

A HEALTHY BUSINESS COMPETITIONING PARTNERSHIP

Andi Aprasing
WESTERN SULAWESI UNIVERSITY

Doi: [10.14724/01.04](https://doi.org/10.14724/01.04)

Abstract

To achieve the development goals the Government continually carry out national development based on the practice of Pancasila which covers all aspects of the life of the nation. Government as the highest power organization authorized to redirect and protect the public in the exercise of its activities through the partnership, sometimes business medium/large businesses treat small businesses not as it should be. That means big business did not help the development of small businesses and even the large business partnership is increasingly growing, the partnership merely proves that big companies care about the social environment and small businesses less benefit as purpose partnerships that help the development of small businesses.

Keywords: Healthy, Competition, partnerships

I. Introduction

The Republic of Indonesia is a country based on Pancasila and the 1945 Constitution. As a country that has been independent, aims to carry out national development in order to realize a just and prosperous societies that uneven material and spiritual, in a unitary State of The Republic of Indonesia

To achieve the development goals the Government continually carry out national development based on the practice of Pancasila which covers all aspects of the life of the nation. Government as the highest power organization authorized to redirect and protect the public in the exercise of its activities

The community as the main actors of development potential and an important position in realizing national development goals. Activities of the society and the Government should support each other in one step toward the achievement of a just and prosperous society. With regard to national development goals, development in all field performed with one emphasizing that the development of the field of law and economics.

The principles of economic democracy through the overall activities of the society and the State, which are sectors of the economy who are accommodated by the Constitution as the Foundation of the constitutional business activities in achieving national development objectives, as well as the commitment of the nation as well as the philosophy of partnership for trade. Although the philosophy of partnership so ideal, but when economic growth is uneven, then it will cause the distance (social inequality) between the strong-rich with a weak little one. This imbalance causes the position of bargaining (bargaining position) is unbalanced and thus created a relationship that gave birth to the actions that make use of the dominant position.

To address social inequalities, as well as giving legal protection to the perpetrators, the Government established the small business:

1. Act No. 9 of 1995 concerning small business
2. Act No. 5 of 1999 concerning the prohibition of Monopoly and competition of unhealthy Businesses

3. Government Regulation (PP) No. 44 in 1997 about the Partnership
4. Government Regulation No. 32 in 1988 about the construction and development of small business.

The groundbreaking partnership between entrepreneurs with small businesses with the term "adopted child" is based on the philosophy of family and hold on to the principle of mutual benefit. To encourage economic growth and the creation of equitable development through the expansion of employment and opportunity seeking. Although the crisis hit Indonesia since 1997, proven small business sector could survive at least not roll the mat, even many take advantage of the economic crisis. Many farmers, clove and brown shrimp pond suddenly rich suddenly due to a rebound in exports value because the value of the dollar rise. At a time when big businesses decide for reasons of employment employees' efficiency, even small businesses can accommodate a lot of labor. Although such partnership between small business and big business, medium business still encountered obstacles in its implementation.

Through the partnership, sometimes business medium/large businesses treat small businesses not as it should be. That means big business did not help the development of small businesses and even the large business partnership is increasingly growing, the partnership merely proves that big companies care about the social environment and small businesses less benefit as purpose partnerships that help the development of small businesses. Medium/large business enterprises as partners the Builder has not been fully performed his obligations properly. There is a partnership where small supplying part of the needs of a medium/large businesses such as shops. In these partnerships, small businesses often are not aware of their significance. Having confirmed that the payment must be done in cash each time small businesses supplying goods. But in fact the business medium/large businesses pay small businesses after the goods sold or paid after one or two times the supply of goods, when payments are late yet again so that small businesses had difficulty arranging capital is indeed a bit.

Through the partnership agreement can be created that cause entrepreneurs medium/large enterprise mastered a particular effort to monopolize/small business difficult to enter such business or may happen to a group of entrepreneurs partner for control of business ranging from upstream to downstream as monopolistic practices of the new order regime.

Based on the results of discussions late last year, economic experts in Makassar (dawn, December 31, 2002) conclude that small businesses are having problems in the field of capital and licensing. In the field of licensing small businessmen feel hampered by red tape many doors that allow the existence of wild charges. Whereas in the field of capital, the bank as lender and financing institutions the non-bank small business less favorably. They feel the need to simplify the system of credit. The problems faced by small businesses because of the presumption that small and medium enterprises (SMEs) lack a promising business prospects, which were caused by the company's management and low culture of businessmen who are still traditional thought pattern.

The success of economic development by itself raise the aspirations of the community in this endeavor. Various challenges and Competition appear. Globalization makes borders a country increasingly diminished, making the scene a Competition in the field of business

is getting tight. Economic globalization, and information technology bring rapid change, and simultaneous. Therefore, the ability to identify the types of businesses and potential entrepreneurs efficiently is a challenge for trade, especially after Indonesia entered the era of free trade is loaded with competition.

To be able to achieve democracy in the corporate world, every citizen of the recommended That were given the same opportunity to participation in the production process and marketing of the goods or services in a healthy business climate, so as not to cause the concentration of market power in a particular business group only. To realize a healthy business, on 5 March 1999, the Government issued law number 5 of 1999 concerning the prohibition of Monopoly and competition of Enterprises. With this Act the application of democratic principles to the market economy are expected to materialize, considering this reform in the era of the rule of law continue to be fought.

Antitrust laws are like a fresh breeze that blows in the Reformation period shortly after the fascist new order regime. Monopoly and competition of unhealthy businesses can occur in a business partnership, when and where are the trend for businessmen doing dishonest competition can do to win business competition is not healthy.

II. Literature review

The partnership is a collaboration between small business and medium business and large enterprise or by observing the principles of mutual needs, mutual strengthening and mutual benefit based on Government Regulation No. 44 in 1977 about the partnership. By sticking to the principle of interdependence and mutual benefit, the partnership may provide the solution of inequality-social inequality such as event no chance of trying and inequality of income.

The partnership between small business and big business, medium business is the efforts made by the Government to foster and develop a small business so that small businesses can strengthen itself into a tough and independent efforts and can develop into a great effort.

Mohammad Jafar Hafsah, (2000: 10) suggests that:

Small business is the people's economic activities small-scale having net worth at most Rp. 200 million excluding land and buildings, places of business or Ade The result annual sales top \$ 1 billion. While the secondary businesses are economic activities which have the net worth or annual sales results greater than net worth and results of annual sales of small businesses.

Kansil, CST. (1997: 189) outlines the criteria for small businesses:

1. have the most net worth Rp. 200 million excluding land and buildings
2. Have annual sales results at most 1 billion
3. the property of a citizen of Indonesia
4. Stand up or send it is not a subsidiary or branch of the company.

Based on PP No. 46 of 1997 concerning Partnership confirmed that partnership is implemented by pattern Inti-Plasma, Sub-contracting, the General Trade, Franchise, And Agency.

The pattern of the core plasma is the relationship of partnership between small business and medium business or a large enterprise, in which medium or large business

enterprises act as a nucleus and small businesses as the plasma. The company carries out construction of the core of the provision of the means of production, technical guidance and marketing of produce. While the plasma companies meet the needs of the company in accordance with the agreement

Mohammad Jafar Hafsa, [2000: 69] suggested that the primacy of core plasma patterns are:

- a. The plasma core Partnerships benefit mutual between large or medium entrepreneurs as core with small entrepreneurs as plasma through large or medium-sized entrepreneur gave the construction and provision of the means of production, guidance, processing and marketing. This means a big businessman has divided the business risks and opportunities with small entrepreneurs as plasma. Therefore, through the core of the plasma model will be created by interdependence and mutual benefit.
- b. Core plasma Partnership can act as empowering young entrepreneurs in technology, capital, Institution, etc.
- c. Small entrepreneurs who mentored was able to able to meet the scale of the economy so as to achieve efficiency.
- d. In partnership with core plasma in large or medium entrepreneurs have a wider market, so that it can develop commodity, has the superiority and able to compete in national and international markets.
- e. Plasma core partnership Success can become an attraction for large or medium entrepreneurs to build new partnerships.
- f. Partnership with the growth of the core plasma will grow new economic centers, as well as an equitable distribution so as to prevent the social gap.

The pattern of subcontracting relationship is a partnership between big business and small business or medium, in which small enterprises producing components that required great effort as part of its production. This partnership has the advantage that it can encourage technology transfer, capital, including ensuring product marketing Partner Company. This is in accordance with the results of the research Watanabe 1983 (Moh Jafar Hafsa, 2000: 73) outlines that:

Japan's experience proved the success of the sub contract is a pattern transfer technology, capital and skills in the industry. This success occurred in the auto industry. Toyota is one of the industry in Japan has managed to develop the industry by implementing the pattern of sub contract to manufacture components automotive to medium companies as well as small Corporation in Japan. Erna in the results of his research in 1994 found some shortcomings in subcontracting partnership pattern air Subcontracting relationships often isolates the small producers as trend subcontracting on one form of relationship of monopoly, especially Ni The Precision of raw materials and marketing, i.e. the occurrence of the price of the goods, product, control the payment system that is often too late and often occurs as a symptom of the exploitation of the energy to chase the target production.

Research on the pattern of subcontracting the above done in Pekalongan batik industry. The existence of the fact above, the construction of the pattern of subcontracting is urgently needed by the Government in order to protect small businesses

General trade patterns is the relationship between small businesses and medium enterprises or enterprises of Market produced by small businesses or small businesses supplying the needs required by the business of medium and large enterprises as partners.

Partnership is similar to a regular trade relations between sellers and buyers because of corporate partners to market the partnership object and therefore also this partnership requires a large Fund, 8 for each party to finance themselves and their respective businesses.

The pattern of the franchise is a partnership in which the giver [great effort] gives the usage license, trademark and distribution channels the company a franchise to a recipient [small or medium-sized businesses] with the help of management guidance. Advantages of franchising the franchising recipients can obtain source of funds as well as conserve funds and expand the network, while the disadvantage was the recipient of a huge franchise depends on franchise owners. Examples of McDonald, Kentucky, Texas, Coca cola and others.

The pattern of the Agency is a partnership in which small businesses are given special rights to market goods and services business medium/large businesses. In this pattern of medium/large business enterprise responsible for goods and services. Small businesses are responsible for finding customers.

The sense of competition and antitrust Effort not healthy

According to the General provisions of article (1) UUAM confirmed that the monopoly is control of the manufacturing and or marketing of goods and services or for the use of the service by a single performer or a group of businessmen. On paragraph (2) confirmed that the practice is centralizing economic power monopoly by one or more perpetrators attempt that resulted in the acquisition of manufacturing and or marketing of goods and or services giving rise to particular business competition and can be detrimental to the public interest.

The concentration of economic power monopoly is founded on a person or a specific group of people just so the other businessmen who usually more leman could not compete. The concentration of economic power in a particular person's deeds that lead to unhealthy competition because the monopoly removes other people's opportunities for taking part and this opportunity is used to the greatest possible advantage for the sake of dredge the bags themselves.

Implicitly, the Constitution also recognizes the existence of a form of monopoly control of sectors that ruled his life. It is realized from the control of the State-Owned Enterprises over a specific area. For example, electrical control of Pertamina PLN'S monopoly on oil and gas, PT. Railroad controlled the railways, and so on. The monopoly of the State as set forth in article 41 Constitution was an exception from UUAM. The monopoly of the State is aimed at implementing the legislation.

The Purpose of Antitrust Laws (UUAM):

1. Safeguarding the public interest and increase the economic efficient
2. Cultivate a conducive business climate
3. Prevent monopoly or practice unhealthy business competition
4. Create the effectiveness and efficiency in business activities

Based on general provisions article 1 paragraph (6) UUAM, confirmed that business Competition is unhealthy competition between businessmen in the exercise of the activities

of manufacturing and or marketing of goods and services is carried out by means of a dishonest or unlawful or inhibit competition efforts.

Indicators of unhealthy business competition according to the above article is how dishonest, against the law and impede competition efforts. It may also be an indicator of a healthy business competition by means of elaborate in a ' contrary. Honest competition is a competition conducted in accordance with the applicable rules, not cheating or lying so as not to harm others. In tort are met when the subject of legal action contrary to the obligations and or regulations as well as violating the rights of others that result in losses, while the Covenant does not harm others are agreements or trade activities in partnership based on the principle of interdependence and mutual benefit in achieving the goals of the business.

Through government partnerships foster a business climate in the aspect of the competition as set forth in Act No. 9 of 1995 article 6 paragraph (1) and policies for: :

1. enhance cooperation among small businesses in the form of cooperatives, associations, and community groups to strengthen the bargaining position of small business
2. prevent the formation of market structures that can bear the unfair competition in the form of build oligopoly, monopoly, and monopoly to the detriment of small business
3. Prevent the occurrence of market domination and the centralization of efforts by individuals or specific groups to the detriment of small businesses.

In addition to the readiness of the Government through other legislation/policy, employers and the community needs to intervene could encourage and promote training activities to improve the quality of human resources (small) changing dynamically according to the development progress

III. Result of the Reseach

Based on research results, this section will be described implementation of business competition on two private companies, namely PT Sari Achieve Major Flour Mills and PT Hadji Kalla.

1. Thepartnership agreement of PT Sari Main Flour Mills Achieve

PT. Autonomy is one of the major companies in Makassar that are in the process of its production partner with some of the smaller companies, companies like several companies of the expedition.

Partnering PT. Achieve with the company Malkatek Company in an area of convection based on agreement. Rights and obligations born of that agreement is the company Malkatek provides bags of flour in accordance with quality volume that has been. Supply bag and thread from the Malkatek conducted a month with payment obligations by PT. Autonomy also conducted monthly by transfer account.

Partnership between PT. Achieve with the company Malkatek when analyzed according to PP. No. 44 in 1997 in accordance with the pattern of sub contract to manufacture goods, business medium/large businesses give help to small businesses the opportunity to work on some production and or other components of the business partners.

Special marketing PT. Autonomy partner with several distributors in Indonesia's eastern region. For the Makassar is the new Fortress and Rice companies. The distributor

agreement, each party has a right and an obligation that is based on the substance of the agreement between PT distributors. Achieve with the distributor.

Distributors obliged to sell products (flour) from PT.Brdikari according to his ability. In this case there is no sales targets to be achieved by the distributor because in principle the distributor buys products (flour) from PT. Autonomy. But there is a difference from the usual purchase because of the existence of the agreement the distributor, the distributor's purchase price below the market price and the quality of the goods is assured. The advantages of a distributor is the difference between the purchase price of its principals (PT.Bedikari) and the selling price to the consumer.

Related to pricing (Price fixing) to different distributors with market prices in UUAM not prohibited all such price is a reflection of the existence of marginal cost. When PT. Achieve selling to distributors will no difference in cost when compared to PT. Achieve selling directly to the end consumer because the distributor can immediately pick up the goods at the place and in great numbers. Thus the PT. Achieve no additional cost to the expedition of goods and marketing products assured.

Differences in pricing against similar goods prohibited by article 5 UUAM i.e. when the goods or services for sale there is no difference in cost to the goods/services to the consumer. If the costs incurred by a seller to a consumer with different other consumer, then logically the selling price will certainly be different. Since the PT. Autonomy has been appointed distributor, then that isn't the case competition, PT. Autonomy does not sell products directly to consumers because when this is done, then the PT. Autonomy can be deadly for small businesses that can move in the same field.

Specifications products are sold by distributors is flour with a padlock, Ghatotkacha, mountain, and compass. Although there is no obligation to sell flour products. Autonomy, but the distributor is free to sell other brands of flour. In this case the Finance and Administration Division Manager, (interview, 15 June 2003), States that Distributors who market the product PT. Autonomy can only sell the flour with other brands because of the distributors work instead on behalf of PT. Autonomy but on behalf of the distributors themselves. PT. Autonomy does not know anything about wherever they are the wheat market

The working mechanism of the distributor is acting for herself and gain from the difference between the purchase and sales price. PT. Autonomy does not set the benchmark price in a distributor reselling. Therefore, the distributor is free to sell products (flour) in accordance with the market price.

Analysis of the mechanism of action of distributors according to the provisions of article 4 and article 9 UUAM that build oligopoly agreement criteria and zoning are not met because the distributor, PT. Achieve no emphasis to distributors to sell only wheat marketed products/PT. Autonomy. Because distributors can market other brands of flour, then the Agreement is prohibited (build oligopoly) in article 4 UUAM are not met, since the agreement is prohibited in the Treaty UUAM by businessmen who are jointly performing mastery and production or marketing of goods and or services may result in the occurrence of monopolistic practices and/or unhealthy business competition.

Marketing wheat products. Special autonomy region Makassar is not monopolized by PT. Achieve because there is no barrier for other entrepreneurs to market their production,

such as that conducted by PT. Sari Boga can market the product flour. Thus there was no violation of the provisions of article 9 UUAM about zoning, because that is prohibited in this article are businessmen making agreements with trade rivals aiming to divide the marketing or market allocation of goods and or services so it can result in the occurrence of monopolistic practices and/or unhealthy business competition.

2. Partnership Agreemen of PT.Hadji Kalla

PT.Hadji Kalla in conducting his business in the field of automotive trade are based on the partnership agreement on the appointment of the dealer (dealer agreement) with PT. Toyota Astra Motor. PT Toyota Astra Motor in the mechanism has partnered with five dealerships in the region of Indonesia. The Dealer in question si:

1. Astra Auto 2000 for Jakarta, Java, Sumatra, and Borneo.
2. New Ratna Motor for Semarang
3. PT.Hadji Kalla to South Sulawesi, central region and the Southeast.
4. Great Auto Mall to the Sumatra portion, and Nusa Tenggara part.
5. PT. Immortal desire for territory in North Sulawesi, Maluku, and Irian Jaya.

In principle the term dealers as distributors. The difference between the two is only on the use of the term which effort. Dealer used in the automotive industry while the distributor used in the field of trade in goods and services. The main task of the dealer is selling goods owned by its principals. Between the principal and the consumer no direct relationship does not even know the consumer. Distributors dealing directly with consumers as well as in running his business acted on his own and profit from the difference between the purchase and sale.

Dealer agreement between PT substance.PT Toyota Astra Motor.Hadji Kalla covers the rights and obligations of the parties, the term of the contract, the validity of the contract, specifications of products that will be sold (brand), after-sales services, the possibility of the appointment of an agent, and things relating to the tort. Analysis of patterns of partnership agreement between PT dealer.Hadji Kalla with PT. Toyota Astra Motor is in accordance with the general pattern of trade due to the collaboration of the parties regarding the marketing, provision of business location or the receipt of supplies from small businesses as business partners. PT.Hadji Kalla as a partner to market the partnership object i.e. car with Toyota brand. The parties in this general pattern of trade partnership must have a huge cost because each Fund itself.

Liability of PT.Hadji Kalla as the dealer is paying an amount of money on purchasing the goods belonging to PT. Toyota Astra Motor and organizes its own expedition of goods he had purchased. Obtained from the obligation is in the form of profits from the difference between the purchase and sale, while the obligation of PT. Toyota Astra Motor is to provide with guaranteed quality, whereas its due is obtaining payment for goods that have been purchased by the dealer.

The contract is valid for six months and will be evaluated at the end of the sixth month. Because the dealer is the spearhead of the sale, the principals in this case PT. Toyota Astra Motor prioritizes working mechanism of professional dealers. The success of the dealer is an advantage of its principals, neither the opposite.

The work contract in this partnership, namely PT.Hadji Kalla authorized to market/sell (Toyota brand cars) in the area of South Sulawesi, Central, and South. This working

relationship is based on an exclusive agreement (exclusive dealer) because there is only one dealer may sell the car brand Toyota, PT.Hadji Kalla. If there are other companies that want to sell cars with Toyota in brand sales.Hadji Kalla, then the company should purchase from PT.Hadji Kalla.

Product specifications and brand sold by PT.Hadji Kalla car brand Toyota is. This type of car is a sedan, a deer, and a truck. PT. Toyota Astra Motor requires to PT.Hadji Kalla to only market cars with Toyota brand in South Sulawesi, central region, and the Southeast. In The Group's PT.Hadji Kalla there is another company that marketed the car with other brands such as:

1. PT. Makassar Kingdom market cars with Daihatsu brand. PT. Makassar Kingdom partnered with PT. Astra Daihatsu
2. PT. The main core of the car market a car brand KIA. PT. Core Main Car partner with PT.KIA Motors International.

Both companies mentioned above have no relationship with PT.Hdji Kalla in terms of marketing the car brand Toyota. Each company have partnered with other companies, just happen to be the two companies including PT.Hadji Kalla Group.

Based on the partnership agreement, PT.Hadji Kalla can open sub dealers in the agreed areas of marketing. Operational terms for dealers by PT.Hadji Kalla called Branch Company. PT.Hadji Kalla Toyota Division for South and Southeast Sulawesi, there are as many as 15 companies. All branches are equipped with show room, workshop, and spare parts for ease of service. The working relationship between PT.Hadji Kalla the company subordinate branches, while between PT.Hadji Kalla with PT. Toyota Astra Motor is coordination, meaning that both have equal employment relationship.

If the agreement between PT.Hadji Kalla with PT. Toyota Astra Motor is analyzed based on UUAM, then there is an indicator of its substance arrangement build oligopoly, zoning, and the agreement is closed. Due to the agreement meet the criteria above, then give rise to monopoly activities in the marketing of goods.

IV. Conclusion

Agreements are build oligopoly if the offender attempts to make agreements with other business actors to do production and mastery or marketing goods and or services may result in a monopoly or competition is not healthy. Treaty of PT. Toyota Astra Motor with PT.Hadji Kalla is build oligopoly because with that agreement simply PT.Hadji Kalla who could sell Toyota cars. With a similarly controlled the marketing of cars with Toyota brand and percentage of market domination in South Sulawesi, Central, and southeastern exceeds 75% as mentioned in article 4 paragraph (2) UUAM.

Zoning prohibited by UUAM due to the existence of the Division/area restrictions to market, may give rise to the existence of a monopoly by certain companies and lead to other entrepreneurs to take part in it. This can also have an impact on consumers because consumers no choice, except if you want to purchase goods outside of the monopoly of the entrepreneur and when it is, the greater the likelihood of greater cost to the detriment of consumers themselves.

The agreement covered the criteria the existence of an agreement made with other businessmen and meet one of the elements in article 15 UUAM. Satisfy these elements, not

required any action of monopoly or unfair competition, but so is proven to meet one of the elements of Article 15 UUAM, then that agreement violates UUAM. This article has a doctrine per Se illegal: any agreement or action that is prohibited, it would be contrary to applicable law regardless of the consequences brought about by such actions, how far the curb market competition or give rise to monopoly.

The items are met by agreement partnership between PT. Toyota Astra Motor and PT.Hadji Kalla: businessmen are prohibited from making agreements with other trade that contains the requirement that the party receiving goods and or services will only supply or not supply the returned goods and or services to a particular party and certain places or on (article 15 paragraph (1) UUAM).

Because there are some criteria of the Treaty as article described above are met, then the partnership agreement between PT. Toyota Astra Motor with PT.Hadji Kalla can result in the monopoly on marketing action car brand Toyota in South Sulawesi, Central, and southeastern, with reference to article 17 UUAM.

Monopoly actions prohibited by article 17 UUAM categorized as Rule of the Treaty or act Reason businessmen are not automatically prohibited. Must be proven first the extent to which such action harms consumers, even though the deeds attributed to him, in fact has been proven. Agreement or the new Act considered unlawful if the agreement or the Act has a negative impact on competition. Until now, the implementation of the partnership by the two big business over with little effort/medium effort in Makassar as not to cause harm to other entrepreneurs, so it does not have a negative impact on business competition.

Partnership agreement between PT.PT Toyota Astra Motor.Hadji Kalla meets the criteria of the Treaty prohibited activities/UUAM such as build oligopoly, zoning, the Treaty is closed, and the activities of the monopoly, but until now has not proved there are parties who feel aggrieved and thus the partnership agreement between PT.PT Toyota Astra Motor.Hadji Kalla did not inhibit competition efforts.

References

- Ahmad, Yani dan Gunawan Widjaja. 2000, *Hukum Anti Monopoli*, PT.RajaGrafindo Persada, Jakarta.
- Kansil, CST. 1997, *Pokok-pokok Hukum Perseroan Terbatas*, PT.Pustaka Sinar Harapan, Jakarta
- Munir, Fuady. 1999, *Hukum Anti-Monopoly*, PT. Citra Aditya Bhakti, Bandung
- Mohammad, Jafar Hafsa. 2000, *Kemitraan Usaha Konsepsi dan Strategi*, Pustaka Sinar Harapan, Jakarta.
- Tulus, T.H.Tambunan. 2002, *Usaha Kecil dan Menengah Di Indonesia Beberapa Issu Penting*, Salemba Empat, Jakarta.