

## LEGAL FRAMEWORKS PROTECTING MICRO, SMALL, AND MEDIUM ENTERPRISES FROM MONOPOLY PRACTICES

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### **Abstract**

*The role of Micro, Small, and Medium Enterprises (MSMEs) in 2020 was significantly affected by the spread of the Coronavirus, which altered consumer behavior and encouraged people to remain at home. While the government has promoted partnership programs aimed at providing convenience, legal protection, and empowerment for MSMEs, practical challenges—both internal and external—remain. Supervision of these partnerships is necessary to ensure that medium-sized enterprises do not exert undue pressure on micro and small businesses, as highlighted in KPPU Decision No. 2/KPPU/-L/2005. This study employs a normative-empirical approach to analyze the legal protection of partnerships between MSMEs and medium to large enterprises under the lens of anti-monopoly law, focusing on the partnership between the Mercure Makassar Nexa Pettarani Hotel and MSMEs in Makassar. Findings indicate that the legal relationship between MSMEs and the hotel can be established in accordance with the business partnership principles outlined in Law No. 20 of 2008 concerning MSMEs and Government Regulation No. 17 of 2013 concerning its implementation. The partnership does not constitute an abuse of dominant position, although some agreements remain informal. Legal protection for MSME partnerships is enforced by the Business Competition Supervisory Commission (KPPU) under Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as Commission Regulation No. 4 of 2019 regarding procedures for supervising and handling partnership cases.*

**Keywords:** MSMEs, Partnership, Legal Protection, Anti-Monopoly Law, Business Competition

### **1. Introduction**

Micro, Small, and Medium Enterprises (MSMEs) are one of the business sectors affected by Covid-19 in 2020. This business group, which has a lot of contact with the community's economy with small-scale capital, is experiencing a significant economic crisis. The existence of the corona virus that is spreading throughout the world has made this business sector ravaged by consumer behavior. MSMEs are the most important pillar in the Indonesian economy, with a total of 64.19 million, with a very dominant composition of Micro and Small Enterprises, namely 64.13 million or around 99.92% of the entire business sector. In comparison, India's estimated 63 million MSMEs account for more than 30% of India's GDP and 45% of India's exports and employ around 111 million people. This shows that empowering MSMEs can increase a country's economic growth.

The economic crisis experienced by MSMEs is also a threat to the national economy. Even though the spread of the coronavirus has been resolved globally, it still has an impact that has not ended. Currently,

MSMEs are experiencing various problems such as decreased sales, limited capital, hampered distribution of goods, difficulty with raw materials, decreased production, and termination of employment; this is a threat to the national economy. The COVID-19 pandemic has harmed MSMEs. Survey results from several institutions (BPS, Bappenas, and the World Bank) show that this pandemic has caused many MSMEs to have difficulty paying off loans and paying electricity, gas, and employee salary bills. According to the release of the Katadata Insight Center (KIC), the majority of MSMEs (82.9%) have felt the negative impact of this pandemic, and only a small number (5.9%) experienced positive growth.

Based on this fact, the role of MSMEs as the foundation of the people's economy requires proper handling by the government, which leads to efforts to improve people's welfare and economy. These efforts are carried out by increasing the competitiveness of SMEs. In increasing the competitiveness of MSMEs, optimal development or coaching steps are needed for the MSMEs themselves. One form of development and coaching that can be applied to MSMEs is cooperation through partnerships.

Based on Article 1 paragraph (13) of Law no. 20 of 2008, what is meant by the partnership is cooperation in business relations both directly and indirectly based on the principles of mutual need, trust, strengthening, and benefit involving micro, small, medium, and large businesses.

Even though the government has announced cooperation between MSMEs and large businesses through partnerships, legal protection for MSMEs is urgently accompanied by supervision by the government considering that the parties/business actors in this partnership have unequal or unequal positions both in terms of capital, marketing, and level of control technology, thus enabling the dependence of micro and small businesses on medium or large business actors who violate applicable legal provisions and are detrimental, hindering the growth of MSMEs.

Every entrepreneur aims to gain profits in various ways, including by partnering so that the desire to partner arises naturally without coercion from either party. This means that partnerships should have been born based on awareness of mutual need, mutual trust, mutual reinforcement, and mutual benefit. This is done because in partnering, the goal to be achieved is profit sustainability based on risk and profit sharing. The reason to increase empowerment and competitiveness in MSMEs is to ensure the continuity of the business of the MSMEs themselves so that they can become strong and independent business actors and can break away from the nature of dependence that shackles the independence of MSMEs.

Dependence is something that is not expected to exist in business actors, especially MSMEs that partner with large businesses. In Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises, it is regulated that in a partnership relationship as outlined in the form of a partnership agreement, its implementation may not conflict with the basic principles of partnership and may not create dependence between MSMEs and Large Enterprises or between Medium Enterprises and Micro and Small Enterprises (hereinafter referred to as UMK).

However, the bargaining position of MSMEs and large businesses in partnerships is lower and often has an impact on dependence and causes losses for micro and small businesses. Like the dominant bargaining

position of PT. Carrefour Indonesia in the Decision of the Commission for the Supervision of Business Competition (KPPU) No.2/KPPU-L/2005 in the case between PT. Carrefour Indonesia with suppliers of goods as micro and small businesses. KPPU, in this decision, considers that PT. Carrefour Indonesia uses a dominant bargaining position through business partnerships by determining trading terms (tending terms) to suppliers of goods, such as *listing fees minus a margin, fixed rebate, payment terms, regular discounts, common assortment costs, opening costs, and penalties* that kill micro and small businesses because they do not differentiate between large scale suppliers and small businesses. Between PT. Carrefour Indonesia and the suppliers of goods entered into a partnership agreement with a trade agreement pattern for one year. Based on the statement of the reporter, all letters, documents, and related data reported, the KPPU's examination team stated that the reported party had been legally and convincingly proven to have violated the provisions of Article 19 letter a of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Provisions of Article 19 letter a Law no. 5 of 1999 that business actors refuse and/or hinder other business actors from carrying out the same business activities in the relevant market. Certain business actors in question are potential competitor business actors. Based on the provisions of this article, PT. Carrefour Indonesia is deemed to be obstructing other business actors (supplying traders) from conducting business activities in the form of supplying merchandise marketed by PT. Carrefour Indonesia by imposing trading terms (*trending terms*).

The requirement for implementation of the market requires business competition. For business competition to run well, regulations are needed as a legal umbrella in the economic field as well as a form of protection for business actors and consumers. Therefore, the government has enacted Law No. 5 of 1999. Through this law, monopolistic practices and unfair business competition can be avoided, as well as a form of partnership supervision from the government so that large business actors do not become predators of small business actors.

In comparison, the Government of India has established the National Small Industries Corporation (NSIC), which is a business entity of the Indian government that provides support services such as marketing, finance, technology, and other services to encourage the growth of Micro, Small, and Medium Enterprises. NSIC also facilitates various schemes to increase the competitiveness of companies. MSME problems such as capital, marketing, and technology that are often faced by MSMEs in India are resolved through NSIC services provided by the government. NSIC has a very important role in providing services while protecting MSME players from other business actors.

The policy pursued by the Indonesian government in developing MSMEs is through one of the programs, namely, a partnership with the "foster father" principle. This program places micro and small businesses as children who need guidance from big businesses as nurturing fathers through the forms of capital assistance, management, and product marketing, with the principles of mutual trust, mutual benefit, and mutual reinforcement. The most important part of the partnership program is to build synergy between

small and large businesses so that a mutually supportive and mutually beneficial value-adding process occurs between the MSME sector and medium or large businesses.

In addition to the "Father Foster" Partnership Program, the government has also rolled out a policy requiring SOEs to allocate 1 to 5% of their net profits for the development of MSMEs, as well as the support of large private companies to set aside a portion of their net profits for the development of MSMEs known as Corporate Social Responsibility (CSR). However, the partnership program initiated by the government so far has not been successful in increasing the margins of small, micro, and informal sector businesses because, so far, both state-owned enterprises and large private companies have implemented partnership programs simply following the government's recommendations.

Various state policies have been launched towards the revival of post-pandemic MSMEs, such as the British Government issuing offline discount vouchers for the small and medium catering industry; the Japanese government invests a large number of funds to subsidize the "domestic travel" service provided by the tourism industry so that tourists can enjoy a 15%~35% discount; in the US. Meanwhile, in China, implementing representative decisions helps post-pandemic MSME economic recovery, such as increasing credit support for MSMEs, reducing taxes for MSMEs, lowering bank loan interest rates, delaying repayment of principal and loan interest, and increasing support from the government.

## **2. Research Method**

This study uses qualitative methods to answer the formulation of the problem of legal protection for MSMEs. Researchers analyzed the literature and collected data through interviews with parties related to the implementation of business partnerships. This type of research is normative-empirical, namely using a legal approach with additional empirical elements. Normative legal research is often referred to as doctrinal legal research, using 2 (two) approaches: the statutory approach and the conceptual method. The aim is to identify legal concepts which become tools for the analysis and review of laws and regulations which form the basis for both repressive and preventive actions related to the issues raised in this study. The research location is Mercure Makassar Nexa Pettarani, one of the hotels in Makassar City, South Sulawesi, which has entered into partnerships with several micro and small business actors. To complete the empirical analysis, the researcher interviewed: Finance and Accounting Manager, the Head of the Regional Business Empowerment Section of the Investment Service and OneStop Services of South Sulawesi Province, Owners of the Joint Permanent Bunly and Voters of "Initial" Trading Businesses. The author examines the Legal Protection of Micro, Small, and Medium Enterprises in the Implementation of Partnerships from the Perspective of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

## **3. Discussion**

The fair business competition will create business effectiveness and efficiency that will benefit the community or companies that implement it. The healthy business competition also affects the small business sector or what is often called UMKM. Currently, the implementation of partnerships between

MSMEs and large businesses occurs a lot. However, healthy business competition between the two business actors is difficult to achieve. This is because the bargaining position of large businesses dominates the market, which often harms MSMEs with a lower bargaining position. For this reason, supervision by the government is needed to overcome problems that are vulnerable to MSMEs.

Through this partnership, MSMEs are expected to be able to open and expand employment opportunities and, empower themselves and provide economic services evenly to all people. MSMEs need to be protected because they are an integral part of the economy, which has the potential to increase the country's economy.

Partnerships that generally involve MSEs with medium and large businesses in their implementation are guided by 4 (four) basic principles, namely mutual need, mutual trust, mutual strengthening, and mutual benefit.

Following the provisions of Article 34 paragraph (1) of Law No. 20 of 2008 in conjunction with Article 29 paragraph (4) of PP No. 17 of 2013, it is stipulated that the partnership agreement is outlined in a written agreement containing at least the following provisions:

1. Concerning business activities
2. Rights and obligations of each party
3. Forms of business development
4. Timeframe
5. Settlement of disputes, if any.

The implementation of the partnership agreement must prioritize the principle of equality without distinguishing between MSEs and medium and large businesses. Equality can be interpreted as equality of opportunity and position before the law. A balanced position between the two parties. The prohibition of dependence is based on the fact that the micro-economy consisting of MSMEs is a business entity that has a significant share in the growth and development of the national economy. Therefore, MSMEs receive special attention and are made a priority by the Government to always be developed so that they have strong competitiveness. However, MSMEs have several weaknesses, namely, first in terms of marketing, which is difficult to do. Second, most MSMEs are still limited in terms of finance and human resources. Third, limitations in the use of technology are not adequate.

With this weakness, it is not uncommon for MSMEs to depend on large businesses that already have good skills in terms of marketing, finance, human resources, and technology. Thus, to avoid this dependence in partnerships that occur between MSMEs and large businesses or MSEs and medium-sized businesses, a transition process must be followed. The transition process in question is the process of transferring skills in the fields of production and processing, marketing, capital, human resources, and technology. This transition process is an effort to empower and strengthen the partnership relationship between Large Enterprises and MSMEs or Medium Enterprises and MSEs.

Looking at the criteria for financial capability between Large Enterprises and MSMEs and/or Medium Enterprises and MSEs, then those with the potential to have a dominant position are Large Enterprises and Medium Enterprises. The financial comparison between these businesses can be seen in the table below.

**Table of Financial Comparison of Working Capital and Annual Sales of Micro, Small and Medium Enterprises and Large Enterprises.**

| Criteria        | Capital for Entrepreneurs | Annual Sales             |
|-----------------|---------------------------|--------------------------|
| Micro business  | ≤ Rp 1.000.000.000,-      | ≤ Rp 2.000.000.000,-     |
| Small business  | ≤ Rp 5.000.000.000,-      | ≤ Rp 15.000.000.000,-    |
| Medium Business | ≤ Rp 10.000.000.000,-     | ≤ Rp Rp 50.000.000.000,- |
| Big business    | > Rp 10.000.000.000,-     | > Rp 50.000.000.000,-    |

Makassar City is the fourth largest city in Indonesia and the first largest city in Eastern Indonesia. This certainly invites many companies to build, invest and run businesses in Makassar City, and one of them is PT. Graha Yasa Selaras. PT. Graha Yasa Selaras is a company that was founded in 2012 and is engaged in providing tourism services, especially in the field of hotel development.

Currently PT. Graha Yasa Selaras built a hotel in Makassar City with the name Mercure Makassar Nexa Pettarani.

Based on research results in October 2022 at the Investment and One-Stop Services Office of South Sulawesi Province (hereinafter referred to as DPMPTSP Prov. Sulsel), Mercure Makassar Nexa Pettarani entered into partnerships with 42 Business Actors consisting of 12 Limited Liability Companies (PT), 5 Commanditaire Vennootschap (CV), 6 Trading Companies (UD) and 19 businesses that do not have PT or CV or UD status. Mercure Makassar Nexa Pettarani also conducted partnerships with 19 MSMEs facilitated by the DPMPTSP of South Sulawesi Province. Preliminary data obtained shows that Mercure Makassar Nexa Pettarani has a partnership with MSMEs to supply food and other needs in providing hospitality services. These needs are in the form of market snacks, snacks, juices, crafts, eggs, rice, and cosmetics/herbs.

### **3.1 Partnership Pattern of Mercure Makassar Nexa Pettarani with MSMEs**

The legality of MSMEs before partnering is that they must meet administrative requirements for the accountability of the MSMEs themselves. The administrative requirement is that MSMEs must be recorded in the government database (DPMPTSP South Sulawesi Province) to make it easier for the government to collect MSME data. To be registered in the DPMPTSP database for South Sulawesi Province, MSMEs must have a Business Identification Number (NIB), have been running their business for at least 3 (three) years, and be able to produce a product according to the specifications needed by the company.

The MSME database is informed to Large Enterprises to then be facilitated in a partnership relationship by the government. Concerning the responsibility of MSMEs, the legality of this business will be used in obtaining halal certification and will be the basis for ensuring that MSMEs are eligible to be facilitated by DPMPTSP of South Sulawesi Province to partner with Large Enterprises.

However, according to Joko Mulyono, Mercure Nexa Pettarani Makassar does not require MSME players to have a Business Identification Number (NIB). In principle, as long as the goods offered by MSMEs meet the standards set by Mercure Makassar Nexa Pettarani and there is a price match, Mercure Makassar Nexa Pettarani will conduct partner relations with these MSMEs even though they do not yet have a NIB.

The partnership pattern that exists between Mercure Makassar Nexa Pettarani and MSMEs is illustrated in the cooperation contract with the "Initial" Trading Business. In the cooperation contract, Mercure Makassar Nexa Pettarani is the party receiving the goods, while the "Initial" Trading Business is the supplier of the goods. The partnership pattern that exists between Mercure Makassar Nexa Pettarani and the Initial Trading Company is a supply chain partnership pattern. In the supply chain partnership pattern, partnerships are carried out in a series of activities involving large businesses and MSMEs to carry out: (1) management of product transfers carried out by companies with raw material providers; (2) distribution of products from companies to consumers; and/or (3) managing the availability of raw materials, supply of raw materials, and fabrication processes. In the supply chain pattern, Large Enterprises are positioned as recipients of goods, while SMEs are positioned as providers of goods. There is a positive influence between process innovation through partnerships, so partnerships in production have a significant effect on production performance.

In implementing business partnerships, the negotiation process is between Mercure Makassar Nexa Pettarani and MSME potential partners. It is still being carried out orally even though according to Article 34 paragraph (1) of Law No. 20 of 2008 in conjunction with Article 29 paragraph (4) PP No. 17 of 2013, it must be done in writing so that there is certainty of the rights and obligations of each. In the negotiation process, the two parties only discussed the price agreement and the supply process that had to be carried out by MSMEs. There is no specific agreement regarding the period, method of payment, and conditions in the event of default. The form of the written agreement regulates the business activities, rights, and obligations of each party, the form of development, period, dispute resolution, and the expiration of the cooperation agreement.

One example of a business partnership that is not indicated as violating the law is between Toko Pedia and Gojek. Even though the partners are both large companies in the same market group, both are not indicative of monopolistic and unfair business competition. This is because post-merger companies do not control production/distribution/consumption in society.

### ***3.2 Implementation of the Mercure Makassar Nexa Pettarani Partnership with MSMEs in Makassar City***

The partnership essentially shows two or more parties interacting dynamically to achieve profit. This is in line with microeconomic theory, which states that in the business world, maximizing profits is the main goal of a business being run. Indicators in determining partnership relationships that are mutually beneficial to both partners and achieve partnership goals are as follows:

1. Realizing equal opportunity and contribution of MSMEs in the regions in improving the regional economy;
2. Increasing the capacity and competence of MSMEs in the regions to be able to collaborate with large businesses both from within and outside the country;
3. Encouraging the growth of MSMEs in the regions that are included in the supply chain to strengthen the added value and the production base in the country And
4. Maintain certainty and business continuity that is mutually beneficial between large businesses and MSMEs in the regions.

Based on these indicators, the implementation of the Mercure Makassar Nexa Pettarani Partnership with MSMEs in Makassar City is analyzed as follows:

1. Realization of equal opportunity and contribution of MSMEs in improving the regional economy. Economic growth in Indonesia is influenced by the involvement of the role of MSMEs. Data from the Ministry of Cooperatives and SMEs showing the number of MSMEs with a contribution to the Gross Domestic Product of 61.97% or a value of 8,573.89 trillion rupiahs shows that MSMEs contribute to improving the Indonesian economy, including in areas where MSME businesses are carried out. Bunly Abadi Bersama is one of the UMKM partners with Mercure Makassar Nexa Pettarani. This MSME is a business that has been recorded in the DPMPSTSP database for South Sulawesi Province. The recording of the Bunly Abadi Bersama business makes the obligation to pay taxes by MSMEs to be carried out properly for the country's development, including the development of Makassar City (Lily Nuryah, interview, 3 January 2023).

2. Increasing the capacity and competence of MSMEs to be able to collaborate with large enterprises To achieve an increase in the capacity of MSMEs, the DPMPSTSP of South Sulawesi Province facilitated MSMEs in Makassar City, which have been recorded in the database to partner with Mercure Makassar Nexa Pettarani which is one of the Big Businesses in Makassar City (Nirmalasari, interview 2 January 2023).

The supply chain pattern that exists between Mercure Makassar Nexa Pettarani and MSME partners in its implementation, apart from expediting sales turnover and helping MSME income, the partnership has also indirectly helped the marketing of MSME products such as accessories, shoes, crafts, onions, cashews, rich jams and others on display and minibar. The products that are displayed on displays and minibars will be seen directly by customers so that it will attract customers to buy them (Joko Mulyono, interview, 21 December 2022).

3. Encouraging the growth of MSMEs that are included in the supply chain to strengthen the added value and the domestic production base

Based on the analysis of the partnership with the supply chain pattern between Mercure Makassar Nexa Pettarani and MSMEs, it has driven the growth of the partners, both the growth of Mercure Makassar Nexa Pettarani and the growth of the MSMEs themselves. Even regional economic growth was also encouraged

by the establishment of this partnership. With supply chain partnerships, Mercure Makassar Nexa Pettarani's needs in serving customers can be fulfilled so that customers get the best hotel services. Regional economic growth in Makassar City has increased because tax payments are following the income of MSMEs that have NIB and are recorded in the DPMPTSP database for South Sulawesi Province. In addition, the sales and turnover of MSME products have increased and run smoothly since the partnership between MSMEs and Large Enterprises was established (Nirmalasari, interview, 2 January 2023).

4. Maintenance of mutually beneficial business certainty and continuity between large businesses and MSMEs in the regions The Business Identification Number (NIB) that has been owned by UMKM indicates that the business run by UMKM has been going on for no less than 3 (three) years. The duration of the MSME business is required to ensure that the MSME can continuously produce products needed by large businesses so that the sustainability of the partnership can be ensured. This NIB will make MSME data available in the DPMPTSP database for South Sulawesi Province to provide accurate information to every large business that will establish a partnership with MSMEs (Nirmalasari, interview, January 2, 2023).

Legal protection for small business actors in business competition in Indonesia is an embodiment of the implementation of economic democracy, which contains the principles of fairness, unity, and fairness to encourage the creation of opportunities for every citizen of the business world in an atmosphere of healthy and fair competition so as not to cause concentration of economic power only in a handful of actors business, but to provide opportunities for small business actors.

The implementation of the partnership between Mercure Makassar Nexa Pettarani and UMKM (Initial Trade Business) has fulfilled the principles as follows:

1. Application of the principle of equality

The basic concept in a partnership relationship is the establishment of cooperation between two or more parties in carrying out business activities that are mutually supportive and where all parties are on a line of equal standing. This equal standing relates to equality and equal standing before the law, and there are no superior or subordinate elements that are described in the contents of the agreement and the implementation of the partnership agreement.

The cooperation contract between Mercure Makassar Nexa Pettarani and the Initial Dagang Business can prove the existence of equal standing from both parties because both parties agree to sign the cooperation contract. If one of the parties feels that there is no equality, then surely there will be no signing as a sign that the contract is agreed.

2. Application of the principle of transparency (openness)

Transparency is needed to avoid mutual suspicion between parties who enter into a partnership relationship. The transparency in question is the transparency of information management and the transparency of financial management. Information transparency is carried out by providing appropriate information regarding the market price of an item that will become the partner's object. Management transparency is evidenced by decision-making when it will increase or decrease the price of goods, the

process of sending goods, and the payment process or mechanism which is carried out using the TOP (Term of Payment) system/payment due.

3. Application of the principle of Result-oriented Approach (result-oriented approach)

The application of the Result-Oriented Approach principle relates to the impact felt by Mercure Makassar Nexa Pettarani and the Initial Trading Business during a partnership relationship. During the partnership, the need for hotel goods in the form of vegetables and fruits by the Initial Trading Business needed by Mercure Makassar Nexa Pettarani can be fulfilled. Thus, Mercure Makassar Nexa Pettarani can provide the best service to hotel customers. While the impact felt by the Initial Trading Business was that the marketing of its vegetables and fruits became wider, sales increased, and monthly income increased.

4. Application of the principle of Responsibility (responsibility)

This principle focuses on the sense of responsibility that must be carried out during a partnership relationship. Mercure Makassar Nexa Pettarani and the Initial Trading Company agreed to maintain performance in carrying out their respective duties and responsibilities. In carrying out a partnership relationship, both carry out their duties and roles seriously and uphold the principle of kinship so that it is not only limited to a business relationship but also establishes a mutually supportive, friendly relationship between the two. As a form of mutual support between the two parties, Mercure Makassar Nexa Pettarani helps promote and market the Initial Trading Business products. Vice versa, the Initial Trading Company helps promote hotel services provided by Mercure Makassar Nexa Pettarani.

5. Application of the principle of Complementarity (complementary)

The principle of complementarity between Mercure Makassar Nexa Pettarani and the Initial Dagang Business is illustrated by their position in the partnership relationship that they carry out. The position of the two is none other than the seller and the consumer/buyer in the process of procuring goods for the hotel. Initial Trading Business, Mercure Makassar Nexa Pettarani serves as the recipient of the goods and then pays the price of the goods according to the agreement (position of the consumer/buyer).

Meanwhile, the Initial Trading Company, as the party that brought in the hotel goods to Mercure Makassar Nexa Pettarani, served as the supplier of the goods and then received payment according to the agreed price (the seller).

From the perspective of anti-monopoly law or business competition law, violations in the implementation of the business world can be identified through agreements and actions of business actors/businessmen. Business practices that can result in unfair business competition or are called fraudulent business practices are usually found through agreements and business practices. If the business agreement contains fraud (unfair business agreement), then the agreement is considered an unhealthy business agreement. Under the anti-monopoly law, fraudulent business is called unfair business competition, namely business competition carried out dishonestly or by way of breaking the law.

To avoid these fraudulent business practices, the government stipulated Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This regulation provides limits and

instructions to business actors who partner so that the two business actors do not have indications of unfair business competition, which could harm the partnering parties or the risk is detrimental to micro and small business actors whose position is weak and dependent on medium or small businesses.

The partnership agreement does not rule out the possibility of becoming an unhealthy or fraudulent business agreement. If the partnership agreement contains one of the elements prohibited in Law No. 5 of 1999, then the agreement is indicated as an unhealthy business agreement. However, to determine whether the partnership agreement is an unhealthy or fraudulent business agreement, further investigations must be carried out by KPPU. This is to identify the categories of violations through the approaches usually used by the Business Competition Supervisory Commission (KPPU), namely the *per se* illegal approach and the rule of reason approach.

The *per se* illegal approach is an approach that is taken in every agreement or certain business activity that is considered illegal so that no further evidence is needed on the impact of unfair competition arising from the agreement or business activity. Meanwhile, the rule of reason approach is an approach to evaluate the consequences of an agreement or a particular business activity so that further evidence is needed to prove that the agreement or business activity inhibits or supports fair business competition.

Through partnerships, MSEs can become dependent on large or medium-sized businesses. Dependence can occur through aspects of capital, business management, or marketing. The dependence of UMK on medium or large businesses creates ownership and/or control of large and/or medium enterprises on UMK. The MSME Law strictly prohibits the action that Large Enterprises and/or Medium Enterprises are prohibited from owning and/or controlling their partner business actors. This form of ownership and/or control is characterized by the condition of Large and/or Medium Enterprises owning most or even all of the shares/capital of their partner business actors. In addition, ownership and/or control is also indicated in terms of decision making, which is dominated by large and/or medium enterprises. In the Anti-Monopoly Law, it is called a dominant position.

This dependence or domination is the result of the abuse of dominant position by large businesses against their partner UMK or medium enterprises against their partner UMK. According to Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, the provisions for a dominant position are explained in Article 1 point 4 and Article 25 Paragraph (1) and Paragraph (2). The dominant position is a legal term that describes a dominant position in the market. Domination over this market results in the absence of significant competitors so that the business is the highest business among the existing business actors. In addition, a dominant position is also characterized by the ability to adjust the supply or demand for certain goods and/or services.

Because of this effect, the MSME Law prohibits using a dominant position to stipulate trade terms that can freely adjust or regulate the amount of demand for goods and/or services to prevent other business actors or consumers from obtaining goods and/or services that compete in terms of both price and quality. A company or business actor is not prohibited from having a dominant position. However, what is prohibited

is the abuse of this dominant position. This is because abusing this dominant position can result in monopolistic practices and/or unfair business competition.

Based on the Business Competition Law, the parameters of a business actor with a dominant position are the absence of significant competitors in the relevant market, having the highest position among competitors in terms of financial capability, ability to access supplies or sales, and the ability to adjust the supply or demand for goods and/or certain services.

The purpose of partnership oversight is to prevent the occurrence of injustice in the practices of large companies in partnership activities. The International Criminal Court (ICC) enforces Commission Regulation No. 1 of 2015 concerning Procedures for Oversight of Partnership Implementation to manage Partnership Activities. This regulation provides legal protection from the perspective of competition law for MSME actors who carry out partnership activities.

If a business actor is proven to have violated the provisions of Law no. 5/1999, the KPPU, as the commission overseeing the implementation of this Law, has the authority to impose sanctions in the form of administrative measures against business actors. Apart from these administrative actions, sanctions for violating Law no. 5/1999 impose 2 criminal sanctions, namely principal criminal sanctions and additional criminal sanctions that must be carried out by business actors who commit acts against the law.

KPPU supervises every implementation of partnership so that it does not violate business competition law and the implementation of partnership following Article 104 paragraph (1) and paragraph (2) In addition, KPPU must also supervise that the implementation of partnership following the Provisions of Article 35 of the UMKM Law junction Article 120 of Regulation Government Number 7 of 2021 Concerning Ease, Protection, and Empowerment of Cooperatives and MSMEs, related to the prohibition of Large or Medium Enterprises from controlling and/or having their business partners.

However, the thing that must be considered is that there are no provisions governing the imposition of sanctions if the contents of the partnership agreement do not comply with what is stipulated by Government Regulation Number 7 of 2021 concerning the Ease, Protection, and Empowerment of Cooperatives and MSMEs. Therefore, the government, both as a policy maker and as a supervisor for business partnerships, must make regulations that can become social engineering for all business actors in Indonesia.

Article 104 paragraph (4) of Government Regulation Number 7 of 2021, Concerning Convenience, Protection, and Empowerment of Cooperatives and MSMEs, stipulates that partnerships that exist between large businesses and MSMEs are carried out accompanied by assistance and strengthening of MSMEs carried out by large businesses. Article 105 of the same regulation states that partnerships cover the process of transferring skills in the fields of production and processing, marketing, capital, human resources, and technology following the partnership pattern.

The provisions in Article 104 paragraph (4) above do not state that the form of assistance and strengthening of MSMEs is something that must be done because, in this Article, there is no "mandatory"

or "must" phrase intended for Large Enterprises. Then Article 105 stipulates that "... following the partnership pattern". This means that this article states that not all partnership patterns are required to transfer skills in the fields of production and processing, marketing, capital, human resources, and technology. The processes in question are carried out following the needs of the established partnership pattern.

#### **4. Conclusion**

One of the post-covid MSME empowerment is through business partnerships, as was done between Mercure Makassar Nexa

Pettarani and several MSMEs using a supply chain partnership pattern. In the supply chain pattern, Large Enterprises (Mercure Makassar Nexa Pettarani) are positioned as recipients of goods, while SMEs are positioned as providers of goods. The implementation of the partnership between Mercure Makassar Nexa Pettarani and MSMEs follows the partnership principles, namely the principles of equality, transparency, result-oriented approach, responsibility, and complementarity. The substance of the partnership agreement does not indicate abuse of the dominant position as prohibited in the Anti-Monopoly Law. However, the partnership agreement does not comply with the provisions of Government Regulation Number 7 of 2021 regarding the partnership agreement outlined in written form. In terms of supervising the implementation of MSME partnerships, KPPU has been given authority through Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as Commission Regulation No. 4 of 2019 concerning Procedures for Supervision and Handling of Partnership Cases.

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