JOINT VENTURE AGREEMENT AS A FORM OF INVESTMENT COOPERATION

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ABSTRACT

According to the 1945 Constitution. The economic growth must promote equitable prosperity, high growth, and steady national stability. To achieve this goal, it is not easy, because the Indonesian people face many challenges. Ways that must be taken to extend financial development incorporate venture, utilize of innovation, increment information, move forward organizational and administration aptitudes. In this case, venture plays an imperative part. Joint Venture is a collaboration between foreign investors and foreign investors. In international business, joint ventures are used in various kinds of agreements, including joint production agreements (Corproduction Agreements), production sharing agreements (license agreements) and management contracts (Management Contracts).

Keywords: Cooperation; Investment ; Joint Venture Agreement

1. PENDAHULUAN

The preamble to the 1945 Constitution of the Republic of Indonesia has the meaning of the desire of the Indonesian people to live freely, the desire to be independent, to protect the entire Indonesian nation and the entire homeland of Indonesia, to promote public welfare, to educate the nation's life, and to participate in carrying out world order based on independence, lasting peace and social justice.

In order for these noble ideals to be realized, this independence must be filled with comprehensive development in all sectors, the national development includes, among others, economic, political, legal, intellectual and technological aspects including industry.

National development is a productive development that prioritizes improving people's lives towards independence, creating a just and prosperous society in all areas of life and covering the entire Indonesian nation.

Basically, the state must actively seek welfare, act fairly, which can seek prosperity and act fairly. According to Mulyani Santoso, the welfare state theory contains 4 (four) meanings, namely:

1. As a condition of well-being
2. That is the fulfillment of material and non-material needs. Prosperous conditions occur when human life is safe and happy because basic

needs (nutrition, health, education, housing, and income) are met, besides that humans get protection from the main risks that threaten their lives.

3. As a social servant
4. Includes 5 (five) forms, namely social security, health services, education, housing, and personal social services.
5. As social benefits
6. Social welfare provided to the poor.
7. As a planned process or effort
8. A process carried out by individuals, social institutions, communities, and government agencies to improve the quality of life through the provision of social services and social benefits.

The 1945 Constitution explicitly mandates social welfare as the highest priority of state public policy. Among them are the principles of kinship, empowering the weak and underprivileged. The government places the interests of the community above the interests of individuals, the Government of Indonesia seeks to implement a welfare state through:

1. Social Security System.
2. Fulfillment of the basic rights of citizens through the development of productive economic resources, creating broad employment opportunities as a starting point for development and compiling economic strength.
3. Equitable economic distribution as distributed production and joint control of production.
4. Bureaucratic reform by creating a strong and responsive government as an agent of Development and a broad provider of public goods and services as well as managing natural resources as a support for the welfare state to uphold social justice. (Kresno, 2018)

Law in Indonesia must guarantee and enforce the values contained in the Preamble to the 1945 Constitution which is a reflection of Pancasila. (Darji, et al, 1995) According to Hamid S. Attamimi, in its position as the basis and ideology of the state, Pancasila must be used as a paradigm (frame of thought, source of values and orientation of direction) in legal development, including all efforts to reform it. Pancasila as the basis of the state has a juridical connotation in the sense of giving birth to various laws and regulations that are hierarchically

structured and sourced from it, while Pancasila as an ideology can be connoted as a socio-political program where law is one of the tools and therefore must also be sourced from Pancasila. (Attamimi, 2006)

According to the 1945 Constitution. The economic growth must promote equitable prosperity, high growth and steady national stability. To achieve this goal, it is not easy, because the Indonesian people face many challenges. Among them are opportunities and challenges as a result of the development that has been achieved. The rapid progress of science and technology as well as the influence of globalization that has swept the world has resulted in national development activities being increasingly linked to international developments.

One of the obstacles in achieving development targets is the need for development financing, especially those that can be extracted from their own resources. Sources of funds from abroad are only as a complement to the principle of increasing independence in the implementation of development and preventing foreign linkages and interference.

Ways that must be taken to extend financial development incorporate venture, utilize of innovation, increment information, move forward organizational and administration aptitudes. In this case, venture plays an imperative part According to the preamble to the 1945 Constitution of the Republic of Indonesia, it is stated as follows: "By the grace of Allah, the Almighty and driven by a noble desire, to live a free national life, the Indonesian people hereby declare their independence.

Then from that to form a government of the State of Indonesia which protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice.

Law points to coordinated and arrange different interface in society since in a cross-interest, security of certain interface can be done by restricting different interface on the other hand. The legitimate intrigued is to require care of human rights and interface so that the law has the most noteworthy specialist to determine human interface that got to be regulated and secured. Legitimate assurance must see at stages such as lawful assurance that's born from a

lawful arrangement and all legitimate controls given by the community which are essentially an understanding by the community to control behavioral relations between community individuals and between people and the government which are considered to speak to the interface of the community. Within the Joint Venture Assention (JVA), lawful security is carried out for both parties, so that there's lawful certainty in speculation.

2. TINJAUAN PUSTAKA

People as legal subjects on the basis of Human Rights (HAM), have freedom in life, both in private life, social life, and as citizens. One of these freedoms is the freedom to carry out legal actions, including legal actions to enter into contracts with other people, who transact their business interests, as well as their legal interests. This is because the contract is a frame, which frames the business interests and legal interests, so that the parties do not get out of the corridor of their transaction, focus on exercising their rights and obligations in good faith, proportionally, because to frame the right rights and obligations. -Really balanced is very difficult (Agus Yudha Hernoko, 2010:8), because the bargaining position of the parties in the contract is naturally unbalanced.

The principle of freedom of contract can be identified from the provisions of Article 1338 of the Civil Code (Ridwan Khairandy, 2011: 42) which stipulates that all contracts made by the parties will apply as law for the parties who make them. One of the freedoms possessed by the parties is the freedom to determine the clauses/articles, or the contents of the contract made by the parties. Of course, it does not violate the validity of a contract, as stipulated in Article 1320 of the Civil Code (HR Daeng Naja, 2006: 8). If a contract meets the legal requirements of the contract, then it can be said that the contract made by the parties is correct, but not necessarily a good contract. A good contract, in addition to fulfilling the legal needs of the parties, namely validity, must also meet anticipatory needs, namely if in the future a dispute arises, then a good contract must have anticipatory provisions or articles (Richardo Simanjuntak, 2011: 5).

It can be said that the contract is a private sphere, but because the bargaining position of the parties is unequal, the Government is present to balance it, at least proportionally, among others by regulating the minimum clauses that must exist in each type of contract, and the clauses that must be regulate the

transactional process, in a law or legislation, for example in contracts for the procurement of goods and services, contract clauses are determined unilaterally by the party representing the Government (Y Sogar Simamora, 2013: 64). The minimum clause arrangements that must exist in each type of contract, as well as the contracting process, are an attempt to provide legal protection for contracting parties, although opinions later emerged that these arrangements had reduced the essence of the principle of freedom of contract.

3. METODE PENEITIAN

Based on the formulation of the problem and research objectives, the approach used in this study is a normative juridical approach. The specification of this research is descriptive analysis, because it is expected to be able to describe in detail, systematically and comprehensively, in this literature study using documentary studies to obtain the following data:

1. Primary legal materials, which consist of:
   a. The 1945 Constitution
   b. Various laws and regulations concerning investment and joint venture agreements / JVA.
2. Secondary legal materials, namely
   a. Decisions relating to foreign investment.
   b. Decisions relating to the Joint Venture Agreement (Joint cooperation agreement).

In order to analyze the legal material obtained in this research, an imperative qualitative analysis method was used, namely analyzing primary and secondary legal material by making a portrayal that clarifies the issue.

4. HASIL DAN PEMBAHASAN

Speculation Law Law no. 25 of 2007 does not control the frame of remote speculation participation. Be that as it may, since in connection to outside speculation, it is carried out in certain shapes of participation, the talk on this matter cannot be abandoned. Especially within the era of globalization where there's liberalization of exchange and speculation, the nearness of a shape of participation in running a trade is very much required for trade progression. Particularly within the field of remote speculation, where the improvement of participation with remote parties with the Indonesian state, both with the government and with the private segment, is exceptionally imperative, particularly in connection to innovation exchange and abilities transfer.

This frame of participation isn't

constrained to exchange participation, but also participation within the speculation segment, both for the benefit division and exchange. as well as the mechanical sector. The shape of participation in relation to venture is carried out within the frame of joint ventures, joint undertaking generation sharing contracts, and others, where these shapes of participation have their particular contrasts, points of interest, and disadvantages.

Concurring to Ismail Suny, the shapes of participation based on certain classifications and/or reasons, both political and casual, are as takes after. (Sunny, 1976).

a. Cooperation within the shape of joint ventures. In this case the parties don't frame a new lawful substance (Indonesian legitimate entity).
b. Cooperation within the frame of a joint endeavor. Here the parties along with their capital (remote capital and national capital) frame a new legal substance, to be specific an Indonesian lawful entity.
c. Cooperation within the shape of a contract of work, comparable to a participation understanding within the field of oil and gas mining. Within the frame of
d. In this participation, remote parties (outside financial specialists) frame Indonesian lawful substances. This Indonesian legitimate substance with remote capital could be a party to the understanding, whereas the other party is an Indonesian legitimate substance with national capital. (Sun, 1976)

Talking around remote speculation implies relating to two or more diverse lawful frameworks embraced by financial specialists and Indonesian law embraced by national financial specialists. For this reason, it is vital to get it the lawful perspectives of commerce participation carried out in remote venture

In general, the legal aspect of business cooperation in the context of foreign investment activities in Indonesia is related to the validity of the cooperation agreement. To assess the validity of cooperation agreements that can be made in the context of carrying out foreign investment activities in Indonesia, the main provisions can be seen in book III of the Civil Code on Engagement.

This is since the form of business cooperation in the field of civil law is included in the legal part of the engagement, so its validity must be tested based on Article 1320 of the Civil Code, in addition to several other special statutory provisions that regulate it.

Although the form of business

cooperation in the context of carrying out foreign investment activities in Indonesia mentioned above is not specifically regulated in the Civil Code, its validity is still based on Article 1338 of the Civil Code concerning the principle of freedom of contract (partij autonomy). As a limitation on the principle of freedom of contract, it is not contrary to law, morality, and public order (vide Article 1337 of the Civil Code) and must be legal (vide Article 1320 of the Civil Code). Article 1320 of the Civil Code stipulates that there are four conditions for the validity of an agreement, namely:

a. agrees on those who bind themselves;
b. ability to act in law;
c. the existence of certain things;
d. there is a legitimate reason.

In addition to the requirements stipulated in book III of the Civil Code for a cooperation agreement, other requirements are determined by the laws and regulations in the investment sector and several other organic rules, including a number of international conventions relating to international contracts and foreign investment, which are aspects of international civil law.

The existence of requirements for international civil law aspects for the validity of cooperation agreements is since a cooperation contract also has an impact on legal arrangements and relations between the parties in terms of international civil law, because it involves foreign elements. For legal certainty, what is agreed in the cooperative relationship must be stated in the cooperation agreement.

Another legal aspect of the form of business cooperation is related to the legal consequences or consequences for the parties, especially for business cooperation in the form of a joint venture with a contract of work. In a joint venture, this legal aspect will be more evident when faced with a business combination in the form of a merger or fusion. Such a merger is always accompanied by the emergence of a new Limited Liability Company, while the old companies simultaneously cease their existence.

In a joint venture business, the existence of the shareholding companies of the joint venture business is at least partially. formally maintained. In the case of fusion, between units of the company because of the liquidation of the old company, all assets and liabilities are accommodated in the new company.

Contracts of work must be distinguished from concessions. Concession is a right owned by the autonomous government on behalf of the Dutch East Indies Government to non-

Bumi Putra people to cultivate or collect the proceeds of a plot of land and grant monopoly rights and other public rights such as collecting taxes, according to forced labor of the people who inhabit and especially in the plantation sector.

Meanwhile, in the contract of work this is not the case. In the contract of work, the government provides land to be worked on and the proceeds taken by foreign parties in exchange for a portion of the results obtained as stipulated in the agreement. Because foreign parties are contractors, the proceeds remain the property of the government. Foreign parties in processing will bring their own tools and even their workers.

Furthermore, legal aspects that are also related to investment cooperation are problems stemming from differences in customs and legislation between countries, problems with the movement of capital, goods, and services at the international level to political, economic, monetary differences of each. country of origin of the companies entering the cooperation.

Therefore, the main problem related to cooperation in the investment sector is the regulation and application of the law for the parties entering into the cooperation or better known as the choice of law (choice of law) and/or the choice of the judge (choice of forum).

Determination of legal issues in a contract agreement is an important factor, where in addition to the chosen legal determination, it is also determined about the body authorized to examine and adjudicate cases that will arise in the future which is commonly known as the choice of judge or choice of forum (Dhaniswara, 1997)

Concurring to the exchange back reference book, a joint venture is characterized as an assention between two or more members who join together their assets or administrations, or both, in one company by shaping a organized partnership. Meanwhile, within the Black's Law Word reference it is clarified that a joint venture may be a legitimate substance (legitimate substance) which is shaped in a association which is concurred in a joint trade as a uncommon exchange in looking for common advantage, a collection of different individuals who mutually carry out a commercial business. Joint ventures require correspondence of intrigued in carrying out the most undertakings, the presence of rights and commitments to coordinate or oversee with certain approaches, which can be changed by understanding, to pick up benefits and bear misfortunes together (Robert, 1990)

A joint venture can be entered into for the purposes of a constrained action or a

exchange, but it can moreover be utilized as a shape of long-standing relationship between the parties. In universal commerce, the term joint venture is utilized for different sorts of understandings, counting coproduction understandings. benefit sharing assention (permit assention), and administration contract (administration contract). From the a few sources over, it can be concluded that a joint venture could be a participation between remote speculators and national financial specialists based exclusively on an assention. In this sense the idea of a joint venture leads to the arrangement of a lawful substance, whereas in another broader sense, the idea of a joint venture does not as it were incorporate a participation in which each party makes a store that's looser, less changeless in nature, and does not have to be be including capital cooperation such as specialized help understandings, permit assentions, and others.

Due to the international element in the joint venture contract, the joint venture is not an ordinary agreement that is included in civil law. It can be said that a joint venture contract entered between a country and a legal entity or a foreign country, is a sui generis contract which is also known as quasi-international agreements. (Pandji, 1990)

Due to this quasi-international nature, to a cooperation agreement or so-called joint venture agreement, it is not only the law of the permit-giving country that applies (applicable law), but it is possible that other legal systems may also apply.

The provisions regarding joint ventures according to Indonesian laws and regulations are not imperative. The regulation regarding this matter is only regulated based on the policy of the state minister for Investment Fund Mobilization/Chairman of BKPM through Decree No. 15/1994 as an elaboration of Government Regulation No. 20 of 1994 which stipulates that for investment in the public sector, a foreign investment is required to undertake a joint venture or joint venture.

In general, a joint venture begins with a joint venture agreement. This understanding was made between the shareholders prior to the establishment of the joint venture.

The relations between the parties in the joint venture are left to the will of the parties to be determined in accordance with the actual provisions applicable to the interpretation of the contract. In a form of joint venture that needs attention, among others, aspects of the responsibility of the parties, the existence of efficiency in business operations, the existence of tangible benefits and the existence of a fair relationship between

the parties.

However, in the rule of law in Indonesia, there are general provisions as well as legal principles and permanent jurisprudence, which can be used as a legal basis or moral guide for economic regulation. These legal provisions can provide a way for executive officials and judges to respond to the practices of contract clauses that contain elements towards an unbalanced, unfair, and unfair relationship, as illegal practices. because the contracts contain harassment of weak parties, it can even be classified as a potential act against the law. This is because most of the domestic investors do not have enough capital.

Many facts show that regulations regarding foreign investment in Indonesia still contain many weaknesses. Such as the existence of covert investment (trusteeship agreement), dummy corporation (dummy corporation) or the interpretation of joint venture contracts that are not balanced.

Through the Economic Stability Council in Indonesia on January 22, 1974, foreign investment was required in the form of a joint venture. The policy is determined as follows.

a. Foreign investment in Indonesia must take the form of a joint venture with national capital.
b. Foreign partners must meet the requirements for hiring Indonesian employees.
c. The participation of indigenous Indonesian entrepreneurs in both foreign investment and domestic investment must increase.

In a form of corporate joint venture, the parties, both foreign investors and local parties, must be careful in the preparation of the joint venture contract, because some of the principle clauses in the joint venture contract will become the clauses in the deed of establishment.

A few vital clauses that must be made clearly and in detail incorporate: trade scope, capital and offers, rights and commitments, exchange of offers, operational administration, dissemination of profits/dividends, specialized help, and debate settlement (Robert, 1990) In a frame of legally binding joint venture, the parties must too make/compile the clauses in detail and clearly, to dodge debate within the future. The contrast with a corporate joint venture is that the sorts of contractual joint ventures don't frame an Indonesian lawful substance. So, it can be said that the components of outside capital in a legally binding joint venture can be within the shape of abilities, skill, specialized administrations, licenses, brands, administration help, and so on. In the interim, benefits gotten from outside

companies can be within the shape of expenses, eminences, administration expenses, and so on which are paid by local/Indonesian parties.

Within the plan of a joint venture understanding, the legitimate angles must be considered so that legitimate holes can be avoided. In common, shortcomings within the substance of the understanding are continuously exceptionally inconvenient to the local/Indonesian side since outside parties are continuously searching for shortcomings so that neighborhood parties are continuously vanquished. Based on this encounter, the substance of the joint venture assention ought to be completely and precisely bound

The influence of international institutions can also be seen in the practice of joint ventures between domestic and foreign capital. In practice, it turns out that the realization of the joint venture is carried out in various combinations of certain variations which are not only in the form of direct investment.

In the context of foreign investment in Indonesia, when viewed from the period of cooperation, in practice it shows that there are two kinds of cooperation. The first is temporary cooperation, which is a kind of joint venture in a contractual sense. The moment is lasting participation, which could be a kind of participation within the sense of a joint enterprise. The shapes of participation known within the PMA Law based on certain classifications and/or reasons, both viable and economical, are as follows.

a. Cooperation within the frame of joint ventures. In this case the parties don't frame a unused legitimate substance (Indonesian legitimate substance). (Fuadi, 1996)
b. Cooperation within the frame of a joint endeavor. Here the parties beside their capital (remote capital and national capital) shape a unused lawful substance, to be specific an Indonesian legal entity.
c. Cooperation within the shape of a contract of work. In this shape of participation, outside parties (remote financial specialists) frame Indonesian legitimate substances. Indonesian lawful substances with other parties are Indonesian lawful substances with national capital within the PMA Law.

In addition to the cooperation contracts known in the PMA Act, there are other forms of joint ventures such as those known as licenses, management contracts, direct investment, production sharing, investment credit, contracts of

work (mining) and so on.

It is well known that before an investor applies for foreign investment with Indonesia, the person concerned must first study a list called a negative list, which is a list containing information on which business fields are closed and which business fields are still open. for investors. The latest list is according to the Decree of the President of the Republic of Indonesia No. 96 of 2000 dated July 20, 2000. This negative list is continuously reviewed and updated in accordance with the development of the business sector in Indonesia. After the Investment Approval Letter (SP.PMA) is issued, before making the deed of establishment at a notary, the foreign investor and the Indonesian party make a joint venture in order to form an Indonesian legal entity.

It should be noted that initially foreign investors will focus on discussing joint venture agreements that are technical, financial, and corporate marketing/management strategies.

After the joint venture is made, the parties make a notarial deed of incorporation or articles of association made in accordance with the regulatory standards in Law Number 1 of 1995 concerning Limited Liability Companies.

Not Forming an Indonesian Legal Entity (Contractual Joint Venture)

Forms of joint ventures that do not form Indonesian legal entities are also called "contractual joint ventures" or "contract oj corporations," namely cooperation between foreign capital owners and national capital owners based on an agreement or can also be in the form of a "non-equity joint venture" such as technical assistance agreement, technical service agreement, franchise and brand use agreement, management contract, license agreement, distribution sales and service agreement, and so on.

For example, in a technical assistance agreement there are provisions or clauses such as: definition, license, servise, scope oj technical assistance, industrial property rights, technical assistance fee, protective provisions, raw material, sub material and parts, maintenance oj quality, report and record, competitive business, products liability, jorce majure, term of validity, termination, arbitrations, amendments, previous agreement.

For foreigners, in the early stages, they already have dominant factors such as capital, technology and management. However, in investment activities, there are various activities or aspects that investors pay attention to, namely with regard to:

1) Investment Policy
    a) Ownership and Management
    b) Financial Issues and Fiscal

Policy

c) Legal Framework
d) Labor Policy
e) Technology
f) Commercial Policy.

All these angles must continuously be surveyed or seen from the point of see of the Speculator, the Government of the Speculation Nation and the Have Nation where the capital is contributed. This is often contained within the Content ICC (Universal Chamber of Commerce) with the title Guidlines for International Venture. In any case, it should be emphasized that as expressed within the content, it isn't planning to be a inflexible run the show of activity, but or maybe a collection of practical recommendations based on encounter. The point is to encourage interview between financial specialists and the Government and advance distant better;a much better;a higher;a stronger;an improved">an improved understanding of each other's interface and targets.

The another step has been to realize the crave of the parties to reach a common understanding. The understanding that was initially come to orally is at that point expressed in what is called a Notice of Understanding or MOU, or there's moreover a say of a Letter of Intent. It traces the fundamental focuses of the issue that are craved to be realized in further cooperation. For illustration, the sum of capital that's portion of each party and its comparison (value or capital cooperation proportion), the ratio and number of administration and administrators who will sit within the company (Management/Board Of Chiefs (BOD) and Board Of Commissioners (BOC), specialized help which is as a rule expressed in an understanding called a Specialized Help Understanding (TAA) or Specialized Collaboration Assention for crude materials and sources of obtainment (Acquirement hardware and materials), generation, promoting exchange of innovation, eminences, venture time plan and so on. The point is the things that are considered fundamental to be loaded. The follow-up after the MOU is completed is to plan and make an assention called a Joint Wander Understanding or JVA. This assention contains the will of the parties in more detail, unraveled and total as a continuation of the past MOU. So, in other words, JVA could be a more nitty gritty and complete description of what has been expressed within the MOU but is basic.

The things that are for the most part included in a Joint Wander Assention are as takes afte:

a) The names of the parties or legitimate substances, their

residence, and head office. (Company Title, Residence, Vital Put of Commerce)

b) Purpose and objectives of the company (Purpose of The Company).
c) Capital (Capital Subscription & Shares)
d) Transfer of Shares.
e) General Meeting of Shareholders
f) Management, Board of Directors and Board of Commissioners)
g) Accounting of the Company/Books and Records
h) Roles of the Parties
i) Financing
j) Payments
k) Effective date
l) Termination and Consequence of Termination
m) Confidentiality
n) Profits and dividends
o) Non-Waiver
p) Severability
q) Disclaimer of Agency
r) Dispute Resolution and Arbitration
s) Assignability
t) Governing laws
u) Force majeure
v) Notice
w) Miscellaneous
x) Implementation of the agreement
y) Dissolution of the company

And other imperative things are moreover included indeed in the event that briefly but at that point taken after by making other understandings such as Permit Understanding, Advance Understanding Business Assention, and others.

5. SIMPULAN

Joint Venture is a collaboration between foreign investors and foreign investors. In international business, joint ventures are used in various kinds of agreements, including joint production agreements (Corproduction Agreements), production sharing agreements (license agreements) and management contracts (Management Contracts).

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