

Perusahaan joint venture dalam penanaman modal asing di Indonesia

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Abstrak

Penanaman modal asing secara langsung di Indonesia harus dilakukan dalam bentuk pendirian perusahaan joint venture antara investor asing dengan investor nasional, sebagaimana diatur dalam Undang-undang Nomor 25 Tahun 2007 tentang Penanaman Modal. Selain berdasarkan adanya ketentuan Undang-undang, pendirian perusahaan joint venture juga dilakukan berdasarkan pertimbangan politik, ekonomi, sosial dan budaya yang berkaitan dengan kepentingan para pihak terutama investor asing dalam melakukan investasi di Indonesia. Perusahaan joint venture ini didirikan dalam bentuk Perseroan Terbatas, yang tunduk kepada Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

Sebelum membentuk Perusahaan Joint Venture para pihak terlebih dahulu membuat perjanjian joint venture yang menjadi dasar pendirian perusahaan joint venture. Dalam merumuskan perjanjian joint venture para pihak terikat dengan kaidah-kaidah yang terdapat dalam hukum perjanjian baik yang bersifat nasional maupun internasional seperti *pacta sunt servanda*, *consensus*, dan kebebasan berkontrak, karena para pihak berasal dari Negara yang berbeda. Dalam perjanjian joint venture ditetapkan tujuan dan kebijakan dari perusahaan joint venture yang dapat dipergunakan untuk menafsirkan perjanjian-perjanjian yang dibuat oleh perusahaan dengan para partner.

Oleh karenanya dipandang perlu untuk mengkoordinasikan perjanjian joint venture dengan Anggaran Dasar Perusahaan Joint Venture yang tunduk kepada Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Struktur perjanjian joint venture itu sendiri sekurang-kurangnya meliputi: objek usaha patungan, modal dan proporsi masing-masing pemegang saham, kepemilikan saham dan kemungkinan pengalihan saham pada pihak lain, penambahan modal dan pengeluaran saham baru, pengurusan perusahaan, kontrol atau pengendalian perusahaan, alih teknologi dan pengetahuan, lisensi paten dan merek dagang, klausul wanprestasi, keadaan darurat, klausul pilihan hukum dan klausul penyelesaian sengketa, pengakhiran perjanjian, dan pengaturan tentang amandemen atau perubahan perjanjian.

Dalam hal adanya sengketa pada perusahaan joint venture, apabila sengketa tersebut terjadi antara pemegang saham, maka penyelesaiannya dapat dilakukan melalui arbitrase atau melalui pengadilan tergantung kepada *choice of jurisdiction* yang menjadi kesepakatan kedua belah pihak. Apabila sengketa tersebut terjadi antara direksi, atau antara pemegang saham dengan direksi perusahaan joint venture (kasus gugatan derivatif), maka penyelesaiannya dilakukan melalui Pengadilan Negeri menurut Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Apabila sengketa yang terjadi antara investor asing dengan Pemerintah, maka penyelesaiannya dapat dilakukan melalui arbitrase internasional, seperti ICSID, atau lembaga penyelesaian sengketa lainnya yang disepakati oleh kedua belah pihak.

.....Foreign direct investment in Indonesia shall be realized in form of joint venture company established by domestic and foreign investor, which is stipulated by law number 25 of 2007 concerning Investment. Beside according to the provisions of the law, the carrying out of establishment of joint venture company also based on politic, economic, and socio-culture considerations related to all parties interests, especially foreign investors in making investment in Indonesia. The joint venture company was established in the form of

Limited Liability Company, which is subject to Law Number 40 of 2007 concerning Limited Liability Company.

Before establishing joint venture company, all parties make a joint venture agreement that will be the groundwork of establishing that company. To formulate the joint venture agreement, the all parties was bound by norms contained in law of contract both nationally and internationally, such as pacta sunt servanda, consensus, and freedom of contract, because they come from different nations. The policy and purpose of joint venture company was stipulated by Joint venture agreement that can be used as a tool or guidance of contracts interpretation made by company with partners.

Because of that, it is necessary to coordinate joint venture agreement with article of association of joint venture company pursuant to law number 40 of 2007 concerning Limited Liability Company. The structure of the joint venture agreement itself include at least : the object of joint venture, initial capital and capital contribution, equity ownership and and the possibility of transfer of shares on the other party, capital increase and issuance of new shares, the management of company, control of the company, transfer of technology and know-how, patent and trademark licenses, profit sharing, breach of contract clause, force majeure clause, choice of law clause, and dispute settlement clause, termination of contract, and rules concerning the amendment of contract.

In the event any dispute arises in connection with joint venture company, if the dispute arises between shareholders of the company, the settlement may be carried out through arbitration or through the Court depending on choice of jurisdiction agreed by the parties. If the dispute arises between directors of the company, or between shareholder and directors of the company (derivative suit case), the settlement must be carried out through the Court, pursuant to law number 40 of 2007. If the dispute arises between foreign investor and Government, the settlement may be carried out through the international arbitration, such as ICSID, or other dispute settlement body agreed by the parties.