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Balance for Indonesian and Foreign Parties in *joint Venture Agreement* in the Province Central Java

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Abstract
One of the obstacles in achieving development targets is the need for development financing, especially that which can be extracted from sources of own capabilities. Sources of funds from abroad are only complementary to the principle of increasing independence in implementing development and preventing foreign involvement and interference. The purpose of organizing investment can only be achieved if supporting factors that hinder the investment climate can be overcome, including legal certainty in the field of investment, highly competitive economic costs, a conducive business climate and others. With the improvement of various supporting factors. It is hoped that the realization of investment will improve. *Joint Venture Agreement*, as a joint cooperation agreement it must contain the principle of freedom of contract, the principle of consensualism, the principle of binding an agreement (*in the name of our Lord*) principle of good faith (*good night*) and the principle of personality (*personality*). This research consists of exploratory research, descriptive research and explanatory research. The imbalance of the Indonesian side in *Joint Venture Agreement* in Central Java Province due to several factors, including Indonesian share ownership being less than foreign parties; causing foreign parties to be able to determine the management of Foreign Investment Limited Liability Companies (PT PMA).

Keywords: Investment, *Joint Venture Agreement*

Introduction

One of the obstacles in achieving development targets is the need for development financing, especially that which can be extracted from sources of own capabilities. Foreign funding sources are only as a complement to the principle of increasing independence in implementing development and preventing foreign involvement and interference.

The methods that must be taken to increase economic growth include capital investment, use of technology, and increasing knowledge, improving organizational and management skills. In this case, investment plays an important role as part of the implementation of the national economy and is placed as an effort to increase national economic growth, create jobs, increase sustainable economic development, increase national technological capacity and capabilities, encourage people's economic development, and realize community welfare in a competitive economic system.

The purpose of organizing investment can only be achieved if the supporting factors that hinder the investment climate can be overcome, including legal certainty in the field of investment, highly competitive economic costs, a conducive business climate and others. With the improvement of various supporting factors. It is expected that the realization of investment will improve.

Indirect investment or *indirect investment*, the investor does not need to be physically present, because in general the main goal of the investor is not to establish a company, but only to buy shares with the aim of reselling them. The investor's goal is how to get maximum results with a time span that is not too long to be able to enjoy the benefits. In other words, this type of investment, what investors expect is *capital gains*, meaning there is income from the difference between buying and selling shares on the stock exchange (Article 1 point 4, Article 6 (1) Law No. 8 of 1995 concerning Capital Markets.

Direct investment means that investors (investors) form a business or company in Indonesia (Article 1 point b) of Law No. 3 of 1982 concerning Mandatory Company Registration (UUWDP). In the establishment of a joint venture company (*Joint Venture Company)* There are several things that the parties must pay attention to, namely the choice of business field, policy aspects, realization of agreements and establishment of the company [1].

The parties in a joint venture company, namely foreign investment and domestic investment, prepare and create joint ventures (*Joint Venture Agreement*).*Joint Venture Agreement* This contains the wishes of the parties in more detail, outlined and complete as a continuation of *Memorandum of Understanding (*MOU) before. So *Joint Venture Agreement* is a more detailed and complete description of what has been stated in the MOU.

The parties involved in a joint venture company (*Joint Venture Company)* is the Indonesian side (*Indonesia Participation*) and foreign parties (*Foreign Participation*). Joint cooperation between Indonesian and foreign parties in *Joint Venture Agreement* should be a relationship of equal standing and mutual need, not subordinate. Whereas according to Indonesian law, the legal relationship that occurs should be the same or equal.

Joint Venture Agreement, as a joint venture agreement, it must contain the principle of freedom of contract, the principle of consensualism, and the principle of binding an agreement (*in the name of our Lord*) principle of good faith (*good night*) and the principle of personality (*personality*).

Increasing investment to process potential economic potential into real economic strength by using capital originating from both domestic and foreign sources is very necessary to accelerate social economic development.

Including in facing changes in the global economy and Indonesia's participation in various international cooperation, it is necessary to create a conducive, promotional investment climate, provide legal certainty, including providing legal protection for the parties involved. *Joint Venture Agreement*, justice and efficiency while still paying attention to socio-economic interests, for these reasons, the Republic of Indonesia Law Number 25 of 2007 concerning Investment is very necessary.

The direction of national development as set out in the National Development Program (PROPERNAS) is to strive to create a just and prosperous society.

The form of a just and prosperous society is among others in the economic field. The implementation of development as is known requires capital in a large enough amount and is available at the right time ideally, the capital is provided by the ability of domestic capital itself, in reality developing countries do not have enough capital to carry out development, including the State of Indonesia, these obstacles are overcome, including through foreign assistance and cooperation through capital assistance.

Foreign investment in Indonesia can be done directly, that is, the foreign capital is owned by a foreign country, foreign business entity, foreign legal entity and/or Indonesian legal entity which is partly or wholly owned by a foreign party.

Foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled in the territory and State of the Republic of Indonesia unless otherwise determined by law. Domestic and Foreign Investment that invests in the form of a limited liability company is carried out by: a. taking part in shares at the time of establishment of the limited liability company; b. buying shares; c. carrying out other methods in accordance with the provisions of laws and regulations (Article 5 paragraph (1), (2) and (3) UUPM); indirect investment, is short-term investment that includes transaction activities in the capital market and in the money market. This capital market is called a short-term investment market, because in general the buying and selling of shares or currency depends on the fluctuations in the value of the shares and/or currency to be traded [2].

Joint Venture Agreement, as a joint cooperation agreement it must contain the principle of freedom of contract, the principle of consensualism, the principle of binding an agreement (*in the name of our Lord*) principle of good faith (*good night*) and the principle of personality (*personality*).

There is a tendency for the implementation of the contents of the joint venture agreement not to be as expected by the spirit of PP No. 20 of 1994 in conjunction with PP No. 83 of 2001. Several cases below prove that the implementation of the joint venture agreement is detrimental to Indonesian participants as working partners.

In practice, there are differences of interest between investors and recipients of capital. According to Sumantoro: The motive of investors in investing capital is to seek profit. Therefore, it is necessary to find a relationship between the motive of investors seeking profit and the goal of the recipient country, namely the effort to achieve its national development goals. In order for investors to invest their capital, the government must provide other facilities and infrastructure. As a consequence, the government needs to organize solid planning, including establishing effective implementation and supervision policies so that national development goals are achieved. With this approach, the role of investors can be directed to development priorities. With this approach, the theory of development is a process of cooperation and not a matter of conflict of interest [3].

Direct investment as a form of capital flow has a major role in the economic growth of developing countries, because it not only moves capital and goods, but also transfers knowledge and human resource capital. In order for direct investment to be beneficial for the recipient country, there must first be human resource capital, otherwise *know how* cannot be utilized for other economic sectors or cannot even be transferred at all.

The reality is that the position of foreign investors is more fortunate than the recipients of foreign capital, namely developing countries. This unbalanced position causes various problems.

Imbalance of power in the making of joint venture agreements (*joint venture agreement*) due to foreign participants (*foreign participation*) is stronger, especially if the participants are foreign (*foreign participation*) has built its business strength in the form of a multinational company (*transnational*).

Such imbalance can cause the cooperation to become unnatural and can result in the strong party controlling the weak party. Such a cooperative relationship becomes a subordinate relationship, not a relationship of equal standing and mutual need.

This subordinate relationship occurs in Central Java Province between foreign investors and local investors, where foreign investors have a stronger position than local investors.

This happened for example at PT Kbt, which in the joint venture agreement (*joint venture agreement*) is determined by the provision of raw materials by foreign investors. The contents of the agreement allow foreign investors to control raw material prices. The consequence of this situation is that the profits obtained by local investors are not high, on the other hand, foreign investors gain profits from two sources. First, profits obtained from the distribution of profits from PT Kbt's business results. Second, profits obtained from the provision of raw materials. Furthermore, in the production process, it turns out that PT Kbt only assembles diesel engines, not produces diesel engines. In fact, in the production process, what must be mastered is how to produce diesel engines, namely mastery of diesel engine component production technology. Without mastery of this technology, we cannot be categorized as an industrial country in the true sense.

Another joint venture company whose position between the parties is not the same or equal is PT Prka. In the joint venture agreement (*joint venture agreement*) it is determined that the purpose and objective of establishing a joint venture company is to create *commercial freezers, commercial refrigerators* and others. It turns out that the activities in the production process only assemble the goods to be produced. These activities result in no transfer of component production technology. *Commercial freezers, commercial refrigerators* and others. In addition, in the joint venture agreement (*joint venture agreement*) it is determined that all industrial raw materials come from the foreign investor country. Such provisions make foreign investors reap profits from two sources, while local investors or the Indonesian side do not get maximum profits.

Joint venture companies in Central Java Province which in preparing joint venture cooperation agreements (*joint venture agreement*) the position of the parties is not the same or equal, namely PT BL. This joint venture produces sports shoes. In the joint venture agreement (*joint venture agreement*) it is determined that the company's intent and purpose is to operate a shoe factory by importing raw materials determined and carried out by the foreign investor. Thus, the same as the two foreign investment companies above (PT Kbt and PT BL) the contents of the joint venture agreement (*joint venture agreement*) results in foreign investors gaining profits from two sources, while local investors do not gain maximum profits, and there is no technology transfer. In addition, in the joint venture agreement (*joint venture agreement*) it is also determined that product marketing is entirely in the hands of foreign investors. Based on the provisions, it can be concluded that the position of the parties who drafted the joint venture agreement (*joint venture agreement*) are not the same or equal. Foreign investors have a higher position than local investors.

Why *Joint Venture Agreement* has not accommodated balance for the Indonesian side?

Research purposes

To find out the cause of the imbalance on the Indonesian side *Joint Venture Agreement.*

Benefits of research

1. Theoretically

This research is expected to provide theoretical benefits in the form of contributions to the development of legal science, especially regarding legal protection for Indonesian parties in *Joint Venture Agreement.*

2. Practically

The results of this study are expected to be used as reference material for improving regulations on *Joint Venture Agreement* In more detail, the benefits of this research are as follows:

a. For policy makers, get input to improve regulations on legal protection for Indonesia in *Joint Venture Agreement.*
b. For policy implementers, get input on the concept or theory of implementing legal protection for Indonesian parties in *Joint Venture Agreement.*

Framework

1. Welfare Theory

The objectives of national development are contained in the opening of the 1945 Constitution of the Republic of Indonesia, namely to: protect the entire nation and all of Indonesia's territory; advance public welfare; educate the nation's life; and participate in implementing world order based on independence, eternal peace, and social justice. To facilitate the achievement of these noble ideals, stages and priorities are needed based on the character of the resources we have and the challenges we are facing, which until now, are still viewed as medium-term or annual to achieve universal goals and specific goals of national development of the unitary state of the Republic of Indonesia.

The aim of establishing a state is to advance general welfare, as included in the 1945 Constitution of the Republic of Indonesia. The mandate of the opening of the 1945 Constitution of the Republic of Indonesia has been described in Article 33 of the 1945 Constitution of the Republic of Indonesia; The welfare state is a development ideal that focuses on improving welfare by giving a more important role to the state in providing universal and comprehensive social services to its citizens. According to Spicker, the welfare state is:

> "*Stands for a developed ideal in which welfare is provided comprehensively by the state best possible standards"* [4].
>
> The welfare state can also be defined as "*is a state which provides all individuals with the distribution of the basic resources necessary to maintain a good standard of living*" [5].

The concept of a welfare state through economic development, in order to realize and improve welfare, improvement, and economic development must be carried out through national economic development which is always in accordance with the state constitution which has mandated that national economic development must be based on the principle of democracy that is able to create the realization of Indonesia's economic sovereignty. The principle of democracy is in accordance with the form of a people's economy as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia [6].

Investment is part of the implementation of the national economy, as an effort to increase national economic growth, create jobs, increase sustainable economic development and improve national technological capabilities.

And realize the welfare of society in a competitive economy. The purpose of investment can only be achieved if the obstacles to the investment climate can be overcome, among others, through:

1. Improvement of coordination between central government agencies in the regions
2. Creation of an efficient bureaucracy and legal certainty in the investment sector.
3. Highly competitive economic costs
4. A conducive business climate in the field of employment and business security [7].

A good business climate is very supportive of investment activities which have an important role in improving the economy and employment. In accordance with Sumantoro's opinion that
"The philosophy and basic policies of the Indonesian Government in using foreign sources are generally in line with those taken by other developing countries receiving capital, namely: 1. It has been realized by the governments of countries receiving capital and by multinational companies (PMN) that foreign sources are a complementary element in financing the national development of countries receiving capital; 2. To carry out development, there needs to be a set of laws and regulations and an implementation mechanism so that the use of foreign sources in developing countries can be carried out.
Capital recipients can be organized effectively. 3. To achieve the development goals, it is necessary to develop the ability to implement development both in the government and in the domestic and foreign private sector fairly in the sense that the distribution of business results can be divided fairly among the parties [8].
There are several opinions as to why foreign investment (foreign investors) want to invest their capital in other countries, for example because the production costs in their country are quite expensive, and also to expand their network.

According to Buu Hoan's opinion,
"Companies were asked to assess the importance of the investment climate on their decisions. The Factors considered to be of great significance by the companies were (classified according to the order of significance): (i) political and economic stability; (ii) stable and disciplined labor force; (iii) access to local finance; (iv) ready availability of foreign exchange; (v) stable currency value; (vi) existence of a good joint venture partner; (vii) duty free imports [9].

Legal certainty is a very important indicator for creating an adequate business climate. According to Paul V Horn and Henry Gomez:
"In making foreign investments a number of important points are to be taken into consideration. The investor is concerned, first, with the safety of his investment and, second, with the return which it yields. The factors having a direct bearing on these considerations may be classified as follows:(1)Political stability and financial integrity in the borrowing or host country;(2) purpose for which the investment is made; (3) laws relating to capital and taxation, attitude towards foreign investment, and other aspects of the investment climate of the host country; (4) Future potential and economic growth of the country where the investment is made; (5) exchange restrictions relating to the remission of profits and withdrawal of the initial investment [10].

According to Mulyani Santoso, the welfare state theory contains 4 (four) meanings, namely:

1. As a Condition of Well-Being (*well-being*)

That is, the fulfillment of material and non-material needs. A prosperous condition occurs when human life is safe and happy because of the needs basic needs (nutrition, health, education, housing and income) are met, in addition humans receive protection from the main risks that threaten their lives.

2. As a social servant

Covers 5 (five) forms, namely social security (*social security*), health services, education, housing and personal social services (*personal social services*).

3. As a social benefit

Social welfare provided to poor people.

4. As a planned process or effort

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 the state's public policy. Among them are the principles of family, empowering the weak and underprivileged. The government places the interests of society above individual interests, the Indonesian government seeks to implement a welfare state through:
1. Social Security System.
2. Fulfillment of basic citizen rights through the development of productive economic resources, creating widespread employment opportunities as a starting point for development and building economic strength.
3. Fair economic equality through distributed production and joint control of production.
4. Bureaucratic reform by creating a strong and responsive government as *agent of development* and the provision of public goods and services widely and the management of natural resources as a support for the welfare state to uphold social justice [11].

Research methods

1. Types of research based on nature

Viewed from the perspective of its nature, this research consists of exploratory research, descriptive research and explanatory research.

2. Types of research based on form

Research can be viewed from the perspective of its form, which consists of diagnostic research, prescriptive research and evaluative research [12].

3. Types of research based on their objectives

Judging from its purpose, research consists of research *fact finding*, study *problem finding* and research *problem solution*. The meaning of each type of research based on its objectives according to Setiono is: Judging from its objectives, this research is included in research *problem solution* namely to overcome the imbalance in Indonesia's position in *Joint Venture Agreement* (JVA) by providing protection for the Indonesian side.

4. Types of research based on application
Viewed from the application perspective, research consists of pure research, problem-focused research, and applied research.

Research Specifications
The specification of this research is descriptive analysis. Using descriptive specifications because this research is expected to be able to provide a detailed, systematic and comprehensive picture of everything related to *Joint Venture Agreement* or joint venture agreements, particularly regarding legal protection for the Indonesian party.

Population and sample
The population in this study is all those related to the implementation *Joint Venture Agreement* in Central Java province. The sampling method in this study used purposive sampling. It is called purposive because the research subjects were grouped based on their involvement in the implementation.

1. Company *Joint Venture* where the Indonesian party has less share ownership than the foreign party.
2. Those who are involved in making the deed of establishment of the joint venture company and processing the ratification *Joint Venture Agreement* (JVA) includes: a. Notary

The definition of a Notary here includes a Notary appointed by the Minister of Justice, a Deputy Notary appointed by the Minister or a temporary Deputy Notary appointed by the Head of the District Court, who has made a deed of establishment of a joint venture company (*Joint Venture Company*).

a. In this case, all establishments of Foreign Investment Limited Liability Companies are made in Jakarta.
b. The Manufacturer *Joint Venture Agreement* (JVA) namely the Indonesian party and the foreign party.

Data collection technique
The determination of data collection tools in this study is guided by the type of data needed for the dissertation compiler. The data collected in this study include primary and secondary data, obtained through literature studies and field surveys. Based on these considerations, the data collection techniques in this study include:

1. Literature Study
The data collection tool used in the literature study is documentary study. This documentary study was carried out to obtain secondary data.

2. Field Survey
In the field survey, the data collection tool used is an interview using an interview guideline. Initially, the research subjects are asked structured questions, then several of these questions are explored in depth to obtain further information. Thus, it is expected to obtain complete and in-depth answers.

Data analysis
To analyze the data obtained from this research, a qualitative analysis method was used, namely analyzing the data obtained from the research results by creating a description that explains the problem.

Research Results and Discussion
The definition of foreign investment in this article is the activity of investing capital to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, either using foreign capital entirely or in partnership with domestic investors. (Article 1 paragraph 3 of UUPM).*Joint Venture Agreement* (JVA) is one of the steps that must be taken to establish a PT. PMA. In this case, the parties referred to are the Indonesian party called the Indonesian participant. (Indonesian Participation) and the foreign party called the foreign participant (*Foreign Participation*).
If the parties have found suitable parties to carry out joint cooperation, then "talks" are started to realize this desire. The term "talks" here is interpreted as a negotiation process that is carried out: (1) face to face (*face to face*) or through; (2) means of communication (telephone); carried out (3) verbally and or through; (4) writing (*correspondence, faxes and so on*).
In this discussion each party submits an offer (*offer*) offered by the other party. Furthermore, if there is a match regarding everything desired by both parties, then a match of wills is achieved. According to the law of obligations, the moment when a match of wills occurs is when the two parties meet. *Offer* (from the offering party) with *acceptance* (by the offeree), which is when the agreement occurs. According to Article 1320 of the Civil Code, an agreement is one of the conditions for an agreement to occur, in addition to the competence of the parties, certain things and lawful objects. With the occurrence of a difference of opinion between Indonesian and foreign entrepreneurs, an agreement arises.
In the agreement, the parties agree to each other to jointly establish a joint venture company in Indonesia. Other matters concerning everything related to the joint venture company (type of business field, company location, amount of capital that must be paid in and so on).
The agreement to establish a joint venture that has been agreed upon by the parties above, is then set out in written form and is called an MOU (MoU).*Memorandum Of Understanding*).
Thus, MOU is a written agreement made and signed by Indonesian participants with foreign participants, which contains general provisions regarding the establishment of a joint venture company and matters related to the joint venture company. MOU is prepared in English, even though the foreign entrepreneurs come from Japan, Korea, Taiwan, China and others.
The points contained in the MOU in general terms include the names of participants, the amount of capital that must be paid in by each participant (*equity or participation ratio*), comparison and number of directors or commissioners.

(*Management/Board of Directors and Board of commissioners*), technical assistance (*Technical Assistance Agreement* or *Technical Collaboration Agreement*), license agreement (*License Agreement*), raw materials and procurement sources (*Procurement of Equipment and Materials*), production, marketing, technology transfer, profits, *time schedule*, dispute resolution, mailing address.

After the company is established and operational, this MOU is no longer used. In this case, what is used as a reference is the joint cooperation agreement (*Joint Venture Agreement*).

The provisions outlined in the MOU above are then further regulated in detail and set out in written form. The creation of a written regulation in detail begins with the creation of a draft. This draft is then studied by both parties. If one party feels that there are things that are not in accordance with their wishes, then this is discussed again with the other party. After the opportunity is achieved in the sense that both parties agree, then an MOU is made *Joint Venture Agreement*.

All over *Joint Venture Agreement* compiled in English. In the drafting process, only 25% of Indonesian companies use legal consultant services. Given the JVA's function, which is so significant, in carrying out *warmeking*, the notary provides a note under the deed with the following words: Stamped and registered in the registration book provided specifically for that purpose by me…………………., notary at ……………., on the date……………….

Based on the requirements of the points above, it is known that the establishment of PT. PMA can be done if the parties have obtained a Foreign Investment Approval Letter (SPPMA) from BKPMD. Considering that the SPPMA procedure is a licensing procedure (administrative), this procedure is not categorized as an agreement between the parties.

Point 3 above is a further explanation of the provisions contained in the joint venture agreement. All joint venture agreements (100%) studied did not explicitly mention the following names and positions.

In a particular company, but only mentions the consideration of the number of commissioners and directors between the Indonesian and foreign partners.

In the deed of establishment of a joint venture company, the notary formulates the will of the parties based on the applicable provisions. The will of the parties has been stated in the joint venture agreement. Thus, the deed of establishment of a joint venture company contains as much as possible everything stated in the joint venture agreement. However, in practice, not all matters stated in the joint venture agreement are included in the deed of establishment. Matters of a confidential nature are left by the parties in the joint venture agreement and are not included in the deed of establishment of the joint venture company.

The requirement of point 3 above is necessary because in the application for approval to the Minister of Law and Human Rights, the composition of the management of this joint venture company is mentioned for the first time. In practice, there are two ways to mention the composition of the management, namely included in the deed of establishment and included as an attachment to the deed of establishment. In the latter case, the deed of establishment only mentions the composition of the number of directors and the board of commissioners.

In all the deeds of establishment of joint venture companies (100%), it turns out that the names of the directors and commissioners are not mentioned in detail, there are 58.22% of companies that carry out operations that are not the same as the company's intent and purpose, because all of these companies have intent and purpose. "Making ……………" The word making contains the intention of carrying out the company's production process from the beginning until the production goods are ready to be marketed. But the production goods are finished, in the production process they do not make them but only assemble them. The impact is that there is no technology transfer to Indonesian participants. This is because in the negotiation process to determine the contents of the joint venture agreement there is an imbalance in negotiating skills.

Provisions regarding the production process, the origin of raw materials (contained in the joint cooperation agreement) and labor (contained in the *Employment Agreement*) determines whether or not technology transfer occurs. Joint venture companies whose joint venture agreements stipulate that raw materials (in the form of semi-finished goods) must be imported from overseas companies and that the production process is only assembly, result in the absence of a complete transfer of production process technology. The occurrence of this technology transfer also does not occur if for certain jobs in *Employment Agreement* determined to be handled by foreign workers.

The type of agreement made by Indonesian participants and foreign participants related to the establishment of a joint venture company is basically an agreement to establish a joint venture company, which is then stated in written form (MOU), a joint venture agreement and an agreement to establish a joint venture company which is stated in the form of a deed of establishment of a joint venture company by a notary. If in the MOU the agreement of the parties is regulated in general terms, then in the joint venture agreement it is made by a notary. Based on the will of the parties, the notary will formulate and make a deed of establishment which contains the articles of association of the joint venture company in accordance with Law No. 40 of 2007. Important matters in a joint venture agreement (JVA) are more complete than the contents of the articles of association, because the contents of the joint venture agreement contain almost all the problems desired by the parties, even confidential matters. Meanwhile, the deed of establishment of a joint venture company is a general document, because it must be announced in the State Gazette of the Republic of Indonesia. Anyone who wants to know can read it, because all the contents of the deed of establishment (which contains the articles of association) of the joint venture company are in the State Gazette. Everyone can check the deed or an excerpt thereof that is registered and can obtain a copy at their own expense.

Regarding confidential matters, these are usually included in the joint venture agreement. If it is felt that not all of it is covered in the joint venture agreement, then a special agreement is made for that, such as *Technical Assistance Agreement, Technical Collaboration Agreement, Loan Agreement, Employment Agreement, Management Agreement, License Agreement, Distribution Agreement, Agent Agreement.*

Closing

Conclusion

The imbalance on the Indonesian side *Joint Venture Agreement* in Central Java Province due to several things:

1. Indonesian share ownership is less than foreign parties

Causing foreign parties to be able to determine the management of Foreign Investment Limited Liability Companies (PT PMA)

a. In making *Joint Venture Agreement* the Indonesian party was not accompanied by a legal consultant so that the interests of the Indonesian party were not accommodated, while the foreign party was accompanied by a legal consultant.
b. Matters regulated in *Joint Venture Agreement* However,

it is not regulated in the deed of establishment including company secrets, dispute resolution, instructions, emergencies, company warnings, implementation of agreements, technology cooperation agreements and product marketing.

c. The contents of the agreement use words that are too general so that they can be interpreted differently.

2. Legal protection for the Indonesian party in *Joint Venture Agreement*

The entire manufacturing process *Joint Venture Agreement (JVA)* must be registered with the Minister of Law and Human Rights, namely starting from the selection of the Negative Investment List (DNI), making *Memorandum of Undertaking (MoU)* and manufacturing *Joint Venture Agreement (JVA).*

Accompaniment of the Indonesian side by legal consultants in the process of making *Joint Venture Agreement (JAV).*

Recommendation

That in the negotiation process, experts accompanying Indonesian participants must consist of various types of expertise (legal, technological, management and so on according to needs).

The role of experts in the negotiation process is to raise the position of Indonesian participants, so that in the negotiation process there is a balance of position between Indonesian participants and foreign participants. Thus the solution is to overcome the causes of losses for Indonesian participants.

Another way to overcome things that are detrimental to Indonesian participants in particular and the Indonesian nation and state in general is through legislation that is supported in its implementation.

For this reason, the Minister of Investment/Chairman of BKPM should make regulations that stipulate that:

1. Joint venture companies whose business field of choice is assembly accompanied by importing raw materials, are required to gradually be able to produce raw materials domestically within a certain period of time.
2. The provisions in the joint venture agreement regarding the type of new business activity are stated in detail and explicitly and may not be formulated in general terms.

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