

LEGAL PROTECTION IN PARTNERSHIP AGREEMENTS FOR THE PROCUREMENT OF GOODS AND CONSTRUCTION SERVICES BY MICRO, SMALL AND MEDIUM ENTERPRISES

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Abstrak

In conclusion, the procurement of goods and services by the government plays a critical role in driving Indonesia's development. As we have seen, this process not only contributes to economic growth through essential infrastructure projects but also fulfills the government's obligation to meet the needs of its citizens. Collaborations between the government and Micro, Small, and Medium Enterprises (MSMEs) are vital in ensuring that these efforts are effective and mutually beneficial. By fostering partnerships based on trust and shared goals, both the government and MSMEs can strengthen their capabilities to support national progress. Ultimately, a strategic approach to procurement will pave the way for sustainable development, benefiting all layers of society while enhancing the overall resilience of Indonesia's economy.

This research is a normative juridical research with a statutory approach. The author uses secondary data using primary, secondary, and tertiary legal materials. The method of analysis used is qualitative method.

The author concludes that the form of MSME Partnership cooperation is regulated in Law No. 11 of 2020 concerning Job Creation, including partnership patterns such as *Inti-plasma*, subcontracting, franchising, and others, which are also explained in Government Regulation No. 7 of 2021. Legal protection for MSMEs is regulated in several laws, and partnership cooperation provides good protection through coaching and development that includes financing, infrastructure, training, and market access. If there are any disputes related to the partnership, the responsibilities and problem solving are clearly stipulated in the agreement.

Keywords : Agreement, Partnership, Construction Services, Micro, Small and Medium Enterprises

INTRODUCTION

The Indonesian government seeks to improve the quality of human resources through government procurement of goods and services. This procurement is important to support infrastructure development, such as roads and bridges, which has a positive impact on economic growth. To fulfil the need for goods and services, the government works with Micro, Small and Medium Enterprises (MSMEs). According to Law No. 20/2008 on Micro, Small and Medium Enterprises (MSMEs), MSMEs are defined as businesses owned by individuals or groups with a certain income and number of workers. This cooperation, based on the principle of mutual benefit, is characterised by

a tender process conducted by the government to select the contractor. However, there are weaknesses in the mechanism, such as a lack of attention to the terms and responsibilities of subcontractors (Sujoko, 2019). Presidential Regulation No. 12 of 2021 on Amendments to Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services regulates the procurement of goods and services with the aim of providing maximum benefit value and supporting MSMEs.

The implementation of government procurement of goods and services must comply with several regulations, including the Government Procurement Policy Agency Regulation No. 9 of 2018, Presidential Regulation No. 16 of 2018, and Presidential Regulation No. 12 of 2021. The aim is to maximise value for money, increase the use of domestic products, support Micro, Small and Medium Enterprises (MSMEs), and sustainable development. Presidential Regulation No. 12/2021 specifically regulates partnerships and subcontracting, which allows large enterprises to cooperate with small enterprises, if the small enterprises have relevant capabilities.

The government has also issued Government Regulation No. 7 of 2021 to protect and empower MSMEs. This regulation states that the government should facilitate the development of MSMEs, including giving them priority in government procurement of goods and services, as well as simplifying licensing and the provision of financing. However, there is often a problem where MSMEs struggle to win tenders, often losing out to large companies.

This was the case in a reported case of a project tender by the Batam City Bina Marga Agency that was deemed unfair by the losing contractor. There were allegations that some companies had connections with certain officials, which influenced the outcome of the tender. Some contractors believe that tenders are controlled by certain groups, making it difficult for other parties to participate fairly. On the other hand, there are also issues where contractors commit illegal acts, such as bribing to win tenders, as happened in the PLUT-KUMKM building project, which led to some officials being involved in bribery cases.

Conditions that are detrimental to MSMEs also arise in partnership agreements that are not kept, as in the case of a road project in Lhokseumawe, where one party failed to fulfil the agreement (Jamal, 2020). From these situations, it can be concluded that MSMEs experience three main problems: lack of opportunities to win tenders, inadequate legal protection for aggrieved MSMEs, and legal protection for MSME partners. Therefore, there is a need for clear regulations regarding partnership agreements for MSMEs in the procurement of goods and services. This research plan will examine the implementation of partnership cooperation between MSMEs and the government by referring to existing regulations with the aim of developing recommendations related to fairer and more transparent procurement of goods and services. In addition, this research will also examine aspects of legal protection in other laws and regulations related to partnership agreements for both parties in procurement agreements in the construction sector.

LITERATURE REVIEW

Partnership

The word 'partnership' comes from the word 'partnership' which means 'union' or 'sharing.' A partnership is a relationship between two or more entities that work together to achieve good results through agreement and mutual need (Sulistyan, 2004).

Partnerships are regulated by Law No. 9 of 1995 and Government Regulation No. 44 of 1997, which emphasise the principles of mutual need, strengthening, and benefit. Thus, a partnership can be defined as a mutually beneficial collaboration, where both parties have the same vision, reach an agreement, and trust each other (Sumardjo, 2004). Rukmana (2006) identified three important principles in partnerships: Equality, Openness, and Mutual Benefit. Equality means that all parties are in the same position. Openness relates to transparency regarding shortcomings and resources. The principle of mutual benefit indicates that all parties should benefit according to their respective contributions.

Partnerships have several elements, such as cooperation between small and large enterprises, the obligation of guidance by medium and large enterprises, and the principles of mutual need, mutual strengthening, and mutual benefit (Subanar, 1997). Some of the benefits of partnerships include increased productivity, cost efficiency, quality assurance, risk sharing, social impact, and economic resilience (Hafsah, 1999). In addition, partnerships can help reduce social disparities and create new economic centres. Various patterns of partnerships are applied, including:

1. Core-Plasma Partnership Pattern: Where a core company partners with farmers or small business groups. The core company provides support in various aspects, and the plasma gets management assistance and market access (Sumardjo, 2004).
2. Subcontracting Partnership: Small enterprises produce part of the product for medium or large enterprises, with assistance in terms of raw materials and technology. However, there is a risk of isolation of small producers and a decline in partnership values (Hafsah, 1999).
3. General trading pattern: Partners independently finance their business activities. The advantages are price and quality assurance, but the disadvantages are the capital required and the possibility of large entrepreneurs determining prices unilaterally (Hafsah, 1999).
4. Agency Pattern: Small enterprises are given the right to market the goods and services of medium or large enterprises. In general, partnerships are an effective way to strengthen economic positions used collaboratively to achieve common goals, but they also have challenges that need to be overcome for maximum results for all parties involved (Hafsah, 1999).

Procurement of Goods/Services

Procurement of goods and services is a process similar to the construction of new facilities, such as buildings and equipment, and can occur in various places, both in private companies and government agencies (Purwosusilo, 2014). The main purpose of this procurement based on Presidential Regulation No. 12 of 2021 article 4 is to meet the needs of the organisation to improve its performance. There are two parties involved: the party making the offer, such as a government or private institution, and the party offering to fulfil those needs.

Government procurement involves the process of purchasing goods and services by government agencies, from planning to purchase, financed by the state budget. This process includes various types of goods and services, such as construction and consultancy services. According to Presidential Regulation No. 12 of 2021, the objectives of this procurement include ensuring quality and appropriate cost, increasing

the use of local products, providing opportunities for small businesses, and supporting research.

There are several methods for selecting goods and services providers under Presidential Regulation No. 12/2021 article 38. One is e-purchasing, where goods and services are already listed in an electronic catalogue. There is also direct procurement for a specific procurement value, direct appointment for special circumstances, express tender for pre-qualified businesses, and regular tender for situations where other methods cannot be used. These methods are designed to improve efficiency and effectiveness in the procurement of goods and services.

Parties in Goods and Services Procurement

Parties involved in Goods/Services Procurement must follow certain ethics, which include responsibility and regularity in achieving goals, maintaining the confidentiality of documents, avoiding influences that create unfair competition, and taking responsibility for decisions made. They are also required to avoid conflicts of interest, waste, abuse of authority, and not accept or give gifts related to procurement.

The parties involved in procurement include the government and providers of goods and services, such as MSMEs. The government as the user of goods and services is represented by the Budget User (PA), who is the authorised official in the use of the budget. The PA has various duties, including determining the procurement plan and winning bidder. The Budget User Authority (KPA) is responsible for budget execution, with the authority to delegate tasks from the PA. The Commitment Making Officer (PPK) has the authority to make decisions related to budget expenditure and prepare procurement plans (Purwosusilo, 2014).

The Procurement Officer is in charge of carrying out the procurement process, while the Selection Working Group (Pokja) is in charge of managing the selection of service providers. Procurement Agents are business people who perform procurement tasks for ministries or institutions. Swakelola Organisers are teams that carry out swakelola activities, and providers are business actors in procurement.

Micro, Small and Medium Enterprises

MSMEs, as a subset of businesses, are defined by net worth and annual sales. The criteria for micro, small, and medium enterprises are regulated by Law No. 20 of 2008 which also covers various sectors such as agriculture and trade. Criteria for the recognition of MSMEs according to the aspect of the number of workers are also provided by the Central Statistics Agency (BPS).

The criteria for micro, small, and medium enterprises (MSMEs) are defined by Law No.20 of 2008. Micro enterprises have a net worth of no more than IDR 50 million and annual sales not exceeding IDR 300 million. Small enterprises have a net worth of between IDR50 million and IDR500 million, with annual sales between IDR300 million and IDR2.5 billion. Medium-sized enterprises have a net worth of more than Rp500 million and up to Rp10 billion, with sales from Rp2.5 billion to Rp50 billion. In addition, the Central Bureau of Statistics (BPS) defines MSMEs based on the number of employees, namely micro enterprises employing up to 4 people, small enterprises 5 to 19 people, and medium enterprises 20 to 99 people.

Law Review

Theory of Legal Effectiveness

The theory of legal effectiveness according to Soekanto (1988) is the level of a group's ability to achieve its goals. Legal Effectiveness Theory explains that the success of a law is influenced by five factors (Soekanto, 1988). The first is the law itself, namely the Law. Second is law enforcement, or those who make and apply the law. Third is the means that support law enforcement. Fourth is the society in which the law is applied. Finally, cultural factors which are the results of human work and culture in social life.

Plato's Theory of Justice

Plato's theory emphasises the importance of harmony and harmony in society. According to Plato, justice is 'the highest virtue of a good state,' and a just person is one who controls his desires with reason. He did not see a direct relationship between justice and law but believed both were important to shape and maintain the unity of society (Nasution, 2014). The ruler has the duty to divide the responsibilities of the state to individuals based on their abilities and expertise. The concept of justice for Plato means giving what each person should receive. Therefore, laws need to be enforced and made to reflect the value of justice. The purpose of law is to protect the value of justice and find basic principles to overcome problems that arise in the application of justice. People's rights are evaluated from a political and cultural perspective, but the basic principle of 'suum cuique tribuere' remains the same. Plato stated that law is not only to maintain state order, but also to guide people towards virtue so that they are worthy of being ideal citizens. Normative analysis is used to seek legal protection for both parties in a cooperation contract in the construction sector carried out by MSMEs.

RESEARCH METHOD

This research is a legal study that aims to find legal rules, principles, and doctrines that can answer existing legal problems (Fajar, 2015). In connection with the type of research used, namely normative juridical research, the approach used is a statutory approach (Marzuki, 2013). This research is descriptive and explains how partnership agreements for micro, small and medium enterprises (MSMEs) are implemented in the procurement of goods and services in the construction sector, in accordance with Presidential Regulation Number 12 of 2021. In addition, this research also discusses legal protection for both parties in the goods and services procurement cooperation agreement.

In this research, the author uses secondary data, namely data obtained from literature studies related to research issues (Marzuki, 2013). This normative legal research involves three types of legal materials. First, primary legal materials, which are authoritative in nature, include important regulations such as the Goods and Services Procurement Policy Agency Regulation No. 9 of 2018, Law No. 11 of 2020 on Job Creation, and Government Regulation No. 7 of 2021 on cooperatives and small businesses. Second, secondary legal materials, which explain primary materials through documents such as draft laws, research works, and legal publications. This research utilises law books, journals, papers, and relevant articles. Third, tertiary legal materials, which are websites that provide guidance and further explanation of primary and secondary legal materials. The website provides additional information related to the legal material under study.

RESULT AND DISCUSSION**PROCUREMENT OF GOODS AND SERVICES BASED ON GOVERNMENT PROCUREMENT POLICY AGENCY REGULATION NO. 9 OF 2018 ON PROCUREMENT OF GOODS AND SERVICES THROUGH PROVIDERS 9 OF 2018 ON PROCUREMENT OF GOODS AND SERVICES THROUGH PROVIDERS****1. Procurement of Goods and Services**

Procurement of goods/services is an activity that starts from knowing the needs to delivering the work. The procurement process through service providers involves several steps before establishing a provider through a tender. This process is regulated in the Government Goods and Services Procurement Policy Agency Regulation No. 9/2018, which includes: procurement preparation, preparation for selection of providers, implementation of selection of providers through tenders, implementation of selection of other providers, implementation of contracts, and handover of work results.

Needs analysis and evaluation and procurement planning must be carried out prior to procurement. The PA, KPA, PPK, or Selection Working Group can get assistance from the Technical Team, Expert Team, or Support Team. PPK can also be assisted by the Activity Technical Implementation Officer (PPTK). Preparation of goods/services procurement is carried out by the Selection Working Group / Procurement Officer after the PPK requests the selection of providers along with the necessary documents. This preparation includes determining the method of selecting providers, qualifications, evaluating offers, submitting documents, scheduling elections, and preparing election documents.

Procurement preparation is carried out by the Commitment Making Officer (PPK) based on the Budget Work Plan (RKA) of the regional institution or device. This process includes several important steps. First, PPK reviews the technical specifications and KAK (Terms of Reference) to find out the availability, price, and alternatives of goods/services. They also ensure the goods/services fulfil the Indonesian National Standard (SNI) and sustainable product criteria. If the goods/services are not available, the PPK must propose alternative specifications for approval by the Procurement Officer (PA) or Budget User Authority (KPA).

Second, after the review, the PPK determines the technical specifications/KAK that have been approved by the PA/KPA and includes them in the Technical Specification Document. The third step is the preparation and determination of the Own Estimate Price (HPS), which is based on the Cost Budget Plan (RAB), the budget ceiling from DIPA/DPA, and the results of the RAB review. HPS is used to assess the reasonableness of the bid price and set the legal bid limit.

HPS that has been approved by PPK must be signed and have the same value as the Budget Ceiling. HPS determination must be made no later than 28 working days before the bid deadline or submission of qualification documents. Finally, the PPK also prepares and determines the draft contract which includes the type and form of contract, agreement text, down payment, procurement guarantee, and other contract terms.

After the documents for procurement and selection of providers are submitted to UKPBJ, the PPK prepares the selection of providers. If the documents are complete,

the head of the UKPBJ establishes the Selection Working Group which will: review the documents, determine the selection method, determine the provider's qualifications and requirements, evaluation method, method of document submission, prepare the selection schedule, and prepare the Selection Document.

2. Forms of MSME Partnership Cooperation

Rapid industry growth in local and international markets increases competition between businesses. This creates risks for companies that can simultaneously support economic development in Indonesia. Micro, Small, and Medium Enterprises (MSMEs) have advantages, especially in technological innovation capable of producing competitive products. MSME development utilises local potential to create national independence.

The business empowerment partnership in Indonesia has several objectives, such as empowering cooperatives and small and medium entrepreneurs, strengthening the business structure of the economy, and facilitating cooperation between large and small entrepreneurs. It aims to increase production, reduce inequality and poverty, and improve competitiveness. The law on MSMEs has changed in terms of partnerships.

The new partnership consists of the following patterns:

- a. Inti Plasma: Large companies act as contractors, while small, medium, and micro enterprises act as subcontractors, with a focus on coaching and development.
- b. Subcontracting: Large enterprises provide support in production, raw material supply, technical know-how improvement, and payment systems.
- c. Franchising: Large enterprises as franchisors and MSMEs as franchisees.
- d. General Trade: Marketing co-operation open to MSMEs by large enterprises.
- e. Distribution and Agency: Large enterprises grant marketing rights to MSMEs.
- f. Supply Chain: Product management is done by large enterprises with MSMEs as suppliers, with a focus on quality.
- g. Profit Sharing: MSMEs run the business financed by large companies with an agreed contribution.
- h. Operational Cooperation: MSMEs run the business temporarily until the work is completed.
- i. Joint Venture: Cooperation between MSMEs and large enterprises to establish a business entity in accordance with the law.
- j. Outsourcing: Large enterprises act as job owners and MSMEs as service providers.

Before carrying out cooperation, there needs to be an agreement, the rules of the partnership agreement are contained in Government Regulation No. 7 of 2021 article 117. If the agreement is made with a party or legal entity from a foreign country, the agreement can be written using Indonesian and the language of origin of the country.

LEGAL ARRANGEMENTS FOR THE PROTECTION OF UMKM IN INDONESIAN LEGISLATION IN TERMS OF PARTNERSHIP COOPERATION

1. Legal Arrangements for the Protection of MSMEs

Indonesia is a rule-based country that should apply fundamental legal concepts to guide national legal development, especially in the current administration. The lack of legal protection makes it difficult for small and medium-sized enterprises (MSMEs) to thrive. Much of Indonesia's economy relies on MSMEs, which play an important role in efforts to reduce poverty and social inequality. Supporting MSMEs can create employment opportunities and increase the overall income of the community.

To help MSMEs develop effectively, legal protection is essential, and the government has enacted several laws to provide this protection. The first is Law No. 20 of 2008 on MSMEs, which outlines the criteria for micro, small, and medium enterprises based on capital, income, and other factors. The law stipulates that the government, local governments, the business sector, and communities should facilitate mutually beneficial partnerships.

However, the framework may overshadow the role of businesses and communities in partnerships. The second law, Law No. 11/2020 on Job Creation, aims to empower, protect, and boost the national economy by using an Omnibus Law approach, which combines various regulations into a single legal framework. The law outlines the role of the central and local governments in marketing horticultural products, but limits the involvement of businesses and communities in partnerships. The law also states that minimum wages for micro and small businesses can be based on agreements between employers and workers without following government minimum wage standards. In addition, the law eases various requirements for MSMEs, such as licensing, access to markets, tax administration, financing, and an integrated data system.

Finally, Government Regulation No. 7 of 2021 focuses on facilitating, protecting, and empowering cooperatives and MSMEs. The regulation mandates local governments to provide free legal aid services to MSMEs, offering legal counselling, consultation, mediation, and support outside the court system.

2. Legal Protection of MSMEs through Partnership Cooperation in the Perspective of the Job Creation Law

Law No. 11/2020 on Job Creation emphasises several principles, such as equal rights to work, legal certainty, ease of doing business, togetherness, and independence. However, Article 87 of this law is considered unclear and does not comply with the principle of legal certainty as there are other more detailed regulations regarding MSMEs. There are various ways to empower and foster MSMEs and cooperatives, such as training programmes, partnerships, improving competitiveness, easing business licences, market access, and support related to taxation and funding. Ideal forms of partnership to protect MSMEs include profit-sharing, subcontracting, and franchising systems. In a profit-sharing system, MSMEs act as executors of businesses financed by large businesses, so that there is a division of profits based on the contribution of each party. This system provides good legal protection for business implementation. Subcontracting partnerships have large enterprises as contractors and MSMEs as subcontractors, with support in production processes and technology. It also provides many conveniences for MSMEs. Franchising partnerships allow large enterprises to provide opportunities for viable MSMEs to develop their businesses with protection in coaching and increased competitiveness. An agreement must be made before the cooperation

takes place, and the agreement can be bilingual if it involves a foreign party. If MSMEs are not legally protected, their growth will be hampered. The principle of economic protection in law related to MSMEs includes protection for social and economic interests, and refers to the provisions in the 1945 Constitution and international law.

CONCLUSION

The author concludes several things about MSME partnership cooperation based on the research. First, this form of cooperation is regulated in Law No. 11 2020 on Job Creation, including the inti-plasma partnership pattern, subcontracting, franchising, and others, which are also listed in Government Regulation No. 7 of 2021. Government Regulation No. 7 of 2021. Second, legal protection for MSMEs is contained in several laws, including Law No. 20 of 2008 and Law No. 11 of 2020. The ideal co-operation provides protection through financing, facilities, licences, training, and market access. Liability in the event of legal disputes are regulated and will be resolved according to the agreement. Forms of co-operation, such as profit-sharing, subcontracting, and franchising, are clearly defined in the applicable regulations are clearly stipulated in the applicable regulations.

SUGGESTION

The conclusion shows that legal protection for MSMEs needs to be improved, although it already exists in the Job Creation Law and Government Regulation No. 7 of 2021 on business licences and MSME development. Sanctions must also be applied to MSMEs that cheat. Although the Job Creation Law provides many conveniences and supports economic growth, MSME players are expected to have good human resources to understand and utilise the law.

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