



The application of the principle of justice in a partnership agreement in the framework of implementing the National Fish Logistics System in Indonesia

¹Ery A. Priyono, ¹Achmad Busro, ¹Islamiyati, ²Dharu Triasih, ³Novita D. Masyithoh, ¹Kornelius Benuf

¹ Faculty of Law, Universitas Diponegoro, Jl. Prof Sudarto, S.H Central Java, Indonesia;

² Faculty of Law, Semarang University, Jalan Soekarno-Hatta, Tlogosari, Semarang, Indonesia; ³ Sharia Faculty of the State Islamic University of Wali Sanga, Prof. Hamka Street, Semarang, Indonesia. Corresponding author: E. A. Priyono, eryap@live.undip.ac.id

Abstract. This study aims to determine the application of the principle of justice in a partnership agreement in the framework of implementing the National Fish Logistics System. The importance of this research is that the implementation of a national fish logistics system partnership agreement is based on justice. This study uses a normative legal research method, with a comparative approach, legal approach, conceptual approach, and historical approach. The results show that agreement with partnership patterns in which one party has a strong bargaining position (government, active economic entrepreneurs) and, on the other hand, there are weak industrial entrepreneurs or ordinary people, often cause injustice in making agreements. The establishment of a forum for agitated industrial entrepreneurs will produce proportional mutually beneficial partnerships.

Key Words: fisheries, management, law, mutually beneficial.

Introduction. Based on the Regulation of the Minister of Marine and Fisheries of the Republic of Indonesia Number 5 / Permen-Kp / 2014 Regarding the National Fish Logistics System in its consideration mentions; (1) that to achieve national food sovereignty, independence, and food security, it is necessary to guarantee the availability, affordability, and sustainability for the fulfilment of fish consumption and the fish processing industry; (2), that in the framework of fulfilling fish consumption and fish processing industry, it is necessary to guarantee the procurement, storage, transportation and distribution of fish and fishery products, as well as materials and production equipment through the National Fish Logistics System.

The National Fish Logistics System from now on referred to as SLIN is a management system of fish and fishery product supply chains, materials and production equipment, as well as information from procurement, storage, to distribution, as a unified policy to increase capacity and stabilize the upstream, downstream fishery production system, controlling price differences, and meeting domestic consumption needs (Azhar et al 2018). The development of the marine and fisheries industry is based on the principle of sustainability and mutual prosperity. The SLIN addresses the need for a support system for fish flow from the source to the destination (Togar 2016).

Indonesia has the second-longest coastline in the world after Canada, which is 99,093 km². Along this coast are coastal villages inhabited by millions of coastal residents who depend on marine resources and fisheries. Coastal communities consist of several segments of fisheries resource utilization, including fish breeders, fish collectors, and fishers, as producers of fishery products (Baso 2013).

Partnership at the start of the twenty-first century is still much the same that it was in the 1890s when it was defined as the relation which subsists between persons

carrying on a business in common with a view of profit. The "persons" may be companies or individuals, or any combination of the two (Deards 2001). East Nusa Tenggara Province is one example, which included successfully running a partnership in the field of fisheries because it has improved the quality of fishing communities in the province (Marjaya et al 2008; Asiati & Nawawi 2016).

A business partnership is an agreement. As a treaty, the business partnership is subject to the provisions of Article III of the Indonesia Civil Code, which regulates the obligation, particularly the articles of the Agreement. Establishment of agreements According to Gregory E. Maggs was quoted by Ery Agus Priyono, beginning with free will as reflected in the offer and acceptance covered by the contract (Priyono 2016a).

The principle of freedom of contract is the basis for making agreements which is the free will of the parties. This principle provides a moral foundation "for every person to make or not to make a covenant, an agreement made under an agreement between the parties without coercion, deception, oversight or misuse (Priyono 2016b)."

In its development, because of the efficiency of agreeing on the principle of freedom of contract is shifted to the standard deal, wherein this standard agreement, the rights of the weak party, are not adequately protected because of the covenant made by a loud party (Priyono 2016b). The partnership relationship is viewed most appropriately as essentially contractual (Hynes 1997).

Partnership agreements are established and implemented based on mutual need, trusting, strengthening, and profitable principles involving micro, small, and medium business actors with large enterprises, government business own/local government business owners. Partnerships are conducted with coaching and development in one or more areas of production and processing, assisting marketing, capital, human resources, and technology. In doing partnership relations, both parties have equal legal standing. The practice of partnership agreements is often far from ideal because the partnership agreement is made unilaterally. The question is: how to protect the weak party? The purpose of this research is to protect the weak parties in the partnership agreement on the implementation of the SLIN by implementing the principle of justice in the partnership agreement.

Method. The research method used is the doctrinal method (Soekanto & Mamuji 1985), based on secondary data, namely regulation, partnership agreement, research results that have a similar topic of discussion. Qualitative and comparative analysis models for secondary data are expected to explain the legal protection partnership agreement in the framework of implementing SLIN.

Theoretical framework. The definition of Partnership in Article 26 paragraph (3) of the Law of the Republic of Indonesia Number 9 of 1995 concerning Small Business, is: "Partnerships are carried out accompanied by coaching and development in one or more fields of production and processing, helping marketing, capital, human resources, and technology". Whereas paragraph (4) is: "In conducting partnership relations, both parties have an equal legal position". Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises that replaces Law Number 9 of 1995 in Article 1 number 13 states, Partnership is cooperation in business relations, both directly and indirectly, based on the principle of mutual need, trust, strengthen, and benefit involving Micro, Small and Medium Enterprises with Big Business. In Article 3 of the Government Regulation of the Republic of Indonesia Number 44 of 1997 concerning Partnership, it is stated that the plasma core partnership pattern is "Large entrepreneurs and medium-sized entrepreneurs as the core conduct coaching and develop small entrepreneurs who become their plasmas" (Azhar et al 2018).

The purpose of the Partnership is "Win-Win Solution Partnership". Awareness and mutual benefit here does not mean that participants in the Partnership must have the same ability and strength, but more important is the existence of an equal bargaining position based on their respective roles. The hallmark of business partnerships for reciprocal relationships is not labour-employers or superiors (Gofur 2010).

The principle of freedom of contract is known as "partij otonomie" or "freedom of contract" or "liberty of contract". The principle of freedom to make this contract is a universal principle, meaning that it is adopted by contract law in all countries in general (Treitel 1999). This principle is the source of the rapidly growing contract law, not only in Indonesia but also at the regional and international levels (Lando 1983). This principle also underpins the entry into force of contracts in China (Zhang 2006), India (Bath 2009), and Japan (Hooft 2002).

Results and Discussion. According to Gofur (2010) implementation of the partnership in ideal conditions are to:

- a. increase small business and community income;
- b. increase added value for partnership sponsors;
- c. increase equity and empowerment of communities and small businesses;
- d. enhancing economic, regional and national growth;
- e. expanding employment opportunities; and
- f. increasing national economic resilience.

This partnership creates a legal relationship between small entrepreneurs on one hand and medium entrepreneurs or strong entrepreneurs on the other hand. The partnership between them will elevate the position of small entrepreneurs and hold it to a higher level, which will ultimately be able to increase the independence of the national economy. For that more efforts are needed tangible to create success that can support the establishment of a reliable business between all economic lives based on the principle of mutual support, mutual reinforcement, and mutual benefit (McQuaid 2016).

The realization of a strong business partnership, especially between large entrepreneurs and medium entrepreneurs with small entrepreneurs, will empower small entrepreneurs to grow and develop more robust and can strengthen the structure of national development that increases the national economy. Malaysia is an example of success in creating a trans-border partnership among Pacific states; release not only the bordering handicap but also increase the national economic income (Lasuin et al 2016).

The mandate of legislation whose contents are very conducive to the growth and development of coastal businesses with this partnership pattern, in practice is not very easy. As an agreement, the business relationship with this partnership pattern is inseparable from the interests of the active party, which often happens to the weak party.

The development of partnerships and the empowerment of fishing communities is one of the strategic policies that can be taken to ensure the sustainability of business and employment in the fisheries sector. These efforts can also support the economic and social improvement of the wider fishing community, removing the dependence of fishers on traditional capital institutions, as well as means of achieving more equitable and sustainable development (Asiati & Nawawi 2016).

A business partnership is an agreement. As a treaty, the business partnership is subject to the provisions of Article III of the Indonesia Civil Code, which regulates the obligation, particularly the articles of the Agreement. Establishment of agreements According to Gregory E. Maggs was quoted by Ery Agus Priyono, beginning with free will as reflected in the offer and acceptance covered by Agreement (Priyono 2016a).

The partnership agreement model often causes complaints and suspicions that cause debate. Partnership agreements as one of the "standard agreement" models tend to be a reflection of the interests of a reliable company, which has a dominant position in the formation and implementation of the agreement, which often ignores the benefits of the weak party (Fontagne et al 2010).

The one-sided business practice that was initiated by the existence of a standard agreement that did not provide a balance of interests for the parties gave rise to a reaction that led to the need to be given a "proper" place for the existence of the principle of good faith and dignity in the drafting and implementation of the agreement. As stated in Article 1338, paragraph 3 of the Civil Code Agreement must be carried out in good faith (Priyono 2016a).

Article 1339 of the Civil Code confirms that the agreement is not merely subject to what is written but also binds the things that are expressly stated in it, but also for everything that, according to the nature of the agreement is required by property, customs, and laws.

Normatively, almost all agreements made by business actors, including partnership agreements in the field of marine and fishery, are valid according to the provisions of Article 1320 of the Civil Code. The partnership agreement in the field of sea and fishing has fulfilled the subjective conditions of the deal, namely (1) understanding and (2) competent and also has met objective requirements, namely (3) certain things and (4) unlawful or forbidden cause (Subekti & Tjitrosudibio 1992; Patrik 1994; Turner 2007; Valle 2009).

Problems arise when standard agreements are made only by the core party as the dominant party. Once the party as a relatively weak party can only "take it or leave it" without being able to make an offer let alone change the contents of the articles in the partnership agreement (Schwartz & Scott 2003).

Standard agreements are not prohibited, for reasons of efficiency; standard contracts are always applied in almost all existing agreements. This more adhesion agreement gives no room for the weak party to carry out the negotiation process as appropriate. Accepting or rejecting it (take it or leave it) is the only option for those who have weak bargaining positions (Priyono 2018a).

A deviation that often accompanies the standard agreement is the inclusion of exemption clauses, which are an article or provision whose contents are the extinguishment of responsibility or even the release of liability of one party to another party. This deviation is also a negative impact of the application of the principle of Freedom of Contract, which is not well controlled (Treitel 2004).

Partnership agreements in the field of fisheries and coastal culture, in general, do not differ from other partnership agreement models, for example, partnerships in the field of animal husbandry. As an agreement, a partnership agreement is usually in the form of a standard protocol. Standard contracts are often misused by active parties (companies, principals, investors) to suppress partners whose bargaining positions are weaker (Patrik 1986).

The fact is that the form and content of the agreement have been determined by the party which is active before the contract is signed by the parties. It is undeniable that a strong party will strive to have all its interests accommodated in the agreement, even though it has the potential to cause economic losses to the other party (Elliott & Quinn 2009).

The following is one of the articles in the partnership agreement between PT. Malindo with chicken farmers as plasma in the Sleman district. Article 4, paragraph (3) of the Broiler Maintenance Agreement (Priyono 2018b), it is stated that:

"The first party will" prosecute "the second party criminally if there is a difference in the number of broilers exceeding 0.1% (zero points one per cent) of the total initial population minus the number of appliances sold, and also subject to a fine of 2 (two) times the value of ovens determined by the first party, which payment must be completed within 14 (fourteen) days".

Clauses like this are not uncommon to be contained in the contents of the partnership agreement, because:

1) It appears that the first party is too suspicious and puts pressure on the second party, so the first party ignores the "principle of good faith". This is not by and contradictory to Article 1338 paragraph (3) of the Civil Code, namely that "an agreement must be implemented in good faith".

2) While according to Subekti & Tjitrosudibio (1992), the principle of good faith is explained as follows: "Good faith in the implementation of the agreement means propriety, that is, a good assessment of the actions of one party in carrying out what has been promised and aims to prevent improper and arbitrary acts from one of the other parties."

3) An agreement containing the contents of an exclusion clause like this is possible to be null and void, meaning that the deal is considered to never exist if this happens then an agreement whose purpose is to provide maximum benefits to the parties through the partnership model will never be reached.

The provisions of the article above can already be said to be a manifestation of the deviation from the requirements of Article 26 paragraph (3) of the Law of the Republic of Indonesia Number 9 of 1995 concerning Small Businesses, namely:

"Partnerships are carried out accompanied by coaching and development in one or more fields of production and processing, helping marketing, capital, human resources, and technology". Whereas paragraph (4) is: "In conducting partnership relations, both parties have the same legal position".

Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises that replaces Law Number 9 of 1995 in Article 1 number 13 states, Partnership is cooperation in business relations, both directly and indirectly, based on the principle of mutual need, trust, strengthen, and benefit involving Micro, Small and Medium Enterprises with Big Business.

Article 3 Government Regulation of the Republic of Indonesia Number 44 of 1997 concerning Partnership, it is stated that the plasma core partnership pattern is: "Large entrepreneurs and medium-sized entrepreneurs as the core conduct coaching and develop small entrepreneurs who become their plasmas".

An agreement that violates the principle of good faith has two possibilities to be cancelled; if it is considered to violate the subjective conditions (in this case there is no agreement because there is a defect of the will), then the transaction can be cancelled. Unlike the case, if the deal is considered to have violated the objective conditions as stipulated in Article 1337 "about non-halal causes", then the agreement can be null and void.

Conclusions. Legal protection efforts for the parties, especially the Plasma party as a weak party can be pursued through three mechanisms, namely:

1. Application of administrative, statutory provisions by enforcing rules on, fostering, oversight by the government, as stipulated in the micro, small and medium business law, and/or government regulations regarding partnerships.
2. Application of the provisions in Law No. 8 of 1999 concerning Consumer Protection.
3. Application of the provisions of civil law, by claiming to cancel the agreement to the District Court.

Acknowledgements. Our sincere appreciation to Rector of Diponegoro University, Dean of Law Faculty-Diponegoro University, LPPM of Diponegoro University, and Committee of ICTCRED 2019 for their support in this research.

References

- Asiati D., Nawawi, 2016 [Partnership in the fishery sector: strategies for business and employment sustainability]. *Jurnal Kependudukan Indonesia* 11(2):103-118. [in Indonesian]
- Azhar M., Suhartoyo S., Putut S., Vivi E. A., Nanik T., 2018 Prospect on implementation of National Fish Logistics System: case in Indonesia. *E3S Web of Conferences* 47 (06009):1-6.
- Baso A., 2013 [Revitalizing community empowerment for fishermen's welfare, in the book building Indonesian marine resources]. IPB Press, Bogor, 75 pp. [in Indonesian]
- Bath S., 2009 Basis for contract law in law and business contracts in India. Saiga Publications, India, 46 pp.
- Deards E., 2001 Partnership law in the twenty-first century. *Journal of Business Law* 2001:357-376.
- Elliott C., Quinn F., 2009 Contract law. 7th edition, Library of Congress Cataloging-in-Publication Data, New York, 472 pp.
- Fontagne L., Laborde D., Mitaritonna C., 2010 An impact study of the economic partnership agreements in the six acp regions. *Journal of African Economies* 20(2):179-216.

- Gofur S., 2010 [Implementation of the partnership agreement between PT. Malindo with Plasma in Sleman Regency]. PMKn UNDIP, Semarang, 78 pp. [in Indonesian]
- Hooft W. M. V., 2002 Japanese contract and anti-trust law. Routledge Curzon Taylor & Francis Group, London, 232 pp.
- Hynes J. D., 1997 Freedom of contract, fiduciary duties, and partnerships: the bargain principle and the law of agency. *Washington & Lee Law Review* 54:439-464.
- Lando E., 1983 European contract law. *American Journal of International Law* 31:653-659.
- Lasuin C. A., Omar A., Thurasamy R., 2016 The advantages of a trans-pacific partnership agreement (TPPA) on Malaysian small, medium enterprises (SMEs). *Journal of Advanced Research in Business and Management Studies* 5(1):35-46.
- Marjaya S., Namah C., Setiawan K., 2008 [Strategy for developing partnership patterns between fishery entrepreneurs and traditional fishermen partnering on the Namosain coast, Pasir Panjang Beach, and Kupang Oesapa Beach]. *Partner* 15(1):10-21. [in Indonesian]
- McQuaid R. W., 2016 The theory of partnership - why have partnerships? In: *Managing public-private partnerships for public services: an international perspective*. Osborne S. P. (ed.), Routledge, London, pp. 9-35.
- Patrik P., 1986 [Principle of good faith and appropriateness in the agreement]. Badan Penerbit UNDIP, Semarang, 38 pp. [in Indonesian]
- Patrik P., 1994 [Fundamentals of obligation law]. Mandar Maju, Bandung, 118 pp. [in Indonesian]
- Priyono E. A., 2016a [Applying the principle of good faith and compliance in the franchise agreement]. *Jurnal Humani* 6(3):67-75. [in Indonesian]
- Priyono E. A., 2016b [Good faith in standard form contract proceeding on the third national civil law conference]. Civil Law Teaching Association and Faculty of Law Brawijaya University, Malang FH UB Malang, 34 pp. [in Indonesian]
- Priyono E. A., 2018a [Fairness in business contracts in Indonesia (review of franchise agreements)]. *Law Reform* 14(1):15-28. [in Indonesian]
- Priyono E. A., 2018b [Legal protection for parties in the agreement livestock partnership]. *Diponegoro Private Law Review* 2(1):154-160. [in Indonesian]
- Schwartz A., Scott R. E., 2003 Contract theory and the limits of contract law. *Yale Law Journal* 113(3):541-619.
- Soekanto S., Mamuji S., 1985 [Normative legal research: a short review]. Rajawali Press, Jakarta, 148 pp. [in Indonesian]
- Subekti R., Tjitrosudibio R., 1992 [Code of civil law]. PT. Balai Pustaka, Jakarta, 34 pp. [in Indonesian]
- Togar S., 2016 [Development of a national fish logistics system]. Institute Teknologi Bandung, Bandung, 67 pp. [in Indonesian]
- Treitel G. H., 1999 The law of contract. 10th edition, Sweet & Maxwell Limited, London, 1015 pp.
- Treitel G. H., 2004 An outline of the law of contract. 6th edition, Oxford University Press, 455 pp.
- Turner C., 2007 Contract law. 2nd edition, Hodder Education, London, 264 pp.
- Valle A. V. L., 2009 Obligation and contract. Boa Presentation Transcript, Manila, 308 pp.
- Zhang M., 2006 Chinese contract law: theory and practice. Martinus Nijhoof Publisher, Leiden, 372 pp.

Received: 17 March 2020. Accepted: 12 May 2020. Published online: 25 July 2020.

Authors:

Ery Agus Priyono, Faculty of Law, Universitas Diponegoro, Jl. Prof Sudarto, S.H, Semarang, 50275, Central Java, Indonesia, e-mail: eryap@live.undip.ac.id

Achmad Busro, Faculty of Law, Universitas Diponegoro, Jl. Prof Sudarto, S.H, Semarang, 50275, Central Java, Indonesia, e-mail: achmadbusyro@rocketmail.com

Islamiyati, Faculty of Law, Universitas Diponegoro, Jl. Prof Sudarto, S.H, Semarang, 50275, Central Java, Indonesia, e-mail: islamiyati@yahoo.co.id

Dharu Triasih, Faculty of Law, Semarang University, Jalan Soekarno-Hatta, Tlogosari, 59160, Central Java, Indonesia, e-mail: dharu.triasih@usm.ac.id

Novita D. Masyithoh, Sharia Faculty of the State Islamic University of Wali Sanga, Prof. Hamka Street, Semarang, 50185, Central Java, Indonesia, e-mail: novita.dewi79@yahoo.co.id

Kornelius Benuf, Faculty of Law, Universitas Diponegoro, Jl. Prof Sudarto, S.H, Semarang, 50275, Central Java, Indonesia, e-mail: korneliusbenuf@gmail.com

This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution and reproduction in any medium, provided the original author and source are credited.

How to cite this article:

Priyono E. A., Busro A., Islamiyati, Triasih D., Masyithoh N. D., Benuf K., 2020 The application of the principle of justice in a partnership agreement in the framework of implementing the National Fish Logistics System in Indonesia. *AACL Bioflux* 13(4): 1963-1969.