

The Legal Review of Telecommunications Central Construction of Joint Venture Cooperation Form

Avrila Anzani^{*)}

^{*)} Faculty of Law, Indonesia University, E-mail: anzaniavrila@gmail.com

Abstract. *The cooperation in this case a Joint Venture is one of the investment activities with the concept of joint ventures with local investors in the agreement of a business will do. In business, every company will review the business opportunities that can be expanded to achieve its business goals. In this case, there are limited human resources which are obstacles to the implementation of the business. Thus, there are several companies cooperate with foreign parties in the form of joint venture cooperation. The research method used a normative juridical approach with primary and secondary legal concepts which are then analyzed by statutory approach and historical approach. The researcher collects data sources based on statutory provisions as primary materials and secondary legal materials, the researcher obtains secondary legal materials through literature in books, journals, research reports, and articles. The joint venture which is the status of Foreign Investment, then the percentage of shares follows the requirements regulated in the Law. There are several agreements which include License Agreements, Loan Agreement, Employment Agreement, and other Agreements. As with the regulations described above, it can be interpreted that the establishment of a joint venture company is based on a review of the negative investment list in terms of foreign investment. Several things should be of concern, that is the negative investment list in Presidential Regulation No. 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector which regulates that business fields are closed to domestic and foreign. In share sharing, there is capital that have to be met as the basic capital for the establishment of a corporation PMA, that is having an investment value of more than IDR 10,000,000,000.00 (ten billion rupiahs) excluding land and buildings. Then regarding the investment done with the establishment of a capital partnership corporation the founders, in this case the party conducting the joint venture, have to be established by 2 or more people and have to take each of their shares by the agreement.*

Keywords: *Cooperation; Construction; Telecommunication; Ventura.*

1. Introduction

The potential for developing the country's economy, the government stipulates the Foreign Investment Law, then there is implementation of the Foreign Investment Law that is investor who invest both foreign investor and local investor. Its meaning based on article 1 point 1 of the Investment Law, that explains "Investment is all forms of investing activities, both by domestic investors and foreign investors to do business in the territory of the Republic of Indonesia." In this sense, it can be interpreted that investment activities, both foreign and local parties, have legitimacy for an investment activity for every closed or open company to develop a business, which of course can be mutually beneficial for both investors and companies. Indonesia is a country with a very broad number of markets and consumption by being No. The 4th most populous country. There is an opportunity and a potential for the state and the private sector to attract foreign investors and become the center of attention for Foreign Direct Investment (FDI) investors, both in conducting business collaborations and making investments in destination countries.¹

Collaboration in this case Joint Venture is also one of the investment activities with the concept of joint ventures with local investors in the agreement of a business to be done. In doing a business, every company often will review the business opportunities that can be expanded to achieve its business goals. In this case, there are limited human resources which are obstacles to the implementation of the business being eyed. Thus, not a few companies cooperate with foreign parties in the form of joint venture cooperation.²

This form of business cooperation is a form of technology transfer to Human Resources in realizing a business that has legitimacy by law but there is a shortage of Human Resources. However, the form of Joint Venture Cooperation is not regulated explicitly in the Law, but the legal basis can be interpreted as a form of Cooperation with foreigners through Joint Ventures based on Article 1 number 3 of Act No. 40 of 2007 concerning Limited Liability Companies, which regulates "Foreign Investment is investment activities that doing a business in the territory of the Republic of Indonesia done by foreign investors, both those who use foreign capital completely and those who jointly invest with domestic investment". In the business field of communication central construction activities, it has the potential to be implemented with foreign investment both shareholders and foreign joint venture cooperation, which later this business

¹ John W. Head, *Pengantar Umum Hukum Ekonomi*, (Jakarta: Proyek Elips, 1997)., p. 91

² Billa, Wahyu Dwi Utomo, "Kajian Yuridis Mengenai Penanaman Modal Asing Melalui Pendirian Perusahaan PMA Menurut Undang-Undang No 25 Tahun 2007", *Lex Privatium* Vol. 8, No. 3 Juli-September 2020.

field has developed and is popular in Indonesia from various businesses, especially in the service sector.³

The problem in this research is that ordinary people and companies, especially in the field of telecommunications, can obtain information in the form of legal regulations and aim that the general public and entrepreneurs are familiar with forms of foreign cooperation, especially telecommunications in terms of joint ventures, to obtain information on legal standing and legal certainty. Then the problems in this research will be discussed regarding the history of the formation of joint ventures in Indonesia, and how is the implementation of joint venture cooperation in the field of telecommunication central construction in Indonesia?

2. Research Methods

In this study, the researcher used a normative juridical approach by analyzing the primary and secondary legal concepts which were then reviewed by a statutory approach and a historical approach. Then the researcher collect data sources based on statutory provisions as primary and secondary legal materials, the researcher obtain secondary legal materials through literature in books, journals, research reports, and articles. The data collection in this research used a library research. In this study, the researcher used data analysis techniques with deductive thinking methods and presented the results of this study in the form of descriptive-qualitative. This research used a normative juridical approach with primary legal materials consisting of laws and regulations and secondary legal materials consisting of literacy, journals, research reports, and articles.⁴

3. Result and Discussion

3.1. The History of the Joint Venture Agreement before Interpreting the Joint Venture Agreement Formation

Provisions of the Civil Code, in this case, the 3rd (third) book which regulates engagements and agreements. If described, there is a difference between the agreement or the law of the agreement (*verbintenissen/verbintenissen recht*) and the agreement or the law of the agreement (*overeenkomst/overeenkomst recht*). From the two laws above, the engagement has a wider scope than the agreement or contract law. In principle, engagement or engagement law regulates matters related to legal relations that arise other than agreements or agreements, in addition to these matters also engagements arising as a result of

³ Devi, R. "Perlindungan Hukum Bagi Penanam Modal Asing (PMA) Di Indonesia", *Jurnal Rectum* Vol.1, No 2, 2019

⁴ Sembiring, S. *Hukum Investasi : Pembahasan Dilengkapi dengan Undang-Undang No 25 Tahun 2007 Tentang Penanaman Modal*. Bandung : Penerbit Nuansa

acts against the law (*onrechtmatige daad*) and which are not tied to the agreement (*zaakwaarneming*). However, several sections in Book III of the Civil Code also regulate engagements that arise as a result of agreements or agreements or so-called contract law.

The agreement basically applied as a law for the parties to the agreement (*pacta sunt servanda*). Article 1338 of the Civil Code stipulates that each of these agreements have to be made in good faith. In this case the intended meaning is rationality and propriety (*redelijkheid en billijkheid*) that live in society (Khairandy, 1990). There is an impact of globalization which is the result of the formation of global markets with legal arrangements that do not overlap so that legal rules are harmonized with the national legal system. Along with the rapid development of the business world, the harmonization of continental European and Anglo-Saxon legal systems has been done, so there are various types of agreements that are more popular and not written in the Civil Code. Types of agreements that are not written in the provisions of the Civil Code can be divided into two, that is nominal agreements or can be interpreted as contracts that can be reviewed as an agreement written in the Civil Code.

This type of innominate agreement is the entire legal instrument that regulates various agreements that arise and develop in people's lives and this type of agreement is not written in the Civil Code (Salim H.S, 2003). This type of innominate agreement is a legal rule that regulates relations between legal relations and legal subjects in an agreement, because this type of agreement is not regulated in the Civil Code, then based on an agreement it can give rise to legal consequences. Then what becomes part of the innominate agreement are various contracts that are developing and popular in society, such as production sharing agreements, work agreements, leasing, buying leases, franchise or franchising agreements, construction agreements, and joint ventures.⁵

Provisions of the Civil Code, there is one article in Book III of the Civil Code which regulates innominate agreements, which lies in the provisions that state that all agreements, both those with a special name and those that are not known by a certain name, are subject to general regulations that contained in this or previous chapters. One thing that arises and develops in an innominate agreement is caused by entrepreneurs expanding their business on an international scale, where there are simple options to the most complex arrangements. There are several types of business expansion, that is, global trade through export-import, product licenses, franchises, and joint ventures. In its development, especially in Indonesia, to realize national development that is driven by the service industry, products, and technology transfer. the

⁵ Raihana. *Peranan Perusahaan Asing Patungan Dalam Alih Teknologi*. Fakultas Hukum Universitas Islam Indonesia, 2005.

government appealed to both domestic and foreign entrepreneurs to establish joint ventures. Then, as has been described, it can be concluded that a joint venture is a form of agreement that is not regulated in the Civil Code, but a joint venture has the legitimacy to form the basis of an agreement. In this case, the basic reference refers to Article 1320 of the Civil Code which regulates the legal requirements for an agreement strengthened by the principle of *pacta sunt servada* which means that the agreement applies as a law for the parties who make it.

The development of technology triggers a fundamental for investors to invest their capital to expand a business. Along with the development of technology in the era of globalization, especially in Indonesia, obstacles often occur in terms of costs, technology, and human resources to knowledge which results in uncertainty in conducting a business sector that can fundamentally reach a broad market, especially in the service sector. One of the ways that domestic investors do this is by cooperating with foreigners in the form of a joint venture by establishing a Limited Liability Company (PT) with foreign investment status in the territory of the Republic of Indonesia with an agreement on the investment value of the investment. Forms of Joint Venture Cooperation in Indonesia In the business world, cooperation Joint ventures between parties are often an important part of mutually beneficial relationships so that they become a solution for companies to expand their business. This is done by companies, in general, because they have the goal of developing a business but have limitations in terms of technology, and costs, to save the company from the threat of bankruptcy which results in the settlement of company assets.⁶

The form of Joint Venture Cooperation basically, is a type of business with a joint venture between two parties, both between domestic companies and foreign and domestic cooperation with the aim of the company's business interests that have been agreed upon and agreed upon within a certain period. The form of joint venture cooperation is based on the formation of a joint venture agreement or joint venture agreement which is an agreement that regulates between domestic and foreign companies in the form of business cooperation in certain business fields permitted by Laws and Regulations. After a joint venture agreement or joint venture agreement arises, then a joint venture company or joint venture company can be established, in this case, the shareholders are the founders of the joint venture company. However, if the company's business objectives have been achieved, the joint venture can continue by extending the period of cooperation.

⁶ Khairandy, R. *Perkembangan Tentang Hukum Itikad Baik Di Netherland*, Spesialias Kenotariatan Fakultas Hukum Universitas Airlangga, 1990.

In principle, a joint venture is a corporate action or corporate action in reaching a wider market both nationally and internationally by developing a new business where it is considered that there are no products or services that can be produced by other domestic companies so that this becomes a new opportunity for the company. However, the company remembers the limitations of technology, and human resource capabilities to the amount of costs. Then the form of Joint Venture cooperation is an option to answer this problem as long as it does not violate the provisions of the laws and regulations that apply in Indonesia. The form of joint venture cooperation has the advantage of being influenced by domestic companies with prior knowledge related to local environmental culture to the local government bureaucracy. If traced, the form of joint venture cooperation is generally done by domestic companies in this case Domestic Investment (PMDN) with foreign companies, that is Foreign Investment.⁷

After the enactment of Act No. 11 of 2020 Concerning Job Creation. The provisions that form the basis for conducting a joint venture are legal relations in investing as stipulated in Article 77 of Act No. 11 of 2020 concerning Job Creation in conjunction with Act No. 25 of 2007 concerning Investment. Legal actions related to joint ventures can be done by business entities in the form of legal entities by local companies and foreign companies, in this case, PMA have to be done by establishing a limited liability company in the territory of the Republic of Indonesia first by following the provisions of Act No. 40 of 2007 concerning Limited Liability Companies. Joint ventures have the characteristics of Cooperation that begin with the formation of a new company domiciled in the Territory of the Republic of Indonesia with the status of Foreign Investment with domestic and foreign parties. The investment is stated in the form of share ownership which is facilitated by the founding company with the agreement of each joining company. Then, the party that can be in power and has voting rights is generally the party with the largest number of shareholdings without neglecting the existence of the founders of the company and the advantage is that the risks of this form of cooperation are borne jointly between the parties.⁸

3.2. Regulation and Implementation of the Establishment of Corporation Foreign Investment in the Field of Telecommunication Central Construction Business

Domestic and foreign investors need to establish a Limited Liability Company with the status of a Foreign Investment Company. Submitting a Joint Venture several documents have to be prepared in entering into a Joint Venture

⁷ Salim, H.S. *Perkembangan Hukum Kontrak Innominaat di Indonesia*. Jakarta: Sinar Grafika, 2014.

⁸ Widjaja, G. *Seri Hukum Bisnis : Global Marketing Management*. Jakarta: Rajagrafindo Persada, 2001.

agreement such as a share purchase agreement (SPA), share subscribe agreement (SSA), shareholders agreement (SHA) and joint venture agreement (JVA). Several important articles have to be included in a JVA, usually such as the procedure for establishing a company, ways for one of the shareholders to leave the company, procedures for transferring shares, ways to resolve disputes between shareholders, how to operate the company day-to-day and rights - shareholder rights and obligations of shareholders. In establishing a Joint Venture company, in this case, Foreign Investment, several permits have to be fulfilled, including principal permits and permanent business permits which have to be submitted to the Investment Coordinating Board, and periodically submit investment activity reports.

An absolute requirement for standing as a Foreign Investment Company, based on Article 5 Paragraph 3 letter of Act No. 25 of 2007 concerning Limited Liability Companies it is stipulated that "Domestic and foreign investors who invest in the form of a limited liability company are made by taking shares at the time of establishment of the limited liability company". These provisions are regulated to explain Joint Ventures that are not expressly explained in the Laws and Regulations. However, regarding the procedure for conducting a Joint Venture, it is explained based on the provisions of Article in Act No. 25 of 2007. In its classification, the business sector for the construction of the telecommunications central business is listed in the Standard Classification of Indonesian Business Fields 42206 which is regulated in Regulation of the Head of the Central Bureau of Statistics No. 2 of 2020 and Regulation of the Head of the Investment Coordinating Board No. 4 of 2021 regarding Forms of Joint Venture cooperation in the field of air transportation activities.⁹

Regarding joint ventures which are Foreign Investment status, then the percentage of shares follows the requirements stipulated in the Law. There are several agreements which include License Agreements, Loan Agreement, Employment Agreement, and other Agreements. As with the regulations described above, it can be interpreted that the establishment of a joint venture company is based on a review of the negative investment list in terms of foreign investment. Several things should be of concern, that is the negative investment list in Presidential Regulation No. 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector which regulates that business fields are closed to domestic and foreign.

A closed business fields regulated in Article 12 of Act No. 25 of 2007 concerning Investment have been amended in Act No. 11 of 2020 concerning Job Creation. It is known that PMA have to be established in the form of Establishment of a

⁹ Widjaja, I.G.Rai. *Pedoman Dasar Perseroan Terbatas (PT)*. Jakarta : Paradya Paramita, 1994.

Limited Liability Company (PT) and domiciled in the Territory of the Republic of Indonesia unless the law regulates other matters related to the establishment of PMA. In this case, the establishment of PMA is done by:

- a. Participating in shares at the time of the establishment of a Limited Liability Company;
- b. Buying shares;
- c. Other methods regulated in the law provisions.

In addition to the method of taking shares, there is capital that have to be met as the basic capital for the establishment of a corporation investment, that is having an investment value of more than IDR 10,000,000,000.00 (ten billion rupiahs) excluding land and buildings. Then regarding the investment done with the establishment of a capital partnership corporation, the founders, in this case, the party conducting the joint venture, have to be established by 2 or more people and have to take each of their shares by the agreement. Based on Presidential Regulation No. 49 of 2021 concerning Amendments to Presidential Regulation No. 10 of 2021 concerning the Investment Business Sector. In principle, this business sector is devoted to the cooperative sector, and micro and medium enterprises (MSMEs).¹⁰

The communication center construction business sector is declared open to foreign investors. However, based on Article 12 of Regulation of the Head of the Investment Coordinating Board No. 4 of 2021, there is an exception to the minimum requirement regarding the investment value of the foreign investment, that is an investment value of more than IDR 10,000,000,000.00 (ten billion rupiahs) excluding land and buildings with five-digit reference per line of business for one telecommunication business project location. Related to this business, it can be applied to construction service business activities with the following conditions: a. Construction consulting service business (KBLI 7xxxx); b. Construction business (KBLI 4xxxx, depending on sub-classification); or c. Construction business (KBLI 4xxxx, depending on sub-classification). As in the provisions above, related to construction consulting services in letter A cannot be combined with letter b and/or letter c. In all parts of the business sector within the scope of the KBLI, this business sector is devoted to the cooperative sector and Micro, Small, and Medium Enterprises (MSMEs), this business sector is given opportunities for foreign investors by construction service business entities in establishing Foreign Investment. In Indonesia with several provisions related to the percentage limit of investment value as stipulated in Government

¹⁰ Raihana. *Peranan Perusahaan Asing Patungan Dalam Alih Teknologi*. Fakultas Hukum Universitas Islam Indonesia, 2005.

Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing in the Appendix for the PUPR Sector as follows:

- a. Construction service business entities (BUJK) for non-Asian investors a maximum of 67%;
- b. Construction service business entities (BUJK) for ASEAN investors a maximum of 70%.

As with the series of laws above, in principle the occurrence of joint venture cooperation in the form of foreign investment in Indonesia, have to be implemented by establishing an investment company domiciled in the Territory of the Republic of Indonesia with foreign and domestic share ownership as stipulated in Article 5 paragraph (2) of the Act No. 25 of 2007 concerning Investment. The matter attached to a foreign investment company consist of a business entity in the form of a Limited Liability Company based on the Limited Liability Company Law, subject to legal provisions in Indonesia, and domiciled in the Territory of the Republic of Indonesia.¹¹

4. Conclusion

Regarding the joint venture implemented in the field of telecommunications central construction business which is based on Government Regulations allocated to the cooperative sector and Micro, Small, and Medium Enterprises. However, this provides an opportunity for foreign investors to invest in the Territory of the Republic of Indonesia. So that if there are obstacles for domestic investors in implementing business prospects in the field of central construction and telecommunications, especially costs, human resources, and science to technology, they have the opportunity to collaborate in the form of a joint venture.

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¹¹ Khairandy, R. *Perkembangan Tentang Hukum Itikad Baik Di Netherland*. Spesialias Kenotariatan Fakultas Hukum Universitas Airlangga, 1990.

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