

Research Paper

Core-Plasma Pattern Partnership Agreement with Micro-Small Business based on the Perspective of Competition Law

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Abstract: Partnership agreements that aim to mutually benefit both parties, especially empowering micro and small businesses, often have unfavorable consequences for parties whose bargaining position is weak, so that the business competition authority is also given supervisory authority over the implementation of the agreement. The imbalance in bargaining position in this agreement is the reason for writing to raise the issue of understanding owning and/or controlling micro and small businesses according to the applicable regulations and how it is implemented in the nucleus plasma partnership scheme for the oil palm plantation sector. This normative research includes prescriptive research using secondary data which is analyzed qualitatively and concluded using deductive methods. The results of this study indicate that the notion of having is defined as ownership of equity or capital, while the term control focuses more on managerial control which ultimately has an impact on asset control. The partnership agreement contains several clauses that have the potential to own and/or control micro-small businesses according to Law 20/2008 jo. Law 11/2020, besides that, it also has the potential to violate the provisions or principles of unfair business competition. However, this potential violation is difficult for competition authorities to reach due to the absence of technical regulations that explain the meaning of owning and/or controlling micro and small businesses. Therefore, KPPU needs to prepare further regulations in the form of guidelines that explain the limitations.

Keywords: Micro-Small Business, Nucleus-Plasma, Partnership Agreement, Unfair Business Competition.



1. Introduction

Business cooperation in the form of partnerships in Indonesia is something that has been going on for a long time even on a simple scale, such as mutual cooperation, mutual cooperation, participation, cai partners, forest village community partners, environmental partners and others [1]. On an international business scale, the concept of cooperation has also been practiced for a long time under various names such as strategic alliances. Partnership in the business world is a relationship between business actors based on mutually beneficial business ties in a synergistic working relationship whose result is not a zero-sum game, but a positive-sum game or win-win situation [2]. That is, a business partnership is a cooperative relationship between businesses based on the principle of mutual support and mutual support based on the principles of kinship and togetherness [3].

This partnership based on the principle of kinship is in accordance with the principle in the Indonesian constitution which basically states that "the economy is structured as a joint effort based on the principle of kinship". As a manifestation of this principle, the government has developed a form of business entity that uses this family principle in a cooperative legal entity. Under ideal conditions, partnerships aim to increase the income of small businesses and at the same time increase the acquisition of added value for partnership actors. However, in reality the partnership relationship is not always harmonious and has an unfavorable impact, especially for micro and/or small businesses [4].

One of the problems of the partnership agreement in the business competition regime led to a case at the Business Competition Supervisory Commission (KPPU), which in this case received the mandate as a partnership supervisory agency. Although the Decision on Case Number 16/KPPU-K/2019 which is the first decision on partnership states that PT Pos Indonesia (Persero) has not been proven to have violated Article 35 paragraph (1) of Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises (Law No. 20/2008) but this is the first step in KPPU's efforts to uncover the negative impact of partnership agreements on small businesses [5].

The novelty of this research reveals more about the meaning of the term mastering micro and/or small businesses by medium and/or large businesses in the partnership agreement after the enactment of Law No. 11/2020 concerning Job Creation. In addition, this study aims to analyze the application of the term master in a partnership agreement with the plasma nucleus pattern with micro and small businesses in the plantation sector. This reason prompted the author to conduct a study entitled "The Core Plasma Pattern Partnership Agreement with Micro and Small Businesses from the Perspective of Business Competition Law". Therefore, the author proposes a research problem regarding the meaning of the juridical meaning of the term owning and/or controlling micro and/or small businesses by medium and/or large businesses according to Article 35 of Law 20/2008 concerning Micro and Small Enterprises and their implementing regulations. In addition, regarding the application of the term owning and/or controlling micro and small businesses in the plasma nucleus pattern partnership agreement which has the potential to fulfil the prohibition of Article 35 of Law No. 20/2008, Law No. 11/2020, also has the potential to violate the provisions of Law No. 5/1999. The scope of this research is about partnership agreements by taking the example of an agreement with the nucleus-plasma pattern in the oil palm plantation sector in Bengkulu from the perspective of Business Competition Law, with reference to Law No. 20/2008 concerning Micro, Small and Medium Enterprises, as well as Law No. 11/2020 concerning Job Creation.

2. Literature Review

KPPU carries out its supervisory function on partnership agreements based on the mandate of Article 36 of Law no. 20/2008 which is implemented in a government regulation. This case began with reports of alleged violations of partnerships committed by PT Pos Indonesia (Persero) as the reported party and Agen pos as the micro-small business partner. The object of this case occurred in the courier and logistics service sector, which is suspected of having control over Agen pos by unilaterally determining the change in the amount of the Agen pos fee without involving Agen pos as its partner. KPPU decided that this allegation was not proven because the form of partnership relationship between PT Pos Indonesia and Agen pos was subject to an agency agreement, so that Agen pos acted for and on behalf of PT Posindo as the principal. The principal also sets the price for all postal service products and the postal agent receives a fee for granting the right [6].

The partnership relationship itself can be viewed from an economic or business dimension and from a legal aspect. Several studies on partnership agreements put forward the aspects of the agreement, such as the establishment of standard clauses which are generally stipulated by medium

and/or large business partners, or regarding the content of a fair contract, providing legal protection and certainty, so that the contract becomes an agreement that has perfect proof [7]. In the event of a dispute, dispute resolution efforts that can be used by the parties are through two ways, namely non-litigation channels, namely consultation, negotiation, conciliation, mediation, and arbitration if no agreement is found, it can be submitted to litigation.

In terms of Competition Law, there are not too many previous studies on partnerships, but there are several articles that, among others, focus on the aspect of supervision of the competition authority (KPPU) in supervising partnership agreements, and the steps for drafting implementing regulations for Law No. 20/2008 and PP 17/2013 which have been amended by PP 7/2021 [8]. Another study is related to the partnership agreement in the oil palm plantation sector with the plasma nucleus pattern in Bengkulu, which still uses the old regulations [9]. Meanwhile in 2020 there will be a study that highlights partnership agreements in the perspective of business competition and dispute resolution mechanisms.

3. Methodology

This research is a normative legal research, namely research that uses library materials or secondary data consisting of primary legal materials, legal materials and secondary as primary data. The nature of legal research is in line with the nature of legal science, namely prescriptive which studies the purpose of law, legal concepts, and legal norms [10]. The data used are library materials which are commonly referred to as secondary data [11]. Secondary data includes official documents, textbooks, research results in the form of reports, regulations and policies related to partnerships. The data collection technique was carried out through library research, namely by collecting secondary data by studying books, laws and regulations, KPPU decisions, internet media, journals, and related research results. The data analysis method uses qualitative analysis, namely the analysis of legal materials based on concepts, theories, laws and regulations, expert views in related fields, then interpreted in order to draw conclusions and suggestions from the problems of this research

4. Finding and Discussion

The basic thing that needs to be translated in this research begins with the prohibition of owning and/or controlling micro, small, and/or medium enterprises in partnership agreements. What is meant by "owning" is a legal transfer of ownership of a business entity/company and/or assets or assets owned by a micro, small, and/or medium business by a large business as its business partner in the implementation of a partnership relationship. Meanwhile, what is meant by "control" is the transfer of juridical control over the business activities carried out and/or assets or assets owned by micro, small, and/or medium enterprises by large businesses as business partners in implementing the relationship.

3.1. Juridical Definition of the Term Owning and/or Controlling Micro and/or Small Businesses by Medium and/or Large Enterprises

In Indonesian Civil Law, the notion of having is translated as eigendom, and mastering is translated as bezit. Eigendom is the most perfect right to an object, meaning the right to fully enjoy an object and to control the object freely, as long as it does not conflict with applicable laws or regulations and does not violate the property rights of others. While the notion of bezit is a state of birth, where a person controls an object as if it were his own which is protected by law, without questioning who the property rights to the object actually belong to. Bezit is regulated in Articles 529 to 569 Book II of the Civil Code (KUHPperdata), where the definition of bezit is a material right. Bezit is distinguished from holding (detentie), where a person controls an object based on a legal relationship with another person, namely the owner (bezitter) of the object to a holder (detentor), for example, the tenant is considered that the will to own the object under his control does not exist. The term bezit was actually taken from the Third Book of the Second Title Part One of the Dutch Burgerlijk Wetboek, hereinafter referred to as BW with the title "Van Zaken". Article 585 of the Dutch BW states "*Door bezit wordt verstaan het houden of genieten eener zaak, welke iemand, of in persoon, of door een ander, in zijn magt heft, als of zij hem toebehoorde*" [12]. Frieda translates it as "What is meant by bezit is the state of holding or enjoying an object that is controlled by a person either on his own efforts, or through the intercession of another person, as if the object were his own."

Meanwhile Sri Soedewi stated that bezit is "a state of holding or enjoying an object in which a person controls it either alone or through the intercession of others as if it were his own"[12]. In his conclusion, Frieda stated that the notion of bezit is close to or almost the same as the notion of

property rights (eigendom). The difference is that in eigendom it shows a legal relationship with the owner, while in bezit it shows a real relationship between the holder and the object. In addition, in eigendom, a person can act as the owner (eigenaar) of an object because he is the owner. However, there are also those who act or act as if they are the owner of an object without knowing whether they are the real owner or not. If he fulfills the conditions that have been determined, then he will get legal protection as a ruler (bezitter) without having to prove his rights.

Unlike the case in Corporate Law, the distinction between ownership (shares) and control has been a longstanding debate. This is related to the aspect of corporate management responsibility which is often considered to take excessive risks. Shareholders generally have little influence into the management of the company, but are very concerned with increasing the income and value of their investments [13]. What distinguishes ownership and control of a company are issues related to corporate governance, the detrimental effects of a limited liability company, and the effectiveness of controlling shareholders. The existence of the principle of limited liability separates the responsibility of the owner of the company only up to the amount of capital/shares invested in the company. From a corporate legal perspective, shareholders are separated from management, unless they are appointed as directors or managers. At the same time, they will have control rights, so this will be a problem when dealing with managerial autonomy as a stakeholder requirement that should be separate from corporate social responsibility [14].

There are several types of company ownership, institutional investor ownership, insider ownership, blockholder ownership, family ownership, business group ownership, state owned enterprises). Although there are several forms of corporate ownership, some experts use several theories, including agency theory and institutional theory to understand the phenomenon of ownership. Agency theory is by far the most widely used approach to studying ownership problems. In this case there are two different types of organizations, first, small businesses through ownership or partnerships, where the main decision makers are also the main risk bearers. Second, large publicly-owned companies, with many investors, each have only a small amount of equity. While the Institutional or institutional theory states that shareholders operate in an institutional environment, and these.

The description of the definition of ownership and control above shows that there are differences in the meaning of the term's ownership and/or control from the perspective of Civil Law and Company Law. Ownership in Civil Law is defined as ownership of an object completely and at the same time controlling the object freely. However, control over an object is treatment as if it were one's own protected by law, without questioning the ownership rights to the object. Meanwhile, ownership in Company Law is manifested in the form of equity or share ownership, which is separated from the meaning of control. Although in practice there are several approaches to measuring a good ownership structure or a good corporate governance system, it is the flexibility of the ownership structure and not the ownership structure itself. Related to this, Barbara stated that it is important if the ownership structure can adapt to the environment and the characteristics of the company, because the main thing is to optimize the company's operations and the ability to overcome obstacles [15].

Indonesian Company Law stipulates that the limit of company ownership is limited to the value of the shares and the amount of paid-up capital by the owner. This can be seen from several limitations regulated in Law No. 40 of 2007 concerning Limited Liability Companies (UUPT). The amount of share ownership can be an indication of who the real owner of a company is, whether the company is a public company. In this case, owning/controlling is related to shares, meaning that having a majority share means that someone can control the votes. However, the Indonesian Company Law (Limited Liability Company Law) does not regulate the exact percentage of the number of shares, so that sometimes it can cause problems, especially companies founded by two (2) shareholders with the same percentage of shareholding [16]. The majority shareholder has enormous power to control the company through the GMS (General Meeting of Shareholders). In running the company, the board of directors must obtain approval from the shareholders to carry out company activities that require decision making [17].

In addition to the issue of company ownership, another issue that often comes to the fore is related to company law in terms of business competition aspects, namely company control. This is important to know because understanding control is usually associated with responsibility issues. This control issue becomes more complex when a company develops its business into a holding company that has several subsidiaries. Independent or not a company can be seen by its legal relationship with the parent company. The legal relationship between parent and subsidiary can be analyzed as follows:

- 1) The parent company may appoint members of the board of directors and/or board of commissioners of the subsidiary;
- 2) The parent company influences the subsidiary's policies;
- 3) The parent company affects the business interests of the subsidiary [18].

Control of the parent company over its subsidiaries is needed to ensure the sustainability of the group company (holding company). However, this control does not eliminate the independence of the subsidiaries, although it cannot be denied that the strategic policies of the parent company must be prioritized.

3.2. The Form of the Clause of the Partnership Agreement with Micro, Small and Small Enterprises with the Nucleus-Plasma Pattern which has the Potential to Conflict with the Principles and Provisions of Law 5/1999 and Law No. 20/2008

An important thing to note in partnership relationship is that are regular meetings that inform important things about partnership development such as profit, input factors, number of partners, borrowing, and management score [19].

Some of the attributes of partnership are trust in partners, respect for partners, joint working, teamwork, eliminating boundaries, and being an ally [20]. So far, there are no technical regulations that explain the prohibition of entering into partnership agreements where medium or large businesses intend to "own and/or control micro and/or small businesses. The term is not explained further in PP No. 07/2021. This regulation only stipulates that every form of partnership carried out by micro, small and medium enterprises is written in Indonesian or a foreign language, the contents of which at least contain: a. identity of the parties; b. business activities; c. rights and obligations of the parties; d. form of development; e. the term of the partnership; f. term and payment mechanism; and g. dispute resolution.

The definition of the term "owning" above is increasingly limited by the word transfer of ownership or "juridical" control over business entities/companies and/or assets/wealth owned by micro, small and medium enterprises. The transfer of ownership of business entities and/or assets in a juridical sense in the meaning of Company Law is defined as a corporate action in the form of takeover of shares or assets of micro, small and/or medium businesses by large businesses in the implementation of partnership relationships. UU no. 5/1999 regulates the prohibition of merger, consolidation, and/or acquisition of company shares/assets in Article 28 and Article 29, the implementation of which is regulated in PP No.57/2010. This regulation can serve as a preventive measure for KPPU in supervising the takeover of shares and/or assets of micro-small businesses by medium-sized businesses in the nucleus-plasma partnership agreement scheme, and takeover of shares and/or assets of micro-small-medium enterprises by big enterprises [21].

Meanwhile, the term "control" is also limited by juridical control "over the business activities carried out and/or assets or assets owned by micro, small, and/or medium enterprises by large businesses as business partners in a partnership relationship. In this sentence, it is important to provide an interpretation of several elements, namely juridical control, business activities carried out, or control of company assets/wealth. Similar to the juridical notion of ownership, the notion of control can be interpreted as controlling a company by medium and/or large businesses to micro and or small businesses. Likewise, the notion of control or control of company assets or assets refers to Law no. 40/2007 concerning Limited Liability Companies.

However, the definition of business activity is highly dependent on the partnership pattern chosen by the parties in the agreement. For example, in this study, the nucleus-plasma partnership pattern was chosen for the plantation sector. From the applicable regulations, partnership agreements with the nucleus-plasma pattern can be categorized from the aspects of the actors/parties or subjects, the content of the agreement or the object of the agreement, including the implementation of business activities, the form of development, the term of the partnership and the payment mechanism and dispute resolution [22]. Another important thing for the implementation is that supervision is needed, both preventive and repressive so that a supervisory agency is needed that has been formed based on the Regulation of the Minister of Finance of the Republic of Indonesia No. 114/PMK.05/2015, namely the Palm Oil Plantation Fund Management Agency (BPDPKS).

The following is an example of a Partnership Cooperation Agreement between a Plantation Cooperative "X" and a Plantation Company "Y" regarding the Development of Oil Palm Estates in the Context of a Plantation Revitalization Program. The parties to this Agreement are the first party, namely the General Chairperson of the Cooperative and the President Director of the plantation

company on December 3, 2009. The cooperative's main business activities are Waserda and Plantation Services, which consists of Plasma Farmers assisted by Prospective Farmers participating in Bioenergy Development and Plantation Revitalization Credit. (KPEN-RP). While the second party is an oil palm plantation company that already has a Plantation Business Permit (IUP) with experience in fostering plasma farmers in Bengkulu Province and is designated as a Business Partner in the development of a plantation revitalization program in Bengkulu Province based on the Decree of the Director General of Plantations of the Indonesian Ministry of Agriculture No. II/HK/130/Revbun/09/2009 dated 30 September 2009.

The background of business integration through collaboration with this partnership pattern are as follows [23]:

- 1) Increase employment opportunities and incomes for the Indonesian people in general, and the people of Bengkulu Province in particular through plantation development;
- 2) Increasing competitiveness through increasing productivity and developing plantation-based downstream industries;
- 3) Increase the control of the national economy by involving the community and local entrepreneurs, as well as
- 4) Support regional development.

In this agreement, what is meant by the Plantation Revitalization Program are:

"Efforts to accelerate the development of smallholder plantations through expansion, rejuvenation, and rehabilitation of plantation crops supported by investment banking credit and interest subsidies by the government by involving companies in the plantation business as partners in plantation development, processing and marketing of products".

Meanwhile, what is meant by replanting is "replacing oil palm plants in farmers' plantations because they are old or unproductive with plants that are the same as the original plants (ie oil palm) in certain areas.

This partnership agreement is based on:

- 1) Law no. 25 of 1992 concerning Cooperatives;
- 2) Law no. 18 of 2004 concerning Plantations;
- 3) Law no. 23 of 1997 concerning Environmental Management;
- 4) Minister of Agriculture Regulation No. 33/Permentan/OT.140/7/2006 concerning Plantation Development through the Plantation Revitalization Program;
- 5) Minister of Finance Regulation No. 117/PMK.06/2006 concerning Credit for Bioenergy Development and Plantation Revitalization;
- 6) Minister of Agriculture Regulation No. 26/Permentan/OT.140/2/2007 concerning Guidelines for Plantation Business Licensing;
- 7) Decree of the Director General of Plantations No. 135/Kpts/RC.110/2008 concerning the Maximum Cost Unit for Plantation Revitalization for Plantation Revitalization Program Participants on dry land in 2008-2009;
- 8) Decree of the Director General of Plantations No. II/HK.130/Revbun/09/2009;
- 9) South Bengkulu Regent Decree No. 456 of 2009 concerning Determination of Locations and Participants of the Plantation Revitalization Program in South Bengkulu Regency Phase I (First Phase).

The purpose and objective of this collaboration is "to realize the Plantation Revitalization Program as expected and the existence of a sustainable or sustainable palm oil plantation through a Partnership agreement. The following outlines the contents of the Partnership Cooperation Agreement between the Plantation Cooperative "X" and the Plantation Company "Y" regarding the Development of Oil Palm Estates in the Context of the Plantation Revitalization Program.

Table 1. Clauses of Potential Owning and/or Controlling Micro and Small Business

Principals of the Partnership Agreement	Contents of the Partnership Agreement on the Development of Oil Palm Estates in the Context of the Plantation Revitalization Program	Potential to Own and/or Master Micro Small Business
Identity of the Parties	<p>The first party: Chairman of the Cooperative and President Director of the plantation company on December 3, 2009. The cooperative's main business activity is Waserda and Plantation Services, which consists of Plasma Farmers assisted by Prospective Farmers participating in the Bioenergy Development and Plantation Revitalization Credit (KPEN-RP).</p> <p>The second party: Oil palm plantation companies that already have a Plantation Business Permit (IUP) with experience in fostering plasma farmers in Bengkulu Province and are designated as Business Partners in the development of a plantation revitalization program in Bengkulu Province based on the Decree of the Director General of Plantations of the Indonesian Ministry of Agriculture No. II/HK/130/Revbun/09/2009 dated 30 September 2009.</p>	<ul style="list-style-type: none"> - The difference in the scale of micro/small businesses with medium/large businesses opens up opportunities for the second party to own the shares/assets of the first party by taking over the shares and/or assets of the first party. - In addition, the second party has the potential to control the first party through business management control. - This Partnership Agreement is carried out based on the applicable policies and regulations in the plantation sector.
Business activities	<ul style="list-style-type: none"> - Organizing plantation management in a plantation company's business management; - To make arrangements on plantation management, yield management, marketing and distribution of results, as well as the rights and obligations of each party such as credit installments, allocation of funds for rejuvenation up to the implementation of the rejuvenation program itself; - Develop and integrate the Cattle Oil Palm Integration System (SISS) Program. 	<ul style="list-style-type: none"> - Management of plantations in one business management has the potential to control the first party by the second party in plantation management in company management; - Business activities by integrating the revitalization of plantations together with the cattle palm oil integration system (SISS) program tend to burden the first party, considering that the main purpose of entering into a partnership agreement is to revitalize the plantation.
Obligations of the Parties: The first party, the Cooperative Member as Plasma with The second party, the Palm Oil Plantation Company as the nucleus	<p>First Party Obligations:</p> <ul style="list-style-type: none"> a. Each harvest, must sell the Fresh Fruit Bunches (FFB) to the Second Party, at the nearest factory owned by the Second Party during this cooperation agreement; l. Following the Cattle Cattle Ownership Programme, each member of the First Party who is a participant is required to implement SISS (Oil Cattle Integration System) in the development of oil palm plantations); m. Each member of the First Party must enter into a cooperation agreement for the cattle ownership and maintenance program with the Second Party (provided in a separate agreement); 	<ul style="list-style-type: none"> - This monopsony market structure has the potential to control first party assets in the long term (30 years). - This obligation has the potential to dominate the first party in plantation management by adding the field of cattle breeding business. - The first party's obligation to own and maintain cattle is not directly related to the revitalization of oil palm plantations.
	<p>Second Party Obligations:</p>	<ul style="list-style-type: none"> - This monopsony market

	<p>a. Mandatory purchase of plant products (Fresh Fruit Bunches) during this cooperation agreement lasts;</p> <p>b. Install a signboard on the plantation development area, easily legible, that reads “Palm Palm Plantation Assisted by PT X. In the context of the Bengkulu Province Plantation Revitalization Program;</p> <p>c. It is not permitted to replace other types of plants on the land other than oil palm plantations;</p> <p>d. It is not permitted to transfer the land in any form without the knowledge of the Second Party;</p> <p>e. Disbursing sources of financing for cattle ownership credit facilities and other programs within the framework of a single management unit;</p>	<p>structure has the potential to control first party assets in the long term (30 years).</p> <p>- The provision of a cow ownership credit facility by a bank determined by the second party unilaterally has the potential to dominate the first party from the management side.</p>
Development Form	The form of development is carried out through the Cattle Ownership Program to implement SISS (Oil Cattle Integration System) in the Development of the Plantation Revitalization Program in Bengkulu Province based on the Decree of the Director General of Plantations, Ministry of Agriculture of the Republic of Indonesia Number: II/HK/130/Revbun/09/2009 dated 30 September 2009.	This cattle ownership program which is bundled with oil palm plantations is based on local government policies.
Partnership Term	30 years and minus the plantation development period of 6 years, the First Party is obliged to sell FFB to the Second Party for 26 years.	This period of time is long enough for both parties to mutually benefit from the partnership. However, if only the second party benefits, there is the potential for domination of the first party to occur.
Term and Payment Mechanism	The term of this partnership is for 30 years, which comes into effect from the time this cooperation agreement is signed until December 2, 2039, and can be extended based on a mutual agreement between the two parties.	The duration of this partnership must be considered, because sometimes the first party does not / does not pay attention to this matter, so that if the partnership is not profitable, especially for the first party, it will potentially cause prolonged losses for the first party.
Dispute resolution	In the event of a dispute, all disputes arising from this agreement will be resolved by deliberation and consensus between the two parties. If the dispute cannot be resolved by deliberation and consensus, both parties agree to appoint an agency or agency in charge of cooperatives and plantations in South Bengkulu Regency. Both parties have agreed and agreed to choose a legal domicile at the Registrar's Office of the Manna District Court.	The existence of an agreement on the dispute resolution process by deliberation and consensus is one of the characteristics of a partnership agreement based on the principle of kinship.
Supervisory Agency	Ministry of Agriculture, local government, KPPU and BDPKPS	Need to improve the effectiveness of supervision.

Source:

Partnership Cooperation Agreement between Plantation Cooperative X and Company Y regarding the Development of Oil Palm Estates in the Framework of the Plantation Revitalization Program

The above agreement shows the potential for medium/large businesses to own and/or control micro/small businesses, among others, due to the following conditions:

- 1) The difference in the business scale of the parties that results in an imbalance in the bargaining position of the company (core) and the cooperative (plasma) in drafting the agreement;
- 2) Unification of business management in managing plantation business activities;
- 3) Integrating oil palm plantation revitalization activities with cattle (SISS);
- 4) The obligation to deliver the product to the only (core) business actor who creates a monopsony market structure;
- 5) The relatively long term of the agreement (30 years) requires the re-stipulation of guarantees and certainty of the planter's land ownership rights;
- 6) Ineffective supervision of sectoral authorities and business competition;
- 7) Justification of sectoral regulations and policies that exclude the application of the principles of fair business competition.

The need to apply the principle of agreement, especially the principle of good faith of the parties in the partnership agreement, because it is the most important principle (super eminent principle) and is fundamental in the preparation of contracts. This is indicated by the conditions of fairness (redelijkheid) and propriety (billijkheid) in designing and drafting partnership agreements. Unification of management in managing plantations between micro-small and medium-large enterprises is likely to lead to control.

It is necessary to anticipate the substance of the agreement which tends to provide greater benefits to medium-large business partners by imposing heavier obligations on micro-small businesses. Even though the partnership agreement above is justified in the form of policies from both regional and central governments, it is necessary to pay more attention to its positive impact on micro-small businesses. As an example of a plantation revitalization activity that is integrated with cattle, the associated business sector (cow livestock) must also provide benefits for plasma farmers. This means that in the partnership agreement there is a mutually beneficial commitment for both the farmers and the core company.

The application of the principle of fair business competition in the partnership agreement above can be studied from the provisions of Law no. 5/1999 as follows:

- 1) The existence of the first party's obligation to sell the Fresh Fruit Bunches (FFB) only to the second party, on the other hand the obligation to purchase FFB by the second party completely can create a monopsony structure that tends to benefit the party with a stronger bargaining position, thus fulfilling the provisions of Article 18 of Law No. 5/1999;
- 2) During this collaboration, all harvests will be managed and processed by the second party as the implementation of a single management unit. This action has the potential to violate the provisions of market control in Article 19 letter c of Law no. 5/1999;
- 3) The activity of compiling and integrating plantation revitalization activities with the Cattle Palm Oil Integration System (SISS) program has the potential to violate Article 15 paragraph (2) of Law no. 5/1999 on Closed Agreements;
- 4) Implementation of SISS in the Development of the Plantation Revitalization Program in Bengkulu Province based on the Decree of the Director General of Plantations of the Ministry of Agriculture of the Republic of Indonesia Number II/HK/130/Revbun/09/2009 dated 30 September 2009. This justification is also provided for in the exception of Article 50 letter a, of the Law. No. 5/1999.

Business activities in the Cattle Oil Palm Integration System program were officially launched by the government by establishing the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 105/Permentan/PD.300/8/2014 concerning Integration of Oil Palm Plantation Businesses with Beef Cattle Cultivation Business (Ministry of Agriculture 105/2014). This Ministerial Regulation was issued on the basis of considerations, firstly, to implement the provisions of Article 10 of Presidential Regulation Number 48 of 2013 concerning Pet Cultivation, where as a follow-up to the Presidential Regulation it is necessary to regulate the Integration of Oil Palm Plantation Business with Beef Cattle Cultivation Business; second, in accordance with Article 35 of the Regulation of the Minister of Agriculture Number 98/Permentan/OT.140/9/2013 concerning Guidelines for Plantation Business Licensing, plantation business can be diversified. The integration of the oil palm-cow

business can be done through partnerships by plantation companies, planters, employees, communities, and breeders around oil palm plantations. The partnership pattern as intended includes nucleus-plasma; profit sharing; and other forms that are carried out based on agreements that need, strengthen, benefit, and justify. The implementation of the oil palm-cattle integration program should consider the choice of integration model for beef cattle farming in oil palm plantations, so that it is expected to obtain optimal results and feel the benefits for farmers.

The description above shows that the partnership agreement between PT X and Cooperative Y should start considering other aspects such as civil rights and business competition. This is because in its development, partnership agreements often only bring benefits to those who have large-scale businesses and even harm micro-small businesses. In addition, Law no. 20/2008 and Law no. 11/2020 mandates KPPU to supervise partnership agreements that intend to own and/or control micro-small businesses and are not in accordance with the principles of fair business competition.

5. Conclusion

We can conclude several things regarding the results of our research, as follows:

- 1) The juridical meaning of the term owning and/or controlling micro and/or small businesses by medium and/or large businesses according to Article 35 of Law no. 20/2008 there is no explicit explanation in PP 7/2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises as well as Law no. 11/2020 concerning Job Creation. Civil law translates the meaning of the term ownership with and/or controlling the right to fully enjoy an object and to control the object as freely as possible, with the limitation that it is not against the law. Meanwhile, control is the treatment of an item as if it were one's own which is protected by existing law, with the intention of not questioning the ownership rights to the object. Company law translates ownership as manifested in the form of equity or share ownership, which is separate from ownership or control. Therefore, it is necessary for the KPPU's guidelines to receive public recognition to translate the terms of ownership and/or control of small/micro businesses in relation to their authority as supervisors of partnership agreements from the aspect of business competition.
- 2) The application of the term owning and/or controlling in the partnership agreement for the nucleus plasma scheme for oil palm plantations has the potential to violate Article 35 of Law no. 20/2008 and Law no. 11/2020 is in terms of the subject and object of the agreement. From the subject point of view, it is related to the unequal bargaining position of the parties between the plasma farmers and the core company. Meanwhile, in terms of objects related to the unification of management of plantation business activities, integration with other business activities (SISS), the obligation to deliver products to the only core company that aspires to a monopsony market, and the relatively long term of the agreement. As for the perspective of Law no. 5/1999 partnership agreements for the revitalization of oil palm plantations tend to create a monopsony market (Article 18), market control (Article 19 letter c), and fulfill the pattern of closed agreements (Article 15 paragraph 2). However, all partnership agreements and activities in oil palm plantations are based on applicable regulations and policies, which are protected.

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