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JOIN VENTURE AGREEMENT IN THE JOIN VENTURE COMPANY

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**ABSTRACT**

Join Venture Agreement (JVA) is one procedure that must be taken in the establishment of PT. Join Venture Company. This agreement contains the parties' will in more detail, decomposing and complete what has been stated in a Memorandum of Understanding (MOU) but fundamental. Whereas in the MOU there is outlined the basic points of the desired problem can be further realized. For example, how much capital is part of each party and the ratio (Equity or Capital Participation Ratio).

**1. Introduction**

According to the Investment Law (UUPN), namely Law - Law No. 25 th 2007.

Whereas foreign investment is an investment activity to conduct business in the territory of the Republic of Indonesia which is carried out by foreign investors, both those who use foreign capital entirely, and those that are associated with domestic capital. Parties involved in foreign investment in the form of joint ventures are Indonesian Participation and foreign participants. [1]

Previously establishing a joint venture company, investors had to look at the List of Business Fields that were Closed and Business Fields that were Open with the requirements in the Field of Investment in accordance with Presidential Regulation No. 36 of 2010. Based on these instructions, the parties will consider feasible fields. Furthermore, the investor, the government of the investor and capital receipt must pay attention to:

- a. Investment policy
- b. Ownership and Management
- c. Finance and Fiscal Policy
- d. Legal statement
- e. Labor Policy
- f. Technology
- g. Commercial policy

## **2. PROBLEM**

How to form a joint venture agreement in a joint venture company.

## **3. DISCUSSION**

All aspects must be reviewed by the parties, and contained in the text of the ICC (International Chamber of Commerce) with the title Guidelines For International Investment. The agreement that was originally reached orally was then stated in what is called a Memorandum of Understanding or an MOU, or there is also a mention of Letter of Intent.

In it is outlined the basic points of the desired problem can be realized in further cooperation. For example, a large amount of capital is part of each party and the ratio (equity or capital participation ratio), comparison and number of management and supervisors who will sit in the company (Management / Board of Directors (BOD) and Board of Commissioners (BOC), technical assistance is usually set forth in an agreement called Technical Assistance Agreement (TAA) or Technical Collaboration Agreement (TCA), licensing agreements, raw materials and sources of procurement (procurement equipment and material), production, marketing transfer of technology , royalty, project time schedule, etc. The point is the main thing to be loaded.

Follow-up after the completion of the MOU, is to prepare and make an agreement called Join Venture Agreement or JVA. This agreement contains the parties' wishes in more detail, decomposing and complete as a

continuation of the previous MOU. So in other words, jva is a more detailed and complete description of what has been stated in the MOU's basic name. The matters generally included in the joint venture agreement are as follows:

- 1) The names of the parties / legal entity, domicile and head office. (Company Name, Domicile, Principal Place of Bussines).
- 2) The purpose and objectives of the company
- 3) Capital
- 4) Stock billing
- 5) General Meeting of Shareholders

And other important things that are also included even though briefly but then followed by other agreements such as License Agreement, Loan Agreement, Employment Agreement and others.

The next step is the creation of a Company Establishment Deed. Deed is made by and before a Notary. Notaries based on the willingness of the parties will formulate and make the deed of establishment and the articles of association of the company in accordance with / according to the applicable regulations.

Understanding the joint venture according to the encyclopedia of trade finance economics, is defined as two or more participants, which unites their sources or services or both, in a particular company by forming a structured unity.

Meanwhile, according to Black's Law Dictionary explained that a Joint Venture is a legal entity (Legal entity) which is tangible (the nature of partnership) that is promised in a joint effort as a special transaction in seeking mutual benefit, an association of various people who together- same as running a commercial business. The Joint Venture requires equality of interest in carrying out the main functions, the existence of rights and obligations to move or management with certain policies, which can be changed through agreements, to obtain profits and bear losses together.

A Joint Venture can be held for purposes of a limited activity or a transaction, but can also be used as a form of long-standing relationship between the parties. In international business, the term Joint Venture is used for a variety of agreements, including a coproduction agreement, a production sharing agreement (License agreement), and a management contract (contract management).

From several sources above, it can be concluded that the Joint Venture is cooperation between foreign capital owners and national capital owners solely based on a mere agreement. In this sense the definition of a Joint

Venture refers to a legal entity, whereas in a broader sense, the notion of a Joint Venture does not only include a cooperation in which each party makes a loose deposit, which is less permanent, and does not have to involve capital participation such as the technical assistance agreement, license agreement, and others

As described in the previous chapter, how important is foreign investment in Indonesia, especially to develop the economy. Therefore it is necessary to try to find the right pattern so that foreign investment really takes place and bring good luck together. This is to prevent the strong who do not dominate the economic situation of the weak, while the weak are attempted to improve their position.

To regulate cooperation agreements between national capital and foreign capital in developing countries, UNIDO (United Nation Industrial Organization), WIPO (World Intellectual Property Organization), UNCAT (United Nations Commission on Transnational) and others have compiled guidelines for drafting agreements. joint venture. UNIDO makes guidelines with the title "Manual on the establishment of industrial joint venture agreements in developig countries". The guidelines are outlined in several aspects including aspects of establishing joint ventures, companies, arrangements for marketing, arrangements regarding patent licenses, settlement of disputes and others. To get a joint venture (JVA) that can be applied to other joint venture agreements is quite difficult work, because a country has different problems with other countries. Because of these conditions there is no standard JVA form. In the preface to the book from UNIDO entitled "Manual on the establishment of industrial joint ventures agreements in developing countries" as follows:

..... ..there is no standard or prototype joint venture agreement, and the rights of the partners are of course overwritten by a series of interrelated agreements. These joint ventures are the right of the partners in the joint venture. All other provisions may be incorporated either in the joint venture agreement or be provided for in sparate legal agreements. Where the provisions can be provided for the provisions can be divorced from the other questions on the rights of the parties, it may be better for the legal parity to include such matters in a separatist agreement. Separate agreements may be used in respect of such matters as trade marks, trad names and patent licensing, supply of technical assistance and know-how, engineering an construction; marketing arrangemants; management; supply an other ”

But there are 2 instructions from UNIDO regarding agreements in industrial fields that have an effect on joint cooperation, namely:

1. Guidelines for contracting for industrial projects in developing countries.
2. Guidelines for the acquisition of foreign technology in developing countries with special reference to the technology license agreement.

The instructions from UNIDO contain suggestions for making international agreements in the field of industry, including the factors that influence such cooperation. According to UNIDO in "Guidelines for contracting for industrial projects in developing countries" that general matters that need to be considered to make joint cooperation are:

1. the national laws of economic situation of the countries of other prospective parties, including the facilities offered in the countries for industrial cooperations contracts as well as possible
2. Any intergovernmental agreements which may offer the contracts on industrial cooperation.
3. Market trends are possible out of the product to which the industrial cooperation, and
4. Possible areas of industrial cooperation

Furthermore, the World Intellectual Property Organization (WIPO) gave guidance (guidance) regarding aspects of licensing, negotiation, transfer of technology as a whole for the benefit of developing countries.

The guide is contained in the "Licensing Guide for Developing Countries. Guidance on the Legal Aspects of the negotiation and preparation of industrial property and technology transfer agreements." In brief, there are 7 main material covered by the JVA, namely:

1. Establishment of a joint venture legal entity
2. Ownership and capital structure
3. Directors and joint management
4. Management of company finances
5. Marketing arrangements, etc.
6. Arrangement regarding replacement of management
7. Dispute settlement arrangements

#### **4. CONCLUSION**

Some important clauses that must be made clearly and in detail include: business scope, capital and shares, right and obligations, transfer of shares, operational management, distribution of profit / dividends, technical assistance, and dispute settlements. In a contractual joint venture, the employees must also make / compile the clauses in detail and clearly, to avoid future disputes. The difference with a corporate joint venture is that

the types of contractual joint ventures in question do not form Indonesian legal entities. So it can be said that the element of foreign capital that is in the contractual joint venture can be in the form of skills, authenticity, technical service, patents, brands, management assistance, and so on. Meanwhile, profits from foreign companies can be in the form of fees, royalties, management fees, and so on paid by local / Indonesian parties.

In the design of a joint venture agreement, the legal aspect must be considered so that legal loopholes can be avoided. Generally, weaknesses in the substance of the agreement are always very detrimental to the local / Indonesian side because foreign parties are always looking for weaknesses so that local parties are always defeated. Based on the experience, it is recommended that the substance of the joint venture agreement be bound in a complete and accurate manner. In practice there are several joint venture classifications. According to Fuady, there are three types of cooperation:

- a. Cooperation in the form of a joint venture. In this case the parties did not form a new legal entity (Indonesian legal entity).
- b. Cooperation in the form of a joint enterprise. Here the parties together with their capital (foreign capital and national capital) form a new legal entity, namely an Indonesian legal entity.
- c. Cooperation in the form of a work contract, similar to the cooperation agreement in the field of oil and gas mining. In this form of cooperation, foreign parties (foreign investors) form Indonesian legal entities. This Indonesian legal entity with foreign capital is the party to the agreement, while the other party is an Indonesian legal entity with national capital.[4]

Joint cooperation in foreign investment is related to two or more different legal systems adopted by foreign and Indonesian investors, therefore legal aspects of the collaboration must be understood.

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