

# Consignment Agreement Regulation Model Between Craft MSMEs and Corporations Based on the Principle of Contract Balance

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## ABSTRACT

Conducting business-related activities at this time is not only based on trust, but business actors need concrete evidence in business-related activities and a written the agreement is one of the ways that business actors can use in conducting a business cooperation relationship. If the sculptors or painters in Bali do not open their art shops as MSMEs actors will entrust their work to be sold to larger art shops or souvenir center companies with a consignment agreement system or entrusted to sell as a form of partnership. The unregulated consignment partnership pattern results in the absence of legal certainty for craft MSMEs actors, so it is necessary to find a regulation model of the consignment agreement for the parties. This study using normative research methods with legal material collection techniques used, namely, document study techniques by collecting legal materials from literature relevant to the problem then grouped systematically and then analyzed descriptively qualitatively. The Model of Consignment Agreement Arrangements Between Craft MSMEs Actors and Corporations Based on the Principle of Contract Balance is to reconstruct Article 87 point 5 of the Job Creation Law by adding regulations related to consignment to the partnership pattern and specifically regulating the consignment agreement in its derivative regulations by regulating the materials or classes, that must exist as a minimum requirement or criterion.

**Keywords:** *Consignment agreement, Contract principle, MSMEs.*

## 1. INTRODUCTION

The body text starts with a standard first-level heading like INTRODUCTION or any other heading suitable to the content and context. First level headings are in all caps. Copy the content and replace it for other first-level headings in remaining text. Reference citations should be within square bracket [1]. Headings should always be followed by text.

Conducting business relations activities at this time is not only based on trust, but business actors also need concrete evidence in business-related activities and a written the agreement is one way that business actors can use in conducting a business cooperation relationship. One of the programs currently in use is that Micro, Small, and Medium Enterprises (MSMEs) can market their products in one place. Moreover, cooperate with the mutual benefit of both parties. MSMEs need to be empowered as an internal part of the people's economy that has a strategic role and potential to realize a more

balanced and developing national economic structure [1]. With the development of an increasingly dynamic and global economic environment, it is necessary to have legal protection from the government for MSMEs to ensure legal certainty and business justice. [2].

Related to legal certainty for MSMEs, the government has accommodated by enacting Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (UU MSMEs). Article 2 regulates: "Micro, Small, and Medium Enterprises are based on: a. kinship; b. economic democracy; c. togetherness; d. fair efficiency; e. sustainable; f. environmentally friendly; g. independence; h. balance of progress; and i. national economic unit."

In addition, Article 3 stipulates: "Micro, Small and Medium Enterprises aim to grow and develop their Business in the context of building a national economy based on justice economic democracy".

With the enactment of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja), several provisions contained in the MSME Law have changed. This is because providing convenience, protection, and empowerment to MSMEs is one of the objectives of the creation of the Job Creation Law. One of them is a change related to the criteria for MSMEs. According to Article 87 point 1 of the Job Creation Law, the criteria for MSMEs can include business capital, turnover, net worth indicators, annual sales results, or investment value, incentives and disincentives, application of environmentally friendly technology, local content, or the number of workers following the criteria for each business sector.

In Bali, as a center for arts and crafts that are well-known in foreign countries, some people make a living as a sculptor or as a painter. One of the regencies with a large number of people are in Gianyar Regency. Especially in Gianyar Regency, there is a large and well-known Balinese handicraft souvenir market, namely the Sukawati Art Market and the Guwang Art Market. The sculptors or painters usually if they do not open their art shops as SMEs, and they will entrust their work to be sold to larger art shops or souvenir center companies such as Krisna Oleh-Oleh, Erlangga, and so on with a consignment agreement system or entrust to sell as a form of partnership.

The definition of partnership referring to the MSME Law is given a definition, namely: cooperation in Business linkages, either directly or indirectly, based on the principles of mutual need, trust, strengthening, and benefit involving Micro, Small, and Medium Enterprises with Large Enterprises. Partnership activities which were previously regulated in Article 26 of the MSME Law, there are changes to the Job Creation Law which is regulated in Article 87 number 5 with the addition of a supply chain partnership pattern to implement partnerships with the following pattern: a. nucleus-plasma; b. subcontract; c. franchise; d. general trading; e. distribution and agency; e. supply chain, and f. other forms of partnership.

All partnership patterns must be implemented based on a written agreement. This is under what is stated in Article 34 (1) namely:

“The partnership agreement is stated in a written the agreement which at least regulates business activities, rights and obligations of each party, a form of development, time, and dispute resolution”.

Regarding the general trade partnership pattern, as regulated in the Job Creation Law, Article 87 point 6 states: "The implementation of the partnership with the general trading pattern, as referred to in Article 26 letter d, can be carried out in the form of marketing cooperation, or the provision of business locations from

businesses. Micro, Small and Medium Enterprises by Large Enterprises conducted openly”.

If investigated more deeply regarding the partnership pattern regulated in the MSME Law, which has been amended in the Job Creation Law, no rules govern the sale or consignment deposit pattern, mainly carried out by MSME actors. Consignment is the physical delivery of goods by the owner to another party, who acts as a selling agent. Usually, an agreement is made regarding juridical rights over the goods sold by the seller [3]. The party who delivers the goods (the owner) is called the consignor. The party that receives the goods on the consignment is called the consignee/consigner. For the consignor, goods entrusted to the consignee for sale are consignment goods (consignment out). One of the essential features of a consignment contract is the payment mechanism specified in the contract. The specific mechanism for determining supplier revenue impacts all parties to the contract [4].

The implementation of consignment agreements in the community is mainly carried out verbally [5], so it does not have strong legal protection, and even if it is stated in the written agreement, the clause that is generally included is payment for goods deposited for sale, which will be made when the goods have been sold. Of course, this does not provide justice for MSME actors who need capital in making their work, and it is not clear how long they will wait for the sales results. Not to mention if there is merchandise that was deposited lost because it was stolen or damaged, this will not be the responsibility of the consignee because it is considered as a force majeure event or outside the will and ability of the consignee so that the consignee cannot be held responsible. Furthermore, it results in a position of the weak consignor. This is not following one of the principles of the implementation of SMEs, namely the efficiency of justice which is explained: he implementation of empowering Micro, Small, and Medium Enterprises by prioritizing fair efficiency to create a fair, conducive, and competitive business climate. So that craftsmen should be able to be paid in advance to fulfill the principle of justice under what is explained in the explanation section of the MSME Law. This is also following Government Regulation Number 44 of 1997 concerning Partnerships (PP Kemitraan), Article 6 is regulated:

“If the implementation of the partnership as referred to in Article 3, Article 4, and Article 5 is followed by payment obligations that the Large Business and or must make Medium Business for the delivery of goods or services by the Small Business, the payment is made in cash”.

Based on the vacuum of the norm of consignment arrangements resulting in the absence of legal certainty for handicraft MSME actors, so this research is important to be researched to find a fair consignment agreement

arrangement and has a balanced position for the parties, including entrepreneurs.

## 2. METHOD

This is normative research with qualitative evaluation and argumentation characteristics and uses secondary data in the form of primary and secondary legal materials. Document study techniques obtained all data obtained in this study. One of the primary legal materials used is Law Number 11 of 2020 concerning Job Creation, which discusses the partnership pattern in MSMEs and several Ministerial regulations governing franchise and leasing contracts as a comparison in finding fair contract arrangements for employers. Party. The secondary legal material used is literature that discusses contract law.

## 3. RESULT AND DISCUSSION

One area of law that needs attention to be regulated and developed is contract law because agreements are a manifestation of most human wealth. An essential part of one's property consists of the benefits promised by others [6]. An agreement gives legal consequences in the form of rights and obligations. Something right for one party in the agreement will be an obligation for the other party. Currently, the provisions of contract law that are widely used in Indonesia are the provisions of Book III of the Civil Code (KUHPdata) concerning Engagement. Article 1320 of the Civil Code stipulates that a valid agreement's conditions are agreement, skill, object, and a lawful cause.

The essence of contract law is basically to meet the legal needs of business actors in that it does not merely regulate. However, more than that gives business actors complete flexibility and freedom to determine what their needs are. This is because business people are more aware and know the ins and outs of various needs in their business activities. In the business world that brings together the actors in business activities, contracts are essential instruments that always frame legal relationships and secure their transactions. There is almost no business activity that brings together business people to exchange their interests without a contract. The exchange of interests (achievement – counter achievement) is the starting point for the realization of justice for the parties [7].

The urgency of contractual arrangements in Business practice is to ensure that the exchange of interests (rights and obligations) takes place proportionally for the parties so that a fair and mutually beneficial contractual relationship is established. Not vice versa, harming one of the parties or even, in the end, harming the contracting parties. Following Article 1338 of the Civil Code, agreements made legally apply as law for those who make them. So, the agreement must accommodate the

interests and provide legal certainty for the parties so that a fair business relationship can be achieved.

Related to injustice and imbalance in the positions of the parties in the contract, this is reflected in the handicraft MSME actors who enter into consignment agreements in partnership with corporations such as the Erlangga Souvenir Shop and Krisna Souvenir Shop to sell their handicrafts and only receive payment when the goods are deposited. the sale ended so that it was detrimental to the MSMEs who were unable to turn their capital back and caused an imbalanced position on the consignor's side and things were made worse if there was merchandise that was deposited lost because it was stolen or damaged by animals, this would not be the responsibility of the consignee because it is considered a force majeure event or outside the will and ability of the consignee so that the consignee cannot be held accountable and results in the position of the consignee being weak and unbalanced.

In terms of a balanced position for the parties to the the agreement, Herlien Budiono suggests 3 (three) interrelated aspects of the agreement that can be raised as a testing factor regarding the working power of the balance principle, namely [8]: first, his actions or individual behavior, second, the content of the contract, and third, the implementation of what has been agreed. The absence of precise arrangements on the contents of the consignment contract in writing will not create a balanced position for the parties.

This happens because of the absence of norms related to the arrangement of consignment agreements in Article 26 of the MSME Law as amended in Article 87 point 5 of the Job Creation Law and causes problems in the community, one of which is that many consignment agreements are made orally which will undoubtedly cause legal uncertainty for one of the injured parties. Article 87 number 5 of the Job Creation Law regulates that partnership activities can be carried out with the following patterns: nucleus-plasma, subcontracting, ranchising, general trading, distribution, and agency, supply chain, and other forms of partnership. However, other forms of partnership are not further regulated by strict regulation of the consignment agreement accompanied by its derivative regulations which can provide arrangements related to the minimum criteria/requirements that must be contained in the consignment contract. As well as the franchise agreement which has been regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Franchising, which in that regulation very firmly regulates the material or clauses that must exist in the franchise agreement. Another example is the lease agreement or leasing which in the Decree of the Minister of Finance of the Republic of Indonesia No. 1169/KMK.01/1991 concerning Leasing Activities.

Article 9 of the Minister of Finance regulates that every lease transaction must be bound in a lease agreement and the the agreement contains at least the following: provisions regarding the accelerated termination of the lease transaction, and determination of losses to be borne by the lessee if the capital goods leased with option rights are lost, damaged or malfunctioning for any reason, and the parties' liability for the leased capital goods. So that if something happens to the goods being leased, it will be clear the responsibility of the parties to the goods. this is very different from the conditions in a business agreement with a consignment pattern, where if there is damage or loss of the goods entrusted for sale. It is not the responsibility of the consignor because it is beyond the consignor's ability (Force Majeure). Thus, it is very important to strictly regulate the consignment partnership the pattern in the laws and regulations to create legal certainty for the parties.

Related to the absence in the arrangement of the consignment partnership pattern is also due to the development of the understanding of liberalism giving rise to freedoms of the view that the parties determine the contents of the contract, the business partnership follows the spirit and spirit of economic democracy, which is mandated in Article 33 paragraph 1) UUD 1945. Although the government provides legal protection for micro, small and medium enterprises to obtain legal guarantees, namely in the form of the Micro, Small, and Medium Enterprises Law, that the empowerment of Micro, Small, and Medium Enterprises as referred to in the letter (c)). It needs to be implemented in a comprehensive, optimal, and sustainable manner through the development of a conducive climate, providing Business opportunities, support for protection, and Business development as widely as possible to be able to improve the position, role, and potential of micro, small and medium enterprises in realizing equitable economic growth and increase people's income, job creation and poverty alleviation. Micro, Small, and Medium Enterprises of Indonesian craftsmen are considered very weak, so the government needs to pay special attention to optimizing MSME craftsmen so that state commodities through various policies can regenerate craftsmen MSMEs. Therefore, to develop its Business, it can also distribute its products, for example utilizing cooperation through partnerships as a strategic effort to anticipate increasingly fierce competition in the era of free trade.

According to the theory of Development Law from Mochtar Kusumaatmadja, for people who are developing, the the law must be oriented towards the future that is in line with development. While the function of law in development is not only as a tool, that further than that, the function of law can make efforts to move people to behave following new ways. Such as the function of law as a means of community renewal in the sense that the law can follow a society that is developing [9]. The concept of development law theory is widely

used by the government in formulating various policies related to national economic development, including the protection and empowerment of MSMEs. The law must be able to become an economic frame. On the other hand, the the economy must not leave the law [10]. The law functions as a safeguard for economic policy as well as an economic stabilizer, such as in the arrangement of partnership agreements between MSME actors and corporations, it must be investigated whether the partnership agreements that have been implemented have provided justice for the parties so that corporations and MSME actors can run their Business calmly. This fair arrangement is realized by the existence of legal certainty that can eliminate the doubts of economic actors in their activities and efforts to develop their businesses so that the role of law in creating justice is intended to provide equal treatment to economic actors. [11].

Based on the explanation of the legal theory of development, it is necessary to give restrictions on freedom by regulating the consignment agreement under the legislation in force in Indonesia to provide justice for the parties, both consignees and consignors, by reconstructing the UUMKM related to the arrangement of partnership patterns by specifically regulating consignment agreements with determining the materials or clauses that must exist as minimum requirements, such as provisions regarding the payment mechanism and the responsibilities of the parties for the goods being entrusted for sale.

#### **4. CONCLUSION**

The Consignment Agreement Regulating Model Between Handicraft MSME Actors and Corporations Based on the The principle of Contract Balance is to reconstruct Article 87 point 5 of the Job Creation Law by adding regulations related to consignment to the partnership pattern and specifically regulating consignment agreements in its derivative regulations by regulating the materials or clauses that must be made. exist as minimum requirements or criteria such as: provisions regarding the payment mechanism and the parties' responsibilities for the goods being tipped off as a consignment contract model that is fair and has a balanced position for the parties. The advice that can be given is for the perpetrators of MSME crafts and corporations so that in implementing the partnership pattern with consignment agreements always make a written agreement so that the parties know their rights and obligations clearly to create legal certainty for the parties. The Indonesian government should specifically regulate consignment agreements in the laws and regulations in force in Indonesia so that no party is harmed and can eliminate the doubts of economic actors in their activities in their business development efforts.

## ACKNOWLEDGMENTS

The author would like to thank all those who helped in the preparation of this article, both financially and contributing ideas for the perfection of this article. The author also Hopes that the article can help solve the problem of MSMEs that use the consignment partnership pattern in doing Business.

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