

Conference Paper

Anomaly in Supervision of MSME Partnerships in Indonesia: Comparison of Indonesia, Malaysia, and Vietnam

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Abstract.

Partnership for micro, small, and medium enterprises (“MSMEs”) is a strategy to improve the quality of MSMEs through sharing knowledge and technology, funding, etc. Therefore, Law No. 20/2008 jo. Government Regulation No.7/2021 regulates the implementation of MSME partnerships. One of them is related to the Supervision of MSME Partnerships carried out by the Business Competition Supervisory Commission (“KPPU”). This study aims to test whether the KPPU’s authority to oversee MSME partnerships is appropriate or not. By compiling a list of laws and regulations, journals, and other materials, this study employs a normative juridical methodology. The data obtained will be analyzed qualitatively by concluding inductively. As a result, the supervision of MSME partnerships by KPPU does not follow the basis and objectives of the establishment of KPPU. Compared to Malaysia, all MSME development activities are regulated and supervised by SME Corporation Malaysia (SME Corp. Malaysia) as an authority under the Ministry of Entrepreneur Development and Cooperatives (“MEDAC”). Meanwhile, in Vietnam, the Government established The Vietnam Trade Promotion Agency (VIETRADE) which is under the Ministry of Industry and Trade of Vietnam with one of the tasks of its authority to develop MSMEs and encourage MSME cooperation with large companies. Seeing this comparison, it is appropriate that the authority to manage all MSME activities including partnerships is given to an institution whose main focus is handling the MSME sector in Indonesia, namely the Ministry of Cooperatives and SMEs.

Keywords: supervision, MSME partnerships, comparison

1. INTRODUCTION

One of the pillars of the Indonesian economy are Micro, Small, and Medium-Sized Enterprises (“MSMEs”). Consequently, the creation of the business model is crucial. MSMEs were identified as one of the economic sectors that were anticipated to contribute to the National Economic Recovery programme during the Covid-19 pandemic.[1] The MSME sector can support this programme because there are still a significant number of MSMEs in Indonesia and because they can weather any crisis. Data showing that

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MSMEs contributed 57% of Indonesia's GDP, which may support 97% of the country's labour force, support this.[2]

The Indonesian government must undoubtedly encourage MSMEs given their considerable contribution to the national economy if it wants them to keep expanding and progressing. As part of this strategy, the government passed Law No. 20 of 2008 Concerning Micro, Small, and Medium Enterprises ("Law No. 20/2008"). According to the rule, a partnership is defined as collaboration in business relationships, both directly and indirectly, that is carried out on the basis of mutual need, trust, support, and benefit between partnering business actors, namely MSMEs and major corporations. These alliances may take a number of different forms, including (i) nucleus-plasma; (ii) subcontract; (iii) franchise; (iv) general commerce; (v) distribution, and others.[3]

The implementation of partnerships between large/medium business actors and MSME actors has several objectives, including:[4]

1. Encouragement for MSMEs to grow and develop their capacities to become strong and independent businesses;
2. Encouragement for the Development of a Balanced, Developing, and Equitable National Economic Structure;
3. Encouragement for the Growing Role of Micro, Small, and Medium Enterprises in Job Creation, Regional Development, Economic Growth, Income Distribution, and Reduction of Poverty.

To prevent the emergence of irregularities in the implementation of partnerships, Law No.20/2008 mandates that supervision of the implementation of partnerships be carried out by institutions that are competent and authorized to oversee business competition.[5] Government Regulation No. 7 of 2021 about the Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises ("GR No.7/2021") was released by the government as a follow-up to this law. GR No.7/2021 stipulates explicitly that the implementation of partnership supervision is carried out by KPPU. For the smooth running of MSME partnership supervision activities, KPPU can coordinate with related agencies.[6] The KPPU is a state auxiliary organisation that was established in accordance with Presidential Decree No. 75/1999 of the President of the Republic of Indonesia concerning the Commission for the Supervision of Business Competition ("Presidential Decree No. 75/1999"), with the primary responsibility of upholding Law No. 5/1999 concerning the Prohibition of Monopolistic Practises and Unfair Business Competition ("Law No. 5/1999").

This raises the question: is KPPU, as a law enforcement institution, the right institution to supervise the implementation of partnerships? Because if we look at the meaning of partnership in the eyes of Law No.20/2008, partnership is seen as cooperation. Furthermore, Article 50 section h of Law No.5/1999 stipulates that the MSME sector is excluded from enforcing Law No.5/1999. In the partnership agreement, the parties that bind themselves to the agreement are large business actors and MSME actors. Referring to Article 50 section h of Law No.5/1999, the implementation of MSME partnership agreements should be something that is excluded from the regime of Law No.5/1999. The next question is, is it appropriate for the KPPU to supervise the implementation of MSME partnerships where the KPPU will also examine, try and punish large or medium MSME partners who are suspected of violating Article 35 of Law No.20/2008? Even though Law No. 20/2008 limited the KPPU's authority to overseeing, not carrying out a series of Pro Justitia actions in supervising partnerships, in the end, this authority was expanded again through GR No. 7/2021 which opened the KPPU's space to punish business actors who took action on violations of Article 35 of Law No.20/2008. In comparison, Malaysia places the authority to organize the business activities of companies that fall into the MSME classification under the Ministry of Entrepreneur Development and Cooperatives ("MEDAC"). MEDAC acts as an agent for implementing national MSME policies. MEDAC formed SME Corporation Malaysia (SME Corp. Malaysia) as a sub-institution tasked with being the center for coordinating MSME development.[5] In Vietnam, the Vietnamese government formed the Vietnam Trade Promotion Agency (VIETRADE) which is under the Vietnamese Ministry of Industry and Trade. The support provided by VIETRADE to MSMEs consists of (i) Promotion of MSME policies through policies and exhibitions; (ii) Developing mechanisms and policies so that MSMEs can access foreign markets and become part of the global trade chain; (iii) Providing training and market-related information. In addition, VIETRADE encourages cooperation between Foreign Direct Investment and domestic business actors including MSMEs.[6]

This article will discuss the anomalies that occur in the supervision of MSME partnerships in Indonesia. As a reference for comparison, the author will compare the supervision of MSME partnerships in Indonesia, Malaysia and Vietnam. This is done to obtain comparisons with countries that have regulations regarding MSMEs.

2. METHODOLOGY

This study uses a normative juridical research method, by taking inventory of laws and regulations such as the 1945 Constitution, Law No.5/1999, Law No.20/2008, GR No.7/2021, Presidential Decree No.75/1999 and various laws and regulations other invitations as well as regulations regarding MSME Partnerships in Malaysia and Vietnam. In addition, this research also conducted studies in national and international journals, books, and other literature to explore theories, principles, and legal principles that will be used as an analytical tool to test the accuracy of granting authority to supervise MSME partnerships in Indonesia to KPPU. The information obtained in this research will be analyzed qualitatively.[7]

3. RESULT AND DISCUSSION

3.1. Overview of the Implementation of MSME Partnerships and Their Supervision in Indonesia

The Law of the Republic of Indonesia Number 9 of 1995 concerning Small Enterprises (Law No.9/1995) was replaced by Law No.20/2008, which the government issued as the legal foundation for the implementation of MSME Partnerships between Large and Medium-Sized Businesses, as this regulation was once more deemed to be out of date with the development of the economy and the business world.

In Law No.20/2008, several new issues that were either not fully or not at all covered by Law No.9/1995 are now governed. Law No.20/2008 added certain new regulations, one of which is the acknowledgment of micro-enterprises' existence, which was not covered by Law No.9/1995. Micro Enterprises are defined as companies with a maximum yearly profit of IDR 300,000,000 (three hundred million rupiahs) and a maximum net value of IDR 50,000,000 (fifty million rupiahs), excluding land and company structures. Law No. 20/2008 also makes changes to how partnerships are implemented. Law No. 20/2008 permits partnerships between large/medium business actors and small and micro business actors, whereas Law No. 9/1995 exclusively permits partnerships between small business actors and large or medium company actors. The forms of partnership that can be run between large and medium business actors and MSME actors are as follows:

1. Inti-plasma, in this partnership pattern, large or medium business actors who become partners act as the core and guide MSMEs so that their businesses

can grow. Such direction can take the form of providing and preparing the land, providing production facilities, providing technical direction related to production and business management, providing education, and providing the information needed related to the necessary technology, guarantees, marketing, financing, and other assistance that can encourage increased efficiency, productivity, and business insights;

2. Sub-contracting, in this partnership pattern, large or medium business actors who become partners are required to provide opportunities for MSME actors to: (i) work on part of production and/or its components; (ii) obtain raw materials to be produced sustainably at a reasonable quantity and price; (iii) provide production or management technical guidance and skills; (iv) provide opportunities to acquire the required knowledge and mastery of technology; (v) provide education and assistance regarding financing and payment system management that is good and profitable for the parties; (vi) prevent unilateral termination of relations;
3. The Franchise Pattern, in this partnership pattern, large or medium business actors who become partners must provide opportunities for MSME actors to take precedence as franchise partners for large business actors as long as the business actors have the ability. Large or medium business actors who become partners as franchisors must provide coaching and training, operational guidance in managerial/management, marketing, research and development to MSME actors as franchisees on an ongoing basis;
4. The typical trading pattern, where this collaboration is carried out through openly conducted major enterprises receiving supplies from MSMEs, offering company spaces, or participating in marketing cooperation. Fulfilling the needs of large business actors is carried out by taking supplies from MSME actors who are their partners. MSME actors must guarantee that the products supplied to large business actors meet the required standards. If MSME business actors are unable to meet the required standards, then large business actors can take the supply of goods needed from other parties;
5. The method of distribution and agency whereby large and/or medium-sized businesses act as partners and grant specific rights (privileges) to micro-enterprises and/or small-scale businesses in order to advertise goods and/or services;
6. Patterns of joint ventures, profit sharing, and others between large business actors and MSMEs. When executing a partnership under this scheme, both parties must

be aware of the regulations relating to the Indonesian negative investment list if one of the parties is a foreign legal subject (foreign citizen or foreign legal organisation);

7. The supply chain pattern, where this pattern is a development of the general trading pattern previously regulated in Law No.20/2008. The ratification of the Job Creation Law led to the emergence of this pattern. According to the regulation, the supply chain pattern is a partnership scheme for MSMEs and large or medium business actors, where large business actors are domiciled as recipients of goods from micro, small, and medium enterprises who are located as suppliers of goods, or medium enterprises are domiciled as recipients of goods from micro enterprises and small enterprises. Micro, small, medium, and big businesses participate in the following supply chain partnership initiatives, among others:[8]
8. Companies that work with raw material suppliers manage the transportation of products
9. Product distribution from businesses to consumers
10. controlling the supply of raw materials, their availability, and the fabrication processes.

Furthermore, Law No. 20/2008 provides space for MSMEs to own shares from large business actors who become their partners if these large business actors become public companies (go public). This was not previously regulated in Law No.9/1995. Based on this, it can be seen that Law No.20/2008 strongly encourages the creation of increased welfare for MSMEs.

To ensure that the implementation of MSME partnerships can run well, Law No.20/2008 jo. GR No.7/2021 authorizes KPPU to supervise MSME partnerships. Based on Presidential Decree No.75/1999, KPPU is mandated by the state as an institution tasked with enforcing Law No.5/1999.[9] The duties and powers of KPPU, an entity responsible for upholding Indonesian commercial competition legislation, are outlined in legislation No. 5/1999. The regulation specifies a number of duties that belong to KPPU in carrying out Law No. 5/1999 enforcement, including:

1. assessing contracts, business practises, and abuse of a dominant position;
2. acting in accordance with one's authority; and
3. administrative execution.

The government then issued GR No.7/2021 as a substitute for GR No.17/2013. This regulation further strengthens the KPPU's authority in supervising partnerships between MSMEs and large business actors. The KPPU's authority after the implementation of the regulation consists of: [5]

1. receiving reports or taking initiatives to investigate allegations of domination and exploitation by Micro and Small Business actors by medium or large business actors;
2. carry out a preliminary examination of allegations of domination and exploitation of Micro and Small Business actors by medium or large business actors;
3. provide a written warning to the reported business actor to make improvements to the alleged violation of the MSME partnership;
4. carry out follow-up examinations of the reported business actors who have ignored the written warnings and recommendations for improvement that have been submitted by KPPU;
5. pass a decision on the imposition of administrative sanctions on the reported business actor who is proven to have committed a partnership violation;
6. developing KPPU regulations governing the treatment of alleged MSME partnership violations in light of KPPU efforts and feedback from the general public and business actors.

The thing that is of concern in the supervision of MSME partnerships is the act of mastery, ownership, and exploitation of MSME by large or medium business actors in implementing MSME partnerships. Because if this occurs, it will affect a number of things, including the failure of large and medium-sized business actors to uphold their end of the MSME partnership agreements' obligations, the presence of clauses in those agreements that have an effect on monopoly practices and unfair business competition.

Overview of the Implementation of MSME Partnership Supervision in Malaysia and Vietnam

Malaysia places the authority to organize the business activities of companies included in the MSME classification under the Ministry of Entrepreneur Development and Cooperatives ("MEDAC").^[10] MEDAC is the institution responsible for encouraging the development of the 2030 National Entrepreneurship Policy by Compiling the 2030 National Entrepreneurship Board ("DKN 2030"). DKN 2030 is a long-term strategy drawn up by Malaysia as a national entrepreneurship development which also includes

the MSME sector. Especially for MSME development, MEDAC formed SME Corporation Malaysia (SME Corp. Malaysia) as a sub-institution tasked with being the center for coordinating MSME development. SME Corp. Malaysia will coordinate with ministries and agencies related to MSME development activities in Malaysia. SME Corp. Malaysia continues to play a critical role as the central coordinating organisation and secretariat of the National SME and Entrepreneur Development Council while acting as an agency to implement the national MSME policy. [11]

In Malaysia, SMEs are classified into 2 types based on the line of business, namely SMEs in the manufacturing business sector and SMEs in the service business sector. A manufacturing business is categorised as an MSME if its annual sales are less than RM50 million or it only has 200 full-time employees. Companies in the service industry and others can be categorised as MSMEs if their annual sales are less than RM20 million or they only have 75 permanent employees. The main focus of MSME development in Malaysia today is to encourage digitization, internationalization, and globalization of MSMEs.[12]

In Vietnam, provisions regarding MSMEs are regulated in SME Support Law No.04/2017/QH14. In this policy, a company is classified as UMK if it meets the following criteria:[6]

- A. Have no more than 200 (two-hundred) employees;
- B. Total assets are not more than 100 (one-hundred) billion dongs;
- C. The business's revenue the previous year was not 300 (three-hundred) billion dongs or more.

The support provided by VIETRADE to MSMEs consists of (i) Promotion of MSME policies through policies and exhibitions; (ii) Developing mechanisms and policies so that MSMEs can access foreign markets and become part of the global trade chain; (iii) Providing training and market-related information. In addition, VIETRADE encourages cooperation between Foreign Direct Investment and domestic business actors including MSMEs. In 2015–2018, more than 30,000 business actors received assistance from VIETRADE, and the majority of these business actors were MSMEs. One of the main focuses on developing MSMEs is to connect Vietnamese MSMEs with global market chains. In addition, in developing MSMEs, Vietnam's Ministry of Science and Technology also encourages the optimization of information technology in MSME business development. Apart from collaborating with business actors, MSMEs are also encouraged to collaborate with universities. SME Support Law No.04/2017/QH14 determines the obligations of various government and private institutions to assist the development of MSMEs in Vietnam. The assistance provided can be in the form of consulting,

access to information, market expansion, and so on. Regarding cooperation between MSMEs and large business actors, the regulation stipulates that companies and business organizations that foster MSMEs in Vietnam, in particular, include MSME products as part of their distribution chain. If in a distribution chain group fostered by a business actor or business organization, there are more than 80% MSMEs, then the business actor or business organization has the right to: (i) get a reduction and exemption from land rent, land fees and levies on non-agricultural land following with the applicable laws and regulations; (ii) get a reduction and exemption from corporate income tax for a certain period following laws and regulations on corporate income tax.[6]

If we look at the comparison regarding the general description of MSMEs and their supervision, it can be concluded that the two countries have regulations related to MSMEs. The MSME regulatory regime in the two countries also stipulates that there is a greater obligation for business actors to assist MSME development (in Indonesia it is known as a “partnership”). However, the two countries do not place the implementation of cooperation between MSMEs and large business actors as part of business competition law. This is very unfounded because the main focus of implementing this collaboration or partnership is to develop MSMEs, not enforce the law and find fault with business actors.

3.2. Study on Supervision of MSME Partnerships in Indonesia by KPPU

As a law enforcement institution, the approach adopted by KPPU in viewing a problem is the law enforcement approach. This is very unfounded because the legal ratio for the establishment of KPPU is to enforce Law No.5/1999. However, is this approach appropriate to apply in supervising the partnership of large and medium business actors with MSMEs which aims to establish mutually beneficial cooperation between the two? Previously, KPPU saw that the MSME partnership supervision approach was carried out with a prevention paradigm. However, now this paradigm has shifted to become a law enforcement paradigm.[13] The spirit of MSME partnership supervision arrangements in Law No. 20/2008 aims to prevent irregularities in these activities. Through prevention, business actors are still allowed to change behavior for the better so that the partnership that is implemented can be profitable for both parties. The law enforcement paradigm applied by KPPU in partnership supervision is a natural thing because of the culture of law enforcement attached to the institution.

Referring to Article 50 section h of Law No.5/1999, the implementation of MSME partnership agreements should be something that is excluded from the regime of Law No.5/1999. So, is it appropriate if the supervision of the implementation of MSME partnerships lies with KPPU where KPPU will also examine, try and punish large or medium MSME partners who are suspected of violating Article 35 of Law No.20/2008? Even though Law No. 20/2008 limited the KPPU's authority to only supervise, not carry out a series of Pro Justitia actions in partnership supervision although it was eventually expanded again through GR No. 17/2013 jo. GR No.7/2021 which opens space for KPPU to punish business actors who take action on violations of Article 35 of Law No.20/2008. This condition positions KPPU as a superpower institution due to its enormous and broad authority. This authority, of course, has the potential to be abused. It is necessary to recall a legal adage that states "Power tends to corrupt, and absolute power corrupts absolutely", or power tends to corrupt and absolute power tends to absolute corruption.[14]

Leonard J. Theberge is of the view that the law plays a major role in economic development. The law carries out its role of tinkering, following, or leading. Tinkering is interpreted as an effort to make improvements and legal adjustments to an event that occurs in society. Following is interpreted to mean that the law must always follow the events. While leading is interpreted as a medium/road that guides humans to achieve a goal. Next, J.D. Nyhart is of the view that to determine whether a rule of law encourages or hinders economic development, several things must be considered, including: (i) predictability; (ii) procedural capability; (iii) codification goals; (iv) education; (v) balance; (vi) definition and clarity of status; (vii) accommodations. Similar to Theberge, J.D. Nyhart also view predictability as a determining factor in a legal provision that hinders or encourages the economy.[15]

If the KPPU's authority in supervising the implementation of MSME partnerships is examined from the point of view of the Theory of the Role of Law in Economic Development, then it is necessary to review how the provisions of Article 36 Law No.20/2008 jo. GR No.7/2021 authorizes the KPPU to supervise MSME partnerships concerning the business world. Are these norms a driving force in the development of the business world, or vice versa, become an obstacle and a scourge for large business actors in running MSME partnerships?

To see the effectiveness of laws and regulations regarding partnerships, it is necessary to carry out further studies using various legal theories. One of the legal theories that is often used in studying the effectiveness of the law is the theory of the legal system. In this theoretical perspective, if we look at the substance of the law, there is a

distortion of thinking in the formulation of norms in Law No.20/2008. This is because Law No.20/2008 gives authority to supervise MSME partnerships to KPPU which has absolutely no relevance in the implementation of partnerships. If examined based on its legal ratio, KPPU is an institution authorized to enforce Law No.5/1999. This means that KPPU is only authorized to participate in the implementation of the partnership if there is an alleged violation of Law No.5/1999. Instead of regulating the implementation of MSME partnerships, the authority should rest with the Ministry of Cooperatives and SMEs. Regarding the legal structure, KPPU as the business competition authority in Indonesia whose main focus is the enforcement of Law No.5/1999 is given additional authority to supervise MSME partnerships. In addition to conducting supervision, KPPU is also given the authority to investigate, and prosecute business actors who are suspected of violating MSME partnerships. This shows how big the authority of KPPU is. This enormous authority has the potential to be abused. This will become a scourge for business actors who organize MSME partnerships and will become a separate obstacle to Indonesia's economic development. Regarding the legal culture, it is important to note that the granting of a very large authority to KPPU has an impact on the attitude of arrogance emanating from the institution.

Based on the description above, it can be concluded that KPPU is not the right institution to supervise MSME partnerships. This is because the legal ratio of the MSME Partnership is to encourage the development of MSMEs with a partnership agreement scheme. Therefore, the reconstruction of partnership supervision is important. This is to rectify the distortion of the partnership supervision paradigm carried out by KPPU. This is because the spirit of Law No.20/2008 is to encourage synergy between MSEs and large/medium business actors to establish mutually beneficial relationships and, of course, to encourage the country's economic growth. Not to find fault with the parties who are struggling to develop the Indonesian economy, especially in the MSME sector.

4. CONCLUSION AND RECOMMENDATION

MSME Partnership is an MSME business development strategy. So policies related to increasing MSMEs in Indonesia must focus on things that can achieve these goals. The granting of authority to supervise MSME partnerships to KPPU is not the right thing to do. Because philosophically, KPPU is an institution whose main task is to supervise business competition. When compared to other countries such as Malaysia and Vietnam, the appropriate institution to supervise the regulation of MSMEs is carried out by the Ministry whose main task is to focus on economic development both on a macro and

micro basis. Therefore, Indonesia should follow this pattern so that supervision of MSME partnerships in Indonesia is inclined towards efforts to develop MSME businesses by transferring this authority from KPPU to the Ministry of Cooperatives and SMEs. This can be accomplished by passing the amended versions of Act No. 20/2008 and its derived regulations.

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