

## LEGAL PROTECTION FOR THE PARTNERSHIP AGREEMENT PARTIES

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**Abstract:** Preparing the partnership agreement must comply with the rules for the parties to get guarantees and legal protection. The rules must meet the preliminary requirements, such as understanding the transaction object and background, compiling its outline, recognizing the partners, and formulating the agreement principles. The partnership agreement must also have a signature, as well as rights and obligations. This normative study aimed to analyze the partnership agreement rules as legal protection. The results showed that the partnership agreement rules contain all the parties need as legal certainty and protection.

**Keywords:** Legal Protection, Dairy Processing Industry, Dairy Cooperative, Partnership Agreement

**Abstrak:** Penyusunan perjanjian kemitraan harus sesuai dengan aturan bagi para pihak untuk mendapatkan jaminan dan perlindungan hukum. Aturan harus memenuhi persyaratan awal, seperti memahami objek dan latar belakang transaksi, menyusun garis besarnya, mengenali mitra, dan merumuskan prinsip-prinsip perjanjian. Perjanjian kemitraan juga harus memiliki tanda tangan, serta hak dan kewajiban. Kajian normatif ini bertujuan untuk menganalisis aturan perjanjian kemitraan sebagai perlindungan hukum. Hasil penelitian menunjukkan bahwa aturan perjanjian kemitraan memuat kebutuhan semua pihak sebagai kepastian dan perlindungan hukum.

**Kata Kunci:** Perlindungan Hukum, Industri Pengolahan Susu, Koperasi Susu, Perjanjian Kemitraan

## Introduction

The Big Indonesian Dictionary (KBBI) defines law as regulation or custom considered officially binding and confirmed by the authorities or the government. It regulates the community's social life, rules, and provisions regarding certain natural events, and decisions or considerations determined by the judge in court.<sup>1</sup> Law comprises the principles and rules regulating human social relations in kinships, villages, or a country.<sup>2</sup> One of the most important functions of law is achieving social order in human life.<sup>3</sup>

Experts defined law as follows:

- a. Immanuel Kant defined the law as someone's free will to conform to the free will of others by following the rules of freedom.<sup>4</sup>
- b. Thomas Hobbes stated that the law comprises the orders of people empowered to rule and impose their orders on others.<sup>5</sup>

Legal protection is protecting the dignity and worth and recognizing the legal subjects' human rights based on provisions from arbitrariness or rules that protect one thing from another.<sup>6</sup> Indonesia's legal protection principles are based on Pancasila as the state's ideology and philosophy based on *Rechstaat* and the Rule of Law. The principle focuses on legal protection for human dignity rooted in Pancasila. Furthermore, the legal protection against government actions rests on and originates from recognizing and protecting human rights. This concept from western history is directed towards restrictions and laying down

social and government obligations.<sup>7</sup> Legal protection describes the workings of the legal function to realize justice, expediency, and legal certainty. It protects legal subjects according to the rule of law by preventive or coercive written and unwritten legal regulation enforcement.<sup>8</sup>

A partnership agreement is necessary for the parties. The parties in this study are the milk processing industry that makes powdered, sweetened, condensed, and sour milk. The industry also makes milk cream, conducts preservation processes such as sterilization and pasteurization, and partners with milk-producing cooperatives. Dairy-producing cooperatives partner with dairy farmers, where the parties must obtain legal protection. This is because, without legal protection, one of the parties would arbitrarily make decisions. Therefore, there is a need for a partnership agreement based on the applicable rules.

This study was entitled "Legal Protection for the Parties to the Partnership Agreement (Partnership Agreement Rules)." The topic of discussion is related to legal protection, the parties in the milk processing industry and cooperatives, and the partnership agreement rules.

## Method

This normative study aimed to analyze the partnership agreement rules as legal protection for the parties. A normative or doctrinal study is literature-based and aims to systematically explain, analyze, and predict the development of the rule of law. According to Dyah Ochtorina Susanti and A'an Efendi, there were 3 (three) other legal study approaches relevant to be used as complements to understand and

<sup>1</sup> <https://kbbi.web.id/law> accessed on December 6, 2021.

<sup>2</sup> Mochtar Kusumaatmaja, *Introduction to Law*, Alumni, 2009, p. 4.

<sup>3</sup> *Ibid*, p. 49.

<sup>4</sup> Wawan Muhwan Hairi, *Introduction to Legal Studies*, Faithful Library, 2012, p. 22.

<sup>5</sup> Zainal Asikin, *Introduction to Law* (Jakarta: Rajawali Pres, 2011), p. 10.

<sup>6</sup> Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: Bina Ilmu, 1997), p. 25.

<sup>7</sup> Satjipto Raharjo, *Other Sides of Law in Indonesia* (Jakarta: Kompas, 2003), p. 121.

<sup>8</sup> Soetiono, "Rule of Law," *Master's Degree Dissertation* (Surakarta: Faculty of Law, Sebelas Maret University, 2004), p. 3.

explain completely this phenomenon, including:<sup>9</sup>

- a) Legislative, regulatory approach
- b) Conceptual approach
- c) Comparative approach.

## Result and Discussion

### 1. Legal Protection

In the big Indonesian dictionary, protection comes from the word *lindung*, meaning protecting, preventing, defending, and fortifying. It also means conservation, maintenance, guarding, asylum, and bunkers. This implies protecting something such as interests, objects, or goods from harm, and also mean the protection given to someone who is weak.

In Indonesia, KBBI defined law as an officially binding regulation or custom confirmed by the authorities or the government. It is also confirmed by laws and regulations to regulate community life, standards or rules regarding certain natural events, a judge's decisions or considerations in court, or a verdict.<sup>10</sup>

Legal protection is given by law, legal institutions, or means. It illustrates the role of law in providing justice, order, certainty, benefit, and peace. The following are expert opinions regarding legal protection:<sup>11</sup>

- a. Satjito Rahardjon viewed legal protection as an effort to protect people's interests by allocating Human Rights power to them to act according to their interests.
- b. Setiono defined legal protection as protecting the public from the authorities' unlawful, arbitrary actions to create or-

der and peace for humans to enjoy their dignity.

- c. Muchsin stated that legal protection harmonizes the relationship of values embodied in attitudes and actions in creating social order between human beings.
- d. Philipus M. Hadjon stated that legal protection is always related to government and economic power. Regarding government power, legal protection is given to the governed against the government, while from an economic perspective, it is provided to the economically weak against the strong, such as protecting workers against employers.<sup>12</sup>

The law protects people's interests by empowering them to fulfill their interests. The power or right is granted measurably, in breadth and depth. The 1945 Constitution of Indonesia stated that every product of the legislature must guarantee legal protection for every citizen, including social aspirations and justice.<sup>13</sup>

Legal protection does not differentiate between men and women. As a legal state based on Pancasila, Indonesia must protect its citizens because. Therefore, the protection recognizes the rights of humans as individual and social beings in a unitary state that upholds kinship to achieve mutual prosperity.<sup>14</sup>

Dr. O. Notohamidjojo stated that SH Law comprises written and unwritten coercive rules for human behavior in society and between states. The rules are oriented towards justice and usability to ensure social order and peace.<sup>15</sup>

<sup>9</sup> Dyah Ochtorina Susanti and A'an Efendi, *Legal Research*, (Jakarta: Sinar Graphika, 2014), p. 10.

<sup>10</sup> The drafting team of the Dictionary of the Center for Language Development and Development, *Big Indonesian Dictionary*, Second Edition, cet. 1 (Jakarta: Balai Pustaka, 1991), p. 595.

<sup>11</sup> [http://repository.uma.ac.id/bitstream/123456789/1812/5/138400039\\_file5.pdf](http://repository.uma.ac.id/bitstream/123456789/1812/5/138400039_file5.pdf), accessed November 30, 2021.

<sup>12</sup> Asri Wijayanti, *Post-Reform Labor Law* (Jakarta: Sinar Graphic, 2009), p. 10

<sup>13</sup> Syamsul Arifin, *Introduction to Indonesian Law* (Medan: Medan area University Press, 2012), pp. 5-6.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

The various definitions by legal experts show that the law contains the rules of human behavior.<sup>16</sup>

In the KBBI, protection comes from the word *lindung*, meaning protecting, preventing, defending, and fortifying. It means conservation, maintenance, guarding, asylum, and bunkers. This implies protecting something such as interests, objects, or goods from harm. It may also mean the protection given to someone weak. Therefore, the protection may be provided by law or using legal institutions and means.

Legal protection is defined as conscious efforts made by people, the government, and private institutions to secure, control, and fulfill the welfare of life according to Law Number 39 1999 concerning Human Rights.<sup>17</sup> It does not differentiate between men and women. As a legal state based on Pancasila, Indonesia must protect its citizens because. Therefore, the protection recognizes the rights of humans as individual and social beings in a unitary state that upholds kinship to achieve mutual prosperity.<sup>18</sup>

## 2. Dairy Processing Industry

The industry is an activity or business of processing raw or semi-finished materials into finished goods to make them profitable. According to Nursid in Erik, industry is a human activity utilizing resources or economic activity to process finished or semi-finished goods.<sup>19</sup> Milk is a yellowish or bluish-white liquid produced from the secretion of the udder. It is lac-

tated without adding or reducing components and is not yet processed.<sup>20</sup>

The Dairy Industry Roadmap issued by the Ministry of Industry, the Directorate General of Agro and Chemical Industries, stated that the milk processing industry makes powdered, sweetened, condensed, and sour milk. The industry also makes milk cream and conducts preservation processes, such as sterilization and pasteurization. The Dairy Processing Industry uses fresh milk as a priority raw material needed by milk-producing cooperatives.<sup>21</sup> The production focuses on processing fresh milk raw materials into dairy products or their derivatives. The Milk Processing Industry is important in providing and fulfilling community nutrition. Its contribution to meeting the milk demand and assisting cow breeders in absorbing Domestic Fresh Milk provides and fulfills community nutrition, meaning it must be developed.<sup>22</sup>

## 3. Dairy Cooperative

Etymologically, cooperation comes from the English word "cooperation," which means cooperation. A cooperative is a joint business entity whose members are economically weak communities. Members join voluntarily based on equality of rights to run a business to meet their needs and overcome economic difficulties. According to positive Indonesian law, Article 1 number 1 of the Law of the Republic of Indonesia Number 17 of 2012 concerning Cooperatives stated that:

“A cooperative is a legal entity established by an individual or a cooperative legal entity, with the separation of the assets of its members as capital for running a business, which fulfills shared aspirations and needs in the economic, social and cultural fields in

<sup>16</sup> Ibid.

<sup>17</sup> <http://thesisHukum.com/pengertianperlindungan-Hukum/>, accessed on November 30, 2021.

<sup>18</sup> [http://repository.uma.ac.id/bitstream/123456789/1812/5/138400039\\_file5.pdf](http://repository.uma.ac.id/bitstream/123456789/1812/5/138400039_file5.pdf) accessed on November 30, 2021.

<sup>19</sup> See Article 83 of the Law of the Republic of Indonesia Number 17 of 2012 concerning Cooperatives.

<sup>20</sup> <https://a-research.upi.edu> accessed on December 5, 2021

<sup>21</sup> Ibid.

<sup>22</sup> [agro.kemenperin.go.id.](http://agro.kemenperin.go.id.), accessed on July 31, 2020.

accordance with the values and principles of cooperatives."

Article 1 number 11 of the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 26/PERMENTAN/PK.450/7/2017 concerning the Supply and Distribution of Milk stated that:

"Cooperatives are business entities which members are individuals or cooperative legal entities based on the cooperative principle and as a people's economic movement based on the principle of kinship."

Cooperatives enlarge their members' businesses based on kinship and not their businesses. In Indonesia, cooperatives aim to develop their members' welfare in particular and society's general welfare. They do not measure welfare based on profits because they are people's and not capital associations. Therefore, cooperatives prioritize the profits received by members over the profits generated. Article 3 of the Cooperative Law explained the objectives of cooperatives as follows:

"Cooperatives aim to improve the welfare of members in particular and society in general, as well as to become an inseparable part of a democratic and just national economic order."

The purpose of cooperatives is consistent with their functions and roles as follows:

- a. Build and develop economic potential and capacity to improve the economic and social welfare of members in particular and society in general;
- b. Participate in improving the quality of community life;
- c. Becoming a pillar in strengthening the people's economy as the basis of the national economy's strength and resilience;
- d. Create and develop the national economy based on kinship and economic democracy.

Cooperatives play a role in developing business power and community creation and

increasing people's income, the standard of living, and the nation's intelligence. They also promote continuous economic and democratic development in creating job opportunities to reduce unemployment. These goals are achieved when the cooperative adheres to the following principles:

- a. Voluntary and open membership;
- b. Democratic supervision by members;
- c. Cooperative members participate in economic activities;
- d. A Cooperative is a self-supporting and independent business entity;
- e. Cooperatives educate and train members, administrators, employees, and supervisors. They also inform the public regarding the identity, activities, and benefits of cooperatives;
- f. Cooperatives provide excellent service to their members and strengthen the cooperative movement. They collaborate through local, regional, national, and international activities; and
- g. Cooperatives work for sustainable environmental and social development through policies agreed upon by their members.

The types of cooperatives, according to the cooperative law, include:

- a. Consumer cooperatives. They conduct service business activities in supplying goods for members and non-members.
- b. Producer cooperatives. They procure production and marketing facilities produced by members to members and non-members.
- c. Service cooperatives. They conduct savings and loan service business activities required by members and non-members.
- d. Savings and loan cooperatives. They run savings and loan businesses as the only means of serving members.

Dairy-producing cooperatives are cooperation between cooperatives and dairy farmers. In this case, dairy farmers become members

using cooperatives as a forum to develop their businesses. Cooperatives help farmers market and manage dairy cattle business due to the farmers' management limitations.

#### 4. Partnership Agreement

The partnership agreement is legal certainty and protection for the parties, including the amount of supply, payment of fresh milk, and business management development. However, the agreement must have rules implemented into a written agreement according to the parties' wishes.

A written agreement or contract is translated from English as contract law and known as *overeenscomsrecht* in Dutch.<sup>23</sup> According to the Indonesian Thesaurus, an agreement means a contract, understanding, provision, requirement, or a treaty.<sup>24</sup> WJS. Poerwadarminta in the General Indonesian Dictionary in Chairum Pasaribu and Suhrawardi K. Lubis stated that a written or verbal agreement is made by two or more parties that promise to obey it.<sup>25</sup> Article 1313 of the Civil Code stated that:

"A covenant is an act in which one or more persons bind themselves to one or more other persons."

Subekti stated that an agreement is an event where two people promise each other to carry out something.<sup>26</sup> According to Sudikno in Hananto Prasetyo, an agreement is a relationship between two or more parties with a legal consequence.<sup>27</sup> Burhanuddin defined an

agreement as a legal act that causes legal consequences applicable as law for the parties.<sup>28</sup>

A partnership agreement exists between the Dairy Processing Industry and a milk-producing cooperative. The parties must meet four conditions for the agreement made to be valid, explained as follows:

##### a. Deal

An agreement is conformity of will between the parties, where people approve of what they want. It is also a match between the will of the two parties.<sup>29</sup> In the partnership agreement between IPS and the Dairy Producer Cooperative, the partners must want and agree on its contents, such as the price of fresh milk, payment methods, and supply quantity. The agreement is realized through the signing by the parties.

##### b. Skills

Agreement-making is the ability to carry out legal actions by individuals or personal entities and corporations or legal entities.<sup>30</sup> Article 1329 of the Civil Code stated that everyone could agree unless prohibited by law. In line with this, Article 1330 of the Civil Code stated that those incapable of entering into an agreement are:

- 1) minors;
- 2) people under guardianship;
- 3) Women married lawfully and the people prohibited by law from making certain agreements.<sup>31</sup>

<sup>23</sup> Salim H.S., *Contract Law: Contract Drafting Theory & Techniques* (Jakarta: Sinar Graphic, 2004), p. 3.

<sup>24</sup> Indonesian Thesaurus Editorial Team, p. 215.

<sup>25</sup> Chairuman Pasaribu and Suhrawardi K. Lubis. *Hukum Perjanjian dalam Islam* (Jakarta: Sinar Grafika, 2014), p. 1.

<sup>26</sup> Subject, *Legal Agreement* (Jakarta: Intermedia, 1990), p. 1.

<sup>27</sup> Hananto Prasetyo, "Legal Renewal of Fairness Value-Based Sportentertainment Agreements (Case Study on Professional Boxers in Indonesia)," *Journal of Legal Reform* Volume IV No. January 1 - April 2017, p. 67.

<sup>28</sup> See Article 1338 paragraph (1) of the Civil Code. See also Burhanuddin, *Sharia Contract Law* (Yogyakarta: BPFE, 2009), p. 11.

<sup>29</sup> R.M Suryodiningrat, *Principles of the Law of Engagement* (Bandung: Tarsito, 1991), p. 86.

<sup>30</sup> Novina Sri Indiraharti, "Aspek Keabsahan Perjanjian dalam Hukum Kontrak: Suatu Perbandingan antara Indonesia dan Korea Selatan," *Jurnal Hukum PRIORIS* 4, no.1, 2014: p. 27.

<sup>31</sup> Compare this with Article 31 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, where in this provision, women are considered equal to men so that they are allowed to take legal actions.

In Indonesia, several laws and regulations regulate the criteria for adulthood. Article 330 of the Civil Code determined the adult age as at least 21 years for men and women. In contrast, Article 1 paragraph (1) of Law Number 1 of 1974 concerning Marriage defined an adult as someone aged 18 years or under 18 years but married. Immature, mentally unsound parties are represented by their guardians because they cannot take legal actions themselves.<sup>32</sup>

The second condition is related to the subject in the agreement, where the parties are individuals. In implementing the partnership agreement, the parties' skills are important, specifically regarding maturity, which relates to accountability. When there is a problem in implementing the partnership and involving the law, the parties must be adults and able to take legal actions.

#### c. Certain Things

The third condition is certain things, where an agreement must have a certain object. Certain things imply the agreed-upon object or achievement, which must be clear, calculable, and determinable by type.<sup>33</sup> Each agreement must clearly and unambiguously state its object. The third condition relates to the object of the agreement, which must be clear. In the partnership agreement between IPS and the Dairy-Producing Cooperative, there must be criteria for fresh milk to be sent by the cooperative as a supplier to IPS. These criteria include milk content, quality and quality, and fresh milk temperature.

#### d. Cause Causa Halal

A lawful *causa* does not imply promoting people to make an agreement. It is based on the agreement content,<sup>34</sup> whether it con-

tradicts the law, public order, or morality. The contents of the partnership agreement between IPS and the Dairy Producing Cooperative may not violate the law, public order, and morality. This means that the clauses in the agreement must contain things permitted by law.

A partnership agreement between the Dairy Processing Industry and the Dairy Producing Cooperative must be based on an authentic deed made by a Notary or authorized official to obtain legal protection.<sup>35</sup> This is consistent with Article 1 point 13 of the Regulation of the Business Competition Supervisory Commission Number 01 of 2015 concerning Procedures for Supervision of the Implementation of the Partnership. It stated that the partnership agreement is an agreement outlined in an authentic deed. This shows that the parties must put the agreement into an authentic deed. As a result, it could be strong evidence for the parties in case of a violation or deviation from the agreement contents. The agreement also guarantees legal certainty for the parties.

The state intervenes in forming the partnership agreement by determining its prohibitions. This is regulated in Article 35 of the MSME Law, Article 12 of Government Regulation no. 17 of 2013 concerning the Implementation of the MSME Law, and Article 3 of Perkom No. 1 of 2015.

### 5. *Legal Protection for the Parties to the Partnership Agreement (Partnership Agreement Rules)*

<sup>32</sup> Syahmin AK, *International Contract Law* (Jakarta: Raja Grafindo Perkasa, 2006), p. 14.

<sup>33</sup> <http://bandung.bpk.go.id/files/2016/05/Percepatan-BOT-antara-Government-with-Badan-Usaha.pdf> accessed on August 11, 2020.

<sup>34</sup> Abdul Kadir Muhammad, *Law of Obligations* (Bandung: Citra Aditya Bakti, 1992), p. 94.

<sup>35</sup> An authentic deed is a deed whose form is determined by the law and made by or before a public official who is authorized to do so at the place where the deed was made. The public official referred to in this case is a Notary, as stated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

Philipus M. Hadjon divided legal protection into:<sup>36</sup>

- a. Preventive legal protection. This protection prevents disputes, allowing people to submit their objections (*inspraak*) or opinions before the government's decision becomes definitive. It is meaningful for actions based on freedom of action because the government is promoted to make careful decisions based on discretion;
- b. Repressive legal protection. It resolves disputes, including handling legal protection for the people by the general and administrative courts in Indonesia.

A partnership agreement is preventive legal protection exercised by the parties to prevent disputes.

An unwritten agreement is a weakness because the parties are not legally protected in case of a dispute, even when they have determined their respective rights and obligations. For instance, an unwritten price determination may change at any time according to the wishes of the milk processing industry. It is also possible to change the agreement unilaterally because there is no written evidence for the partnership.

A written agreement is an added value and advantage for implementing the partnership. The agreement is guaranteed legal certainty and is protected by law, though it has agreement drawbacks and weaknesses. The deficiency is the absence of rights and obligations, an important part of an agreement.

The partnership between IPS and the milk-producing cooperative indicates justice for dairy farmers. In this case, farmers are given the opportunity and right to increase and develop milk and fresh livestock production. However, justice is within the legal relationship between milk-producing cooperatives and dairy farmers. In the legal relationship between milk-producing cooperatives and IPS, justice is reflected in the partnership agreement between the two parties. The parties

share their desires because justice is relative and subjective.

Fair, according to IPS, is not necessarily fair for the milk-producing cooperatives, meaning that justice should be balanced and embodied in the partnership agreement. This is related to the parties' bargaining position, which should be balanced to ensure the agreement is balanced.<sup>37</sup>

The parties must fulfill the following preliminary conditions before drafting an agreement:

- a. Understanding of the transaction background;<sup>38</sup>
- b. Introducing and understanding partners;
- c. Recognizing the transaction object;
- d. Preparing transaction outlines;
- e. Formulating the main points of the agreement.

The things that need preparation include:<sup>39</sup>

- a. Bringing partners
- b. The partnership pattern
- c. The partnership agreement

The parties in the partnership between the Dairy Processing Industry and the milk-producing cooperative must sign the agreement. The partnership agreement rules contain everything the parties need as legal certainty and protection.

## Conclusion

The partnership parties must meet preliminary requirements before drafting an agreement. These include understanding the transaction object and background, recognizing the partners, and compiling the agreement's main points and outline. Furthermore, it is necessary to present the parties, determine the partnership pattern, and prepare to implement the agreement. The partnership agreement must be signed by the parties. The agreement is preventive legal protection because it prevents

<sup>36</sup> Ibid., p. 2-3.

<sup>37</sup> Dyah Ochterina Susanti and A'an Efendi, *Legal Research*, p. 168.

<sup>38</sup> Ibid., p. 270.

<sup>39</sup> Ibid., p. 335.



disputes. It must also be a written agreement to ensure it does not change according to the parties' will. A written agreement has an added advantage because it is guaranteed legal certainty and protection by law.

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### Constitution

- Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.
- Article 31 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, where in this provision, women are considered equal to men so that they are allowed to take legal actions.
- Article 1338 paragraph (1) of the Civil Code. See also Burhanuddin.