Bayu and Kusuma, Anak Agung, 'Tinjauan Yuridis Terhadap Perjanjian Kemitraan Yang Dilakukan Oleh UMKM Berdasarkan Hukum Positif Indonesia' (2020) 8 Kertha Negara: Jurnal Ilmu Hukum 305.[47].

²⁷ Novia Choirunnisa, [et.,al.], 'Perlindungan Hukum Bagi Pelaku Usaha Mikro Kecil Dan Menengah Melalui Perjanjian Kemitraan Antara Carrefour dan Pemasoknya' (2019) 2 Jurist-Diction. [1086].

²⁸ Andi Fahmi Lubis, [et.,al], *Buku Teks : Hukum Persaingan Usaha* (ROV Creative Media 2017). [378].

²⁹ Putu Sudarma Sumadi, *Penegakan Hukum Persaingan Usaha (Hukum Acara Persaingan Usaha?)* (Zifatama Jawara, 2017). [160].

officials assigned to the same institution, especially when examining cases at KPPU is often loaded with various interests. On the other hand, this multifunction role could have a negative impact, especially for the reported party, because it is frightened that there will be an attitude of "coercion" towards a case. Hence, it could be examined at the KPPU, even though, according to the view of the reported party, the object of examination is not included in the scope of the KPPU's duties and authorities.

Focusing on the Supervision of partnerships by KPPU is inseparable from several prohibitions related to implementing partnerships. This is stipulated under Article 35 of Law Number 20 of 2008, that states:³⁰

- a. Prohibition for Large Enterprises to own and/or control MSMEs as their business partners in implementing partnership relations.
- b. Prohibition for medium enterprises to own and/or control MSMEs as their business partners.

Supervision of partnership implementation by KPPU is conducted on the control and ownership of business partners, particularly on: the identification of partnership patterns; and construction of violations of the implementation of the Partnership. Supervising the ownership or control of most or all of the shares, capital, and assets by Large or Medium Enterprises for MSMEs could be conducted through acquisitions or establishing new companies, supervision of partnership agreements and terms of trade as the form of control must be carried out with due observance.³¹

- a. Partnership Principles;
- b. Sound business ethics;
- c. Does not contradict the basic principle of independence of MSMEs;
- d. Does not create dependence on MSMEs
- e. Does not detrimental to either party following the provisions of the legislation;
- f. Equal legal position between the parties based on statutory regulations; and/or
- g. Mastery or ownership of capital, shares, and assets of business partners.

³⁰ Article 35 Law Number 20 of 2008 Concerning Micro, Small and Medium Scale Enterprises.

³¹ Shoviatur Rohmatul Himmah and Lailatus Sa'adah, *Perkembangan Kemitraan Pelaku Usaha* (LPPM Universitas KH A Wahab Hasbullah, 2021). [12].

When the results of the analysis of the preliminary examination carried out by the KPPU on the implementation of the partnership a violation found, then KPPU will enforce the law in the form of:³²

- a. Written warning to the Reported Party, which contains improvements suggestion to the Reported Party in the implementation of the partnership and the timeframe for implementing the improvement in the alleged violation of the partnership. A written warning is given a maximum of 3 (three) times.
- b. In the condition that the Commission Meeting evaluates that the Reported Party does not comply with the third Written Warning either partially or wholly, the case shall proceed to the stage of Further Examination of the Partnership.

The implementation of the form of partnership supervision by the KPPU is defined in the *a quo* decision on case examination, which initiates with an alleged violation that continues until the preliminary examination stage, within 3 (three) written warnings, along with an order to partnerships' improvements suggestion.

However, PT STP did not conduct whole improvement suggestions. PT STP solely carried out one of the improvement suggestions, namely related to the clause on rights and obligations with the form of development in the agreement by providing job offers and organizing "training and coaching" with related institutions to members of the Koperasi THB. Another improvement suggestion consists of: the obligation to build 20% of the plasma field, transparency in financial management, management of plasma plantation, and the improvement of the agreement are not being implemented. Thus, the case continues to the further examination of partnership.³³

The prohibition for Large and Medium Enterprises in conducting partnerships regulated in Article 35 of Law Number 20 of 2009 has changed after the issuance of Law Number 11 of 2008, as stated in Article 87 point 8 states:

"The explanation of Article 35 is amended as stated in the explanation section."

- a. Explanation of Article 35 paragraph (1)

The definition of "owning" is a legal transfer of ownership of business entities/companies and/or assets or assets owned by Micro, Small, and/or Medium

³² Regulation of The Commission for the Supervision of Business Competition Number 4 of 2019 Regarding Procedures for the Supervision and Handling of Partnership Cases (n 21).

³³ Decision of the Business Competition Supervisory Commission Number 3/KPPU-K/2021.

Enterprises by Large Enterprises as their business partners in implementing partnership relations.

b. Explanation of Article 35 paragraph (2)

The definition of "controlling" is the transfer of jurisdictional control over business activities carried out and/or assets owned by Micro, Small, and/or Medium Enterprises by Large Enterprises as their business partners in implementing partnership relations.

Therefore, the author contends that the meaning of "owning" and "controlling" in Article 87 point 8 of Law Number 11 of 2020 is not interpreted differently. From this condition, KPPU, based on the duties attached to it, shall explain the two terms further. Hence, these two terms are not "manipulated" by irresponsible parties for their benefit. In avoiding the potential for alleged violations under Article 35 of Law Number 20 of 2008 by large businesses in the form of controlling micro and small enterprises, it is important to implement the principle of mutual trust and create certainty and transparency in the delivery of financial reports. Accordingly, when connected with the *a quo* decision, PT STP and Koperasi THB are required to cooperatively execute financial management in preparation and approval of Profit and Loss reports ("**PnL**").³⁴

Based on the report on the results of the preliminary inspection, the implementation of the written warning, and the Investigator's Conclusion, it is described that there is a violation of the partnership principle in financial management and management of plasma plantations. It is known as follows:³⁵

- a. Regarding plasma debts and bailout funds that are not explained in detail and how the repayment scheme is a violation of the partnership principle of mutual trust and mutual benefit;
- b. The absence of transparency by covering up information on the financial management and management of plasma-owned plantations is a form of controlling plasma property. This is supported by the testimony of Mr. Halomoan Manik in the testimony of the witness as the Head of the Koperasi THB, stated that he was not involved in making the

³⁴ S Irianto, WI Wardani and ATW Lestari, 'Partnership Optimization Between Micro, Small, and Medium Domestic Enterprises With the Justice-Based Capital Enterprises' (2019) 20 South East Asia Journal of Contemporary Business, Economics and Law 32. [34].

³⁵ Decision of the Business Competition Supervisory Commission Number 3/KPPU-K/2021, *Op.Cit.*, [257].

PnL, there was no coordination or communication regarding the preparation and approval of the PnL report.

KPPU's decision in Case Number 03/KPPU-K/2021, the Commission Council, stated that PT STP was legally and convincingly proven to have violated Article 35 paragraph (1) of Law Number 20 of 2008. As a sanction, the Commission Council ordered PT STP to fulfill the obligation of 20% of the plasma land if it obtains the land of forest area release or other use areas and improves the transparency mechanism related to financial reports and preparation of monthly work plans and evaluation of their implementation involving the Koperasi THB.³⁶

Thus far, the understanding of KPPU's duties to conduct supervision over the implementation of partnerships is limited to law enforcement duties. In fact, KPPU has broader role includes conducting consultations, evaluations, and providing suggestions and considerations. KPPU could function as a consultant when a large business and/or MSME is planning to enter into a partnership agreement with a certain system. Through consulting activities, KPPU could provide directions or guidelines to the parties regarding what may or may not be done when drafting an agreement. This is important to understand because, in practice, there are still partnership agreements whose contents are "unbalanced" and only benefit one party. Partnerships should be based on mutual need, trust, strengthening, and benefit.

The role of KPPU in conducting evaluations must be understood not only to evaluate government policies (macro) but also related to partnerships and partnership agreements (micro) that the parties have made. Thus, the clauses of partnership agreements could be analyzed, which must be corrected to align with the partnership principles. Moreover, preparing a partnership agreement is often made with a standard contract where all the clauses of the partnership agreement are prepared by one of the parties, in this case, Large Enterprises. In contrast, the other party (MSMEs) only has to agree without being given access to negotiate the agreement clauses. Advice and considerations given by KPPU on government policies related to business competition are also part of KPPU's role in supervising partnerships. However, the KPPU's suggestions and considerations aimed at government policies related to implementing partnerships seem to be lacking thus far. Many government policies related to partnerships require improvement, such as the existing partnership arrangements in Law Number 11 of 2020. Advice and considerations given

³⁶ *Ibid*, [288]

by KPPU on government policies were generally carried out when government policies were still in the form of the draft.

Provisions regarding partnerships are scattered in several laws and regulations, such as Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, Law Number 11 of 2020 concerning Job Creation, and Law Number 39 of 2014 concerning Plantations. The potential for disharmony between several laws and regulations related to this partnership tends to happen, considering that in deliberations on laws, the involvement of stakeholders is often not optimal. Accordingly, discussions seem to be carried out only in a sectoral manner. Therefore, to avoid disharmony conditions that can disrupt a good partnership climate, KPPU's role is to harmonize policies (regulations) related to partnerships. KPPU has conducted a lot of supervision on partnerships in the form of law enforcement, as evidenced by the fact that hitherto, there have been many cases of partnerships that have entered the inspection process at KPPU, some of which have even entered the trial stage, such as partnerships with the core-plasma system in the oil palm plantation business or agency.

The author perceives building a good climate of partnerships until the purpose of the partnerships could be achieved and to encourage the economic actors (at all levels) to contribute to the national economy without any disruption while law enforcement is still conducting. KPPU's role in enforcing the law should be more minimized, bearing in mind that the "cost" that must be borne by all parties will be higher if law enforcement is prioritized over prevention. It is more useful to prevent conflicts in the implementation of the partnership than to resolve the conflict itself because it is feared that it will impact the emergence of new conflicts between the parties.

CONCLUSION

The position of the KPPU is to have the authority to supervise the implementation of partnerships between large businesses and MSMEs, namely by supervising agreements between business actors which may result in monopolistic practices and unfair business competition, taking action by the authority of the KPPU, and providing advice and considerations on Government policies relating to monopolistic practices and unfair business competition. Under Article 119 paragraph (2) PP 7 of 2021, which is the implementing regulation of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, it is stated firmly that the KPPU carries out supervision of partnership implementation by the provisions of statutory regulations. Furthermore,

Article 2, paragraph (1) of the KPPU Regulation Number of 2019 confirms the authority of the KPPU to supervise the implementation of partnerships, namely, the Commission supervises partnerships carried out by micro, small, and medium businesses with large enterprises. The position of KPPU as an institution with authority to oversee the implementation of partnerships is strengthened by the KPPU Decision Number 03/KPPU-K/2021 regarding alleged violations of Article 35 paragraph (1) of Law Number 20 of 2008 regarding the implementation of partnerships by PT STP with its partner THB Cooperative in terms of cooperation in implementing the Palm Oil Plasma plantation development project, KPPU's law enforcement in the a quo case is by declaring that PT STP has been legally and convincingly proven to have violated Article 35 paragraph (1) of Law Number 20 of 2008 and giving sanctions to PT STP for fulfil the obligation of 20% plasma land and improve transparency mechanisms regarding financial reports.

The form of supervision over the implementation of partnerships carried out by KPPU includes providing consultations, evaluations, suggestions and considerations related to government policy, policy harmonization and law enforcement. The KPPU's form of supervision to carry out control over the implementation of partnerships is understood to be limited to law enforcement duties. Nevertheless, it more broadly includes consultations, evaluations, and suggestions and considerations. The KPPU's form of supervision to carry out evaluations must be understood not only to evaluate government policies (macro) related to partnerships but also to partnership agreements (micro) that have been made by the parties, in order to identify which contents or clauses of the partnership agreements need to be revised, thus that they are complied with the partnership principles.

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