

Legal Aspects of Partnership Agreements between Higher Education and MSMEs through Joint Venture Profit Sharing

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Abstract

Micro, Small, and Medium Enterprises (MSMEs) are a business sector that has a reasonably reliable resilience in the face of various crises, both monetary and other financial crises, including in the face of the current world condition which is facing the Covid-19 pandemic. The research is empirical legal research using qualitative research. It was conducted in Manado, the capital city of the Indonesian province of North Sulawesi, where many MSMEs require partnership in their development. The results show that the legal aspect related to partnership agreements through Joint Venture Profit Sharing by higher education is the first contract law; normatively, it has provided cooperation with other higher-education parties. However, this law only provides restrictions on cooperation in research and development. It does not regulate participation in the implementation of business activities or the possibility of a contract that clarifies the position of higher education in a partnership agreement. The financial legal aspect, the ideal form of a partnership agreement to be implemented by higher education in developing small and medium enterprises, is partnership through the Development of Science and Technology, partnership through modern cooperatives and partnerships with village-owned enterprises.

Keywords: Higher Education; Joint Venture; Legal Aspects; MSMEs.

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INTRODUCTION

The objectives of national development have been clearly outlined in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia is to protect the entire nation and homeland of Indonesia, promote public welfare, educate the nation life and participate in world order [¹]. Micro, Small and Medium Enterprises (MSMEs) are a business sector that has a fairly reliable resilience in the face of various crises, both monetary and other financial crises, including in the face of the current world condition which is facing the Covid-19 pandemic [²].

Joint Venture Profit Sharing (JVPS) is a partnership between two or more parties, where each

party can raise their capital to form a business (*union*) as a legal entity. In this form of partnership, both parties take part in equity participation, and each can participate directly in the management process [³]. If the business being carried out makes a profit, the profits will be divided based on the profit-sharing ratio determined in advance based on the agreement of both parties, proportionally based on the size of the capital included or based on their participation in the management process [⁴]. However, if the business loses, both parties jointly bear the loss.

Universities is a place where experts meet, discuss, and teach their expertise. This extraordinary potential for higher education is actually really needed

¹ Tambunan, Tulus. "Recent evidence of the development of micro, small and medium enterprises in Indonesia." *Journal of Global Entrepreneurship Research* 9, no. 1 (2019): 1-15.

² Nursini. "Micro, small, and medium enterprises (MSMEs) and poverty reduction: empirical evidence from Indonesia." *Development Studies Research* 7, no. 1 (2020): 153-166.

³ Malhotra, Mohini. *Expanding access to finance: Good practices and policies for micro, small, and medium enterprises*. World Bank Publications, 2007.

⁴ Ridwan Maksum, Irfan, Amy Yayuk Sri Rahayu, and Dhian Kusumawardhani. "A Social Enterprise Approach to Empowering Micro, Small and Medium Enterprises (SMEs) in Indonesia." *Journal of Open Innovation: Technology, Market, and Complexity* 6, no. 3 (2020): 50.

by MSMEs in their efforts to plan business development, ensure that businesses run in the right direction, and conduct reviews of activities that have been carried out to revise some deviations that may occur. With this potential, universities have considerable opportunities in partnerships with SMEs in the form of *Joint Venture Profit Sharing* (JVPS). With this partnership, universities can play a role in providing input and ideas for business management in a more targeted and planned manner. This form is not merely a form of Community Service with MSMEs as the object, but more than that, Universities through a MSME development unit become business partners for MSMEs. For the management contribution (and the contribution of funding), the Higher Education has the right to get a share of the profits generated from the partnership [5].

The implementation of partnership agreements between universities and MSMEs through *Joint Venture Profit Sharing* has legal aspects that need to be studied and studied so that an ideal concept is needed that can guarantee legal protection for both parties in implementing the partnership agreement. This research and study aims to determine the legal aspects of partnership agreements through Joint Venture Profit Sharing between universities and MSMEs and the form of partnership agreements through Joint Venture Profit Sharing between universities and MSMEs.

METHOD OF RESEARCH

The research is an empirical legal research using qualitative research. It was conducted in Manado city as a research location based on the reality in Manado city where there are many MSMEs that require partnership in the context of their development. To analyze the data obtained in this research, it was further processed and analyzed through qualitative analysis. This analysis is done using a theoretical basis as an analytical tool in explaining the phenomenon that is the focus of this research.

Legal Basis for the Role of Higher Education in Sustainable Development

The role of the world of education in community development is one form of service in the context of implementing the Tridharma of higher education so that various studies related to this are conducted by researchers and obtained various views and conclusions from various research results, including Ekaterina Panarina, who concluded that partnership who are brave and visionary between industry and higher education are able to accelerate innovation and help provide solutions to economic and social pressures

⁵ Srinivas, K. T. "Role of micro, small and medium enterprises in inclusive growth." *International Journal of Engineering and Management Research (IJEMR)* 3, no. 4 (2013): 57-61.

[6]. The gap between universities and industry continues to widen due to changes in the industrial structure with the increase in foreign investors and the weakening of state ownership of companies, and the uncertainty of universities in developing their capacity in business and industrial development [7]. These studies show that universities have not played a major role in business development that can support sustainable development.

One of the efforts to achieve the national goal, namely realizing a just and prosperous society that is equitable, both in material and spiritual form for all Indonesian people, then small business as an integral part of the business world which is a people's economic activity and has a strategic position and role and realizes the structure of the national economy, needs to be developed and empowered, in taking advantage of business opportunities, and responding to the challenges of future economic development. Based on the above considerations, as a concrete manifestation of what the government does to support the development of small businesses, the government has issued Act No. 20 of 2008, concerning Micro, Small and Medium Enterprises (Amendments to Act No. 9 of 1995, concerning Small and Medium Enterprises) as the legal basis for small business empowerment. One of the institutions that have a role in the development of small and medium enterprises is a higher education institution.

Act No. 12 of 2012 concerning Higher Education confirms that a Higher Education is an educational unit that organizes Higher Education. By the enactment of this rule, the role of higher education in community development has been clearly and firmly regulated in the context of sustainable development where this role is conducted not in the context of rights but is an obligation of higher education. Higher education with all the facilities they have including ease of access and convenience in the development of science and technology and human resources are factors that will support community development, especially small and medium enterprises to realize sustainable development.

The role of higher education can be seen from the magnitude of the influence of higher education on the development of science and technology, the influence of higher education on marketing techniques and strategies, the influence of higher education on

⁶ Ekaterina Panarina, University-industry Partnership as a Key Strategy for Innovative Sustainable Economic Growth, *Journal of International Business Research and Marketing*, Volume 1, Issue 1, November, 2015, p. 27

⁷ Moeliodihardjo, Bagyo Y., Biemo W. Soemardi, Satryo S. Brodjonegoro, and Sachi Hatakenaka. "University, industry, and government partnership: Its present and future challenges in Indonesia." *Procedia-Social and Behavioral Sciences* 52 (2012): 307-316.

creativity and innovation. integrated with Small and Medium Enterprises, among others, through the development of Cooperation with MSMEs, development of MSME networks with professional associations, financial institutions to develop the capacity of the community conducting small and medium-sized businesses.

The Agreement of Joint Venture Profit Sharing

An agreement is an agreement in which the actions are related to default or legal consequences. The agreement can also be regarded as an act to obtain a set of rights and obligations. Legal acts in the agreement are actions to do something, namely getting a set of rights and obligations called achievement [8]. The term joint venture profit sharing agreement basically consists of two terms that are often used independently, namely the joint venture agreement and the profit sharing agreement. A joint venture agreement is a joint venture agreement between two or more parties that regulates the control of the company, the proportion of capital, profit sharing, legal form and termination of the agreement [9]. Profit sharing agreement according to foreign terminology (English) is known as profit sharing. Profit in the economic dictionary is defined as profit sharing. By definition profit sharing is defined as "the distribution of some part of profits to employees of a company" [10]. Profit sharing is the profit or result obtained from the management of funds, both investment and buying and selling transactions provided to customers [11].

Observing the description above and related to the role of universities in the development of small and medium enterprises through Joint Venture Profit Sharing Agreements, it can be said that in this concept higher education are in a position as business actors who will participate together in profit sharing. This clearly requires adequate arrangements, especially to avoid excessive commercialization of universities which can lead to far from the original nature of a higher education, namely to educate the life of the nation.

In Indonesia, MSMEs are defined as productive businesses owned by individuals and/or individual business entities that have the criteria for

micro-enterprises as stipulated in the law. Small business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or not subsidiaries that are owned, controlled or become a part, either directly or indirectly, of a medium or large business that meets the criteria. small business.

Partnership Agreement Through Joint Venture Profit Sharing Between Higher Education and Small and Medium Enterprises

Basically, the partnership agreement through Joint Venture Profit Sharing has a very strong civil law aspect because it departs from the agreement. However, the existence of a higher education as an institution that was not born out of business interests causes this agreement to have administrative aspects that need attention [12]. Government Regulation No. 4 of 2014 concerning the Implementation and Management of Higher Education states that the autonomy of management in Private Higher Education is regulated by the Organizing Body in accordance with the provisions of the applicable legislation. This shows that private universities have independence in various elements compared to public universities because private universities in their management refer to related laws and regulations such as foundations, waqf or associations.

This regulation has a civil perspective so that in the context of its implementation it is very internal. This is clearly different from state universities and Legal Entity Higher Education because although they are declared as autonomous regions, the relationship with the government in this case the relevant ministries is found in most of its elements. This distinction between state higher and private higher education will greatly affect the role of universities in conducting partnership cooperation in the development of Small and Medium Enterprises because when viewed from the breadth of authority granted, private universities have the breadth in managing [13].

Legal infrastructure is very urgent in developing partnership agreements by higher education with MSMEs and can build a conducive environment for conducting research, innovation development and

⁸ I Gusti Ngurah Rendra Suryana, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujjanti, Perjanjian Kerja Sama (Joint Venture) Penanaman Modal Asing Dalam Usaha Perhotelan, *Jurnal Konstruksi Hukum*, Vol. 1, No. 2 October 2020, p. 346-351

⁹ M. Syafi'i Antonio, *Bank Syariah Suatu Pengenalan Umum*, Tazkia Institut, Jakarta, 1999, p. 129

¹⁰ Muhammad, *Teknik Perhitungan Bagih.al.asil di Bank Syariah*, Yogyakarta, UII Press, 2001, p. 2

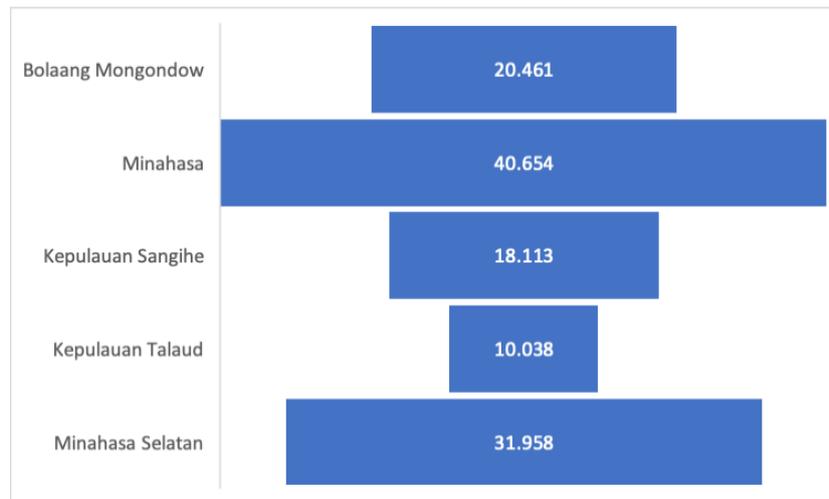
¹¹ Austianto, *Penerapan Bagi Hasil Deposito Mudharabah di Bank Syariah*, Yogyakarta, UII Press, 2019, p. 2

¹² Purwandari, Betty, Briant Otmen, and Larastrri Kumaralalita. "Adoption factors of e-marketplace and instagram for micro, small, and medium enterprises (MSMEs) in Indonesia." In *Proceedings of the 2019 2nd International Conference on Data Science and Information Technology*, pp. 111-116. 2019.

¹³ De Mel, S., McKenzie, D. J., & Woodruff, C. M. (2009). Innovative firms or innovative owners? Determinants of innovation in micro, small, and medium enterprises. *Determinants of Innovation in Micro, Small, and Medium Enterprises (May 1, 2009)*. World Bank Policy Research Working Paper, (4934).

business development in higher education. Autonomy is very much needed by higher education to develop and formulate strategic plans that involve stakeholders, namely industry and other productive sectors.

North Sulawesi Province has a very large MSME potential, this can be seen in the table on the number of MSMEs in this province as shown in Graph 1.



Graph 1. Number of Micro, Small and Medium Enterprises in North Sulawesi Province

Source: Primary Data, 2021 (edited).

The data above shows that the number of MSMEs in North Sulawesi Province reached 292.122 with the highest number of MSMEs being in Manado and the lowest in Siau Tagulandang Biaro. The existence of MSMEs in addition to empowering and strengthening the community's economy, can also play a role in increasing employment [14].

Most MSMEs in North Sulawesi Province are not legal entities, do not use computers and the internet and do not form partnerships with other parties in the context of their empowerment and development. The role of universities is very important in order to provide progress for MSMEs. Article 26 of Act No. 20 of 2006 concerning MSMEs Cooperation/partnership of small, medium and large businesses can be carried out in a pattern including plasma core, sub-contract, general trading, franchise, agency, and other forms. The role of higher education in implementing partnership contracts is of course very necessary, but without being based on adequate legal substance, this role cannot be carried out optimally. The role that higher education can play in developing partnerships is highly dependent on their interactions with stakeholders. Etzkowitz stated that initially higher education, business actors and the government ran separately and then developed in several stages.

The first stage, they develop a knowledge space, which is a space where they concentrate on research and development activities. In the second stage, they develop a consensus space, a space where the three of them work together to create new strategies and ideas. The third stage, they develop an innovation space, namely they introduce a new organization to realize the strategies that have been developed previously. From this stage [15], it can be seen that currently, the pattern of partnership development by higher education in Indonesia is still limited to knowledge space, namely research activities. This is of course because the existing legal substance has not yet provided support to be able to move on to the next stage, namely the consensus space and the innovation space. Unclear arrangements regarding partnerships by universities raise doubts in contract negotiations.

Partnership through Science and Technology Development

In Indonesia, the reality shows that the role of higher education in partnership efforts with the community has not run optimally. In a study of respondents from small and medium enterprises, it can be concluded that small and medium enterprises have not felt the role of higher education in developing their businesses.

¹⁴ Rahadi, Raden Aswin. "Opportunities and Challenges for Micro-Small and Medium Business in Indonesia Facing ASEAN Economic Community." *Jurnal Manajemen dan Kewirausahaan (Journal of Management and Entrepreneurship)* 18, no. 1 (2016): 45-53.

¹⁵ Etzkowitz dalam Program Kemitraan untuk Pengembangan Kapasitas dan Analisis Pendidikan (ACDP), Pengembangan Strategi Kemitraan Perguruan Tinggi, Industri, dan Pemerintah di Indonesia, PT. TRANS INTRA ASIA bekerjasama dengan Institute of Public Administration of Canada (IPAC), 2017, p. 44

The involvement of higher education is only limited to sending internships or field practices from higher education and there is no other role that can bring improvement to the development of small and medium enterprises so that respondents give hope that higher education can play a big role in science, technology, research assistance. and entrepreneurship assistance as well as providing assistance for marketing and access to capital to financial institutions. This shows that the role of higher education in partnerships is still very minimal. Even the results of research from patented higher education are not optimal in providing a role for the development of small and medium enterprises.

Higher education do not fully understand about patents and patent registration is not followed by efforts to market these patents so that registered patents do not provide many benefits for higher education and for the community. The registered patent has not been able to produce a better quality of patent technology, because the institutional capacity to screen the right technology for patenting is not yet optimal.

To be able to increase the role of higher education in the development of small and medium enterprises, it is necessary to make an effort to utilize the findings of the field of science and technology through patents that can be used by small and medium enterprises in their business development. The formation of laws needs to be carried out to provide support for the development of science and technology so that inventions from universities can become a patent that can become the object of partnership cooperation with industry and small and medium business actors.

Partnership through Modern Cooperative Development

The existence of cooperatives in an effort to develop the community' economy has been conducted conventionally, including savings and loans and businesses conducted by cooperatives, such as buying and selling goods needed by members. The development of society today shows a very large change, especially in the use of information technology so that various online-based businesses have sprung up [¹⁶]. Cooperatives as the pillars of the Indonesian economy need to make adjustments to the development of people' lives in the use of technology so as to provide convenience for their members.

The use of online media in the implementation of cooperative businesses is an alternative for

¹⁶ Yacob, S., E. Erida, A. Machpuddin, and D. Alamsyah. "A model for the business performance of micro, small and medium enterprises: Perspective of social commerce and the uniqueness of resource capability in Indonesia." *Management Science Letters* 11, no. 1 (2021): 101-110.

developing cooperative businesses that should be considered. In addition to making it easier, the existence of a cooperative legal entity can provide security guarantees for people who carry out online transactions such as savings and loans. In addition, the current condition of the world is being hit by the Covid-19 outbreak, so the existence of online cooperatives is important to consider in order to continue to be able to provide services to the community safely during the Covid-19 pandemic.

The development of modern cooperatives that utilize information technology is of course one option that can become the object of developing small and medium enterprises for the community. The existence of higher education with various abilities and advantages will provide a safer and more effective business mechanism. For this reason, it is necessary to regulate the development of modern cooperative businesses through cooperation between higher education and small and medium enterprises.

CONCLUSION

Legal aspect related to partnership agreements through Joint Venture Profit Sharing by higher education are the first contract law, normatively it has provided arrangements regarding cooperation with other parties by higher education but this law only provides restrictions on cooperation in research and development and does not regulate regarding participation in the implementation of business activities or the possibility of a contract that provides clarity on the position of the higher education in a partnership agreement. The second, the financial legal aspect, the ideal form of partnership agreement to be implemented by higher education in the context of developing small and medium enterprises is partnership through the Development of Science and Technology, partnership through modern cooperatives and partnerships with village-owned enterprises. As a research recommendation, it is necessary to have regulations that provide clarity and firmness regarding the implementation of profit-sharing partnership agreements between higher education and Small and Medium Enterprises so that they become a strong legal basis and can avoid doubts from universities to enter into partnership agreements.

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