

## The Existence of Joint Operation in The Perspective of Indonesian Legal Entity

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**Abstract:** In the business development, it is not only necessary to establish a formal business entity but also to establish a set of detailed laws and regulations related to the establishment of such business entity and as a result it may make it difficult for business legal entities. In order to overcome such matter, some thinkings are required to accommodate such matter, leading to a development of a new business field in the form of Joint Operation (JO). Joint Operation (JO) is one of a cooperation model between two parties or more with one party as the party having or providing facilities and another party as the owner or the provider of fund or capability or expertise to support the implementation of research or projects. The existence of Joint Operation (JO) is recognized and qualified as a business entity according to Indonesian laws and regulations. Joint Operation (JO) is not a formal legal entity but rather a “quasi legal entity” because it is established based on a mutual agreement without having to obtain a validation from the authorities. As a quasi legal entity, Joint Operation (JO) in taking actions may be represented by board of directors similar to other legal entities such as limited liability company, foundation or cooperative.

**Key words:** Business entity, Joint Operation (JO), quasi legal entity, existance, Indonesia, agreement

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### INTRODUCTION

Indonesia as a developing country is continuously making an endeavor to increase economic growth and living standards or welfare for its people (Hendra, 2013). This is the mandate as referred to in study 33 of 1945 Indonesian Constitution stating that the economy shall be organized as a common endeavour based upon the principles of the family system and the land, the waters and the natural resources within shall be under the powers of the state and shall be used to the greatest benefit of the people.

How advanced a country is shall be determined by its economic growth rate. As such the role of economic actors in driving national economy is crucial. There are 4 types of economic actors namely household, company, government and overseas. Each economic actor plays a very important role in supporting a sustainable economic cycle.

In carrying out its business, business entities comprise of state owned business enterprise (BUMN) or regional owned business enterprise (BUMD), private business enterprise and cooperative. BUMN consists of departmental enterprise (Perjan) with the objective to provide services and therefore usually it is subsidized by the state, public company (Perum) which is non profit oriented and company (Persero) which is profit oriented. Whereas private owned business enterprise comprise of natural person, firm, limited partnership (cv), foundation and limited liability company (pt) either closed/private or public company, either domestic or Foreign investment.

Business entity may also be classified based on its activities, namely extractive business entity (one that extracts those available in nature), agriculture business entity (the one that cultivates plants or agricultural activities), industrial business entity (that increase economic value of the goods by changing its form), Trading business entity (engaged in the activities related to selling and purchasing goods without changing its form) and servicing business entity.

In line with the current development and the high number of business competitors and as part of business strategies, business legal entities enter into a cooperation to improve effectiveness, efficiency and productivity. The cooperation could be in the form of a joint operation, Build Operate and Transfer (BOT), joint venture or other cooperation model. Out of the various models, this study discusses Joint Operation (JO) because a cooperation with Joint Operation (JO) Model has started to be developing in Indonesian business practice. There are 2 legal issues discussed in this study, namely, the status and position of Joint Operation (JO) according to Indonesian laws and regulations and Joint Operation (JO) be qualified as a legal entity under the prevailing laws in Indonesia.

**Theoretical background:** Definition of Joint Operation (JO), Joint Operation (JO) in Indonesian is translated with the term Kerjasama Operasi (KSO). In Indonesia there are no laws and regulations that specifically govern Joint Operation (JO). Based on the statement of Indonesian

Financial Accounting Standards (PSAK) No. 39, dated 8th of December, 1997, it is specified that Joint Operation (JO) is an agreement between two parties or more where each party has agreed to enter into a joint cooperation to do business by using their assets and/or business right and jointly take business risks. Despite the fact that PSAK No. 39 has been revoked by the statement of revocation of financial accounting standards (PPSAK) No. 11 dated 28 June 2011, the reasons for the revocation of PSAK No. 39 is not due to the concept of Joint Operation (JO) deemed to be in contradiction therewith, however, it is because some rules in PSAK No. 39 are overlapping with financial accounting standards for a transaction and other events. Further based on the letter of Director general of tax No. S-123/PJ.42/1989, it is mentioned that Joint Operation (JO) is a form of operational cooperation, namely an association of two legal entities or more joining to complete or research in a project. The object of Joint Operation (JO) could be in the form of asset such as land or right to operate a business.

From the above definition, a preliminary conclusion can be drawn that Joint Operation (JO) is a form of cooperation entered into by two parties or more to perform, complete and at the same time carry out research or project jointly to get profit with the distribution of profit proportional to the participation in the Joint Operation (JO) by bearing the risks jointly and also proportionately. Thus, Joint Operation (JO) is a type of cooperation in performing research in a project which is specific and for a certain period of time.

Despite there are still no laws and regulations that specifically govern Joint Operation (JO) by looking into the above definition, Joint Operation (JO) is a form of cooperation between 2 legal entities or more which are binding each other in a covenant (agreement), then it could be interpreted that Joint Operation (JO) is a manifestation of freedom of contract principle as governed under Article 1338 of Civil Code (KUHPer), stating that all the agreements made are valid as a law for those drafting it. The requirement about the validity of an agreement is governed under Article 1320 of Civil Code (KUHPer), namely agreement, capacity, a specific subject and an admissible cause.

The purpose of cooperation with Joint Operation (JO) model is to improve business effectiveness and efficiency namely by implementing the expertise of each party by combining the various potentials of each participant of Joint Operation (JO). Therefore, if there are two parties or more entering into a cooperation using of Joint Operation (JO) pattern, a question will arise how the form of cooperation is supposed to be constructed and how is the implementation. Another question is whether Joint Operation (JO) is classified as a legal entity similar to limited liability company (PT) or not.

In principle, a cooperation can be implemented with 2 methods, namely. By establishing a legal entity which is formally separated from the legal entity of the parties which is known more as joint venture and without establishing a separate legal entity from the legal entities of the parties in Joint Operation (JO).

If a number of people entering into a cooperation and within such a cooperation a corporation is established, then such cooperation may constitute a legal entity after the requirements established by legal rule have been fulfilled (Ichsan, 1986). The cooperation by establishing a formal legal entity separate from the legal entity of the parties in cooperation meaning that the parties in cooperation provide capital injection (either in the form of cash or in kind (goods) which can be valued by money which is capital injection by asset or income for the company) in the new legal entity established jointly by the parties. Therefore, the newly established legal entity is a new legal subject which is independent and separate from the legal entity of the founders. In reality, a cooperation by establishing a formal legal entity separate from the legal entity of the parties in a cooperation will transform into a joint venture. If the legal entity established is in the form of limited liability company (PT), then automatically it shall be subject to Law No. 40 of 2007 on Limited Liability Company.

A cooperation without establishing a legal entity separate from the legal entities of the parties in a cooperation is recognized as a Joint Operation (JO), it could be in the form of a jointly controlled operations and jointly controlled assets where the parties in Joint Operation (JO) jointly control the operations or assets by referring to the terms and conditions as governed under Joint Operation (JO) Agreement or unilateral control where only one of the parties in Joint Operation (JO) controls the operations or assets by referring to the terms and conditions as governed under Joint Operation (JO) agreement.

Furthermore, what about the status and position of Joint Operation (JO) without establishing a legal entity separate from the legal entities of the parties in Joint Operation (JO). Until now there is no legal rule with the same level of law that specifically regulates the legal status or position of Joint Operation (JO). However, departing from and referring to Article 3 Paragraph (1) of Government Regulation No. 1 of 2012 on the implementation of Law No. 8 of 1983 on value added tax of goods and services and luxury goods sales tax as amended several times last by Law No. 42 of 2009, it is mentioned that "The form of joint operation is part of the other form of entities as meant in the definition of entity in Article 1 No. 13 of law on value added tax".

Whereas Article 1 No. 13 of Law No. 3 of 1983 in conjunction with Law No. 42 of 2009, reads. "Entity is a group of people and/or capital which is a unity either conducting a business or not that includes a limited liability company, limited partnership, other companies, state owned enterprises or regional owned enterprises with the name and in any form, firm, partnership (kongsi), cooperative, pension fund, partnership (persekutuan), association, foundation, mass organization, social politic organization or other organizations, agencies and other form of entities including collective investment contract and permanent business entity".

Guided by Law No. 8 of 1983 in conjunction with Law No. 42 of 2009 and the above government Regulation No. 1 of 2012, Joint Operation (JO) is qualified as "another entity". Indeed there is no explanation what is meant by "another entity" according to the Law. However, it may be interpreted that what is meant by another entity here is entity other than what are specified in Article 1 No. 13 of Law No. 8 of 1983 in conjunction with Law No. 42 of 2009. Therefore, Joint Operation (JO) shall be deemed as an entity rather than a natural person.

If a cooperation is one of entities and if it is related with the definition of legal subject in the form of legal entity could Joint Operation (JO) be interpreted as a legal entity. Joint Operation (JO) indeed 'formal juridical' is not a legal entity but a "quasi legal entity" or it can also be said as a "shadow legal entity" or "quasi legal entity". It is called shadow legal entity (quasi legal entity) because Joint Operation (JO) is not a formal legal entity in the real sense such as a limited liability company, foundation or cooperative where these types of legal entity are recognized and validated as a legal entity with government as the party having the authority to give validation.

With the validation of a formal legal entity, the existence of such legal entity is acknowledged as a legal subject, thus, the legal entity through its organs may take legal study. A limited liability company, foundation or cooperative has the authority to take legal study after having obtained a validation from the government. Whereas Joint Operation (JO) does not belong to business entity that should obtain a validation, thus, it cannot be said as a formal legal subject.

In Joint Operation (JO) there is no organ which is the same as legal entity of limited liability company, foundation or cooperative. Therefore, Joint Operation (JO) though acknowledged as another entity but it is not a formal legal entity and is only qualified as "quasi legal entity". The existence of management in a legal entity is very important to represent the legal entity in taking legal actions. In a limited liability company (PT). Board of

directors is a company organ that has authorities established by law on limited liability company and company's study of association to represent and act for and on behalf of the company. In a Joint Operation (JO) there is also management who is entitled to represent Joint Operation (JO). The management of Joint Operation (JO) (often is also called as "board of directors") is appointed based on the agreement of the parties under a Joint Operation (JO) agreement and shall act by virtue of power from the parties of Joint Operation (JO) to act to represent and maintain the interests of participants of the Joint Operation (JO). In implementing management, there is a difference between limited liability company and Joint Operation (JO), namely organ of board of commissioners in the limited liability company that has the duty to supervise the actions of board of directors while in Joint Operation (JO) there is no board of commissioners or other organs authorized to conduct supervision. The function of board of commissioners is to supervise board of directors in carrying out their duties and give advice. That there is no requirement to have a board of commissioners to conduct supervision in Joint Operation (JO) is similar to limited liability company prior to law on limited liability company No. 1 of 1995, namely pursuant to code of commerce (Kitab Undang-Undang Hukum Dagang). Since, the Code of Commerce took effect in Indonesia in 1848, the modern juridical basis has existed (Fuady, 2003). Article 44 of Code of Commerce reads, "Company is managed by the management, shareholders or others appointed by shareholders with or without pay with or without supervision from Board of Commissioners. Management may not be appointed irrevocably".

The establishment of Joint Operation (JO) entity is only based on the agreement of the parties as the actors of cooperation which is contained in an agreement, namely Joint Operation (JO) agreement. Though, the existence of Joint Operation (JO) entity is not validated by the authorities (government), this Joint Operation (JO) pursuant to Article 3 paragraph (2) of government Regulation No. 1 of 2012 shall report its business to be confirmed as Taxable Entrepreneur (PKP/Pengusaha Kena Pajak) and therefore, Joint Operation (JO) shall have Taxpayer's registration number (NPWP).

If Joint Operation (JO) entity belongs to the entity as specified in Article 1 No. 13 of Law No. 8 of 1983 in conjunction with Law No. 42 of 2009 and government Regulation No. 1 of 2012, a question arisen as to when Joint Operation (JO) entity effectively established or deemed to be existent (Anonymous, 2009). For the reason that Joint Operation (JO) entity does not require a license or validation from the authorized institution, the effective date of the establishment or existence of Joint Operation (JO) entity may create different interpretations.

In a legal entity such as limited liability company (PT), foundation or cooperative, the effective date of the existence of legal entity of limited liability company (PT), foundation or cooperation is when the authorities validate the entity to become a legal entity. The effective date of the existence or establishment of legal entity of a limited liability company, foundation and cooperative is since, the issuance of a decree on the validation of limited liability company, foundation and cooperative as a legal entity. The validation may be deemed as the establishment of an independent legal entity, so that, it may take a legal action independently. In a limited liability company such is expressly stated in Article 7 Paragraph 2 of Law No. 40 of 2007 on limited liability company that reads. "Company obtains a legal entity status on the date of issuance of minister's decree concerning the validation of company legal entity".

In a foundation, such matter is expressly stated in Article 11 Paragraph 1 of Law No. 16 of 2001 on Foundation that reads. "Foundation obtains a legal entity status after the foundation's deed of establishment has been validated by the minister".

While in a cooperative such matter is expressly stated in Article 13 Paragraph 1 of Law No. 17 of 2012 on cooperatives that reads. "Cooperative obtains a validation as a legal entity after the cooperative's Deed of Establishment is validated by the Minister".

In a Joint Operation (JO) for the reason that its establishment is based on the agreement of the parties entering into a cooperation then the effective date of the establishment of Joint Operation (JO) is the date when the agreement was made namely when the Joint Operation (JO) agreement is signed by the parties of Joint Operation (JO). Thus as of the date the agreement is signed, the status of Joint Operation (JO) entity is deemed existent or established and therefore it may research or be in operation.

Joint Operation (JO) as a Quasi Legal Entity, Joint Operation (JO) may be classified as a quasi legal entity (shadow legal entity) because Joint Operation (JO) is a group of parties entering into a cooperation to construct or implement a project. The board of directors in Joint Operation (JO) is the party given the authority to act for and on behalf of Joint Operation (JO) as an entity. The Organ Joint Operation (JO) acts as the executive to conduct activities of Joint Operation (JO) entity. Organ of board of directors is established and agreed upon by the parties in Joint Operation (JO) entity and in general, the authority and limitation to the authority of board of directors are governed in quite details in the cooperation agreement.

The people appointed to occupy the position in the organ of board of directors is called director who has the authority to act for and on behalf and represent Joint Operation (JO) entity. The duties and position of director in Joint Operation (JO) entity are similar to the duties and position of director in a limited liability company (PT). Board of directors in a Joint Operation (JO) is given duties, authority and responsibility to carry out the daily operational research as a company and implement company's policies. In a limited liability company, board of directors is a complementary instrument of company in carrying out all company activities and represent the company, both inside or outside the court (Budiartha, 2002).

For the reason that Joint Operation (JO) is a quasi legal entity (not a formal legal entity) then Joint Operation (JO) as an entity may have wealth or assets independently and separately from the parties in Joint Operation (JO), both movable or immovable goods, except land (because laws and regulations in land do not allow business entity other than legal entity to have a title to a certain land such as rights to build, right of use and right to cultivate). If there is an asset (in the form of a lot) that has been possessed or will be possessed then such an asset mentioned above will be put under the name of one or all parties in Joint Operation (JO) according to the agreement. This is different from limited liability company foundation or cooperative which is a legal entity and thus may possess assets in the form of land.

Quasi legal entity in the form of mutual funds in the form of collective investment contract, Joint Operation (JO) as a quasi legal entity or shadow legal entity (quasi legal entity) has a similarity with an investment institution namely mutual funds in the form of CIC (Collective Investment Contract). In Article 1 No. 27 of Law No. 8 of 1995 regarding capital market it is mentioned that mutual funds is a frame used to collect funds from the public investors to be further invested in securities portfolio by investment manager. Investment manager is the party assigned to manage securities portfolio for the customers or manage portfolio of collective investment contract for a group of customers.

Basically there are two types of participation in the form of mutual funds namely mutual funds in the form of a company and mutual Funds in the form of Collective Investment Contract (CIC). If in the form of a company, then the frame of mutual funds is limited liability company (PT) both closed PT or public PT (Tbk). If a mutual fund institution is in the form of limited liability company (PT), it is clear that the mutual fund institution is a legal entity that has obtained a validation from the authorized institution as such it becomes a legal subject. As in the

case of other securities companies involved in sale purchase of securities activities, a mutual fund company must obtain a license from capital market supervisory board (Bapepam). In addition as a limited liability company, mutual funds in the form of a limited liability company must also be subject to the general regulations on limited liability company set forth in the law on limited liability company.

While the participation of mutual funds in the form of Collective Investment Contract (CIC) may only be carried out based on a contract or agreement (vide Article 18 Paragraph 1 and Article (4) of Law No. 8 of 1995). Based on regulation of Bapepam-LK number IV.C.5-and decision of chairman of Bapepam-LK number KEP-43/BL/2008 on mutual funds in the form of limited participation of collective investment contract it is explained that mutual funds in the form of limited participation of the collective investment contract is the frame used to collect funds from investors which further be managed by investment manager in a securities portfolio. In mutual funds in the form of a limited liability company, board of directors of company makes two contracts each with investment manager and custodian Bank for investment management while for mutual funds in the form of the collective investment contract there is only one contract called collective investment contract (Pratomo and Nugraha, 2001).

Therefore, the definition of collective investment contract is a contract between investment manager and custodian bank which is binding the participation unit holders. Investment manager is given an authority to manage collective investment portfolio while custodian bank is given an authority to implement collective custody (Anonymous, 2012). In addition, custodian bank also has administrative functions. In this case custodian bank has the obligation to settle each transaction conducted by investment manager for the interests of mutual funds (Jaka, 2002). The parties involved in the investment participation contract is investment manager and custodian bank which are binding the people that invest their money in the form of securities portfolio (shares).

The characteristics of Collective Investment Contract (CIC) is similar to Joint Operation (JO). Joint Operation (JO) Agreement is similar to or almost the same as the construction of Agreement between investment manager and custodian bank in Collective Investment Contract (CIC). Both are included in an agreement that contains provisions on investment and procedures for management. Investment manager is the party carrying out activities and managing investment in Collective Investment Contract (CIC) which is very similar to an

agreement between the participants of Joint Operation (JO) in an agreement contained in an agreement with the construction of Joint Operation (JO). The conferment of authority by the investors to investment manager in a Collective Investment Contract (CIC) in order to be able to implement the activities and manage investment of Collective Investment Contract (CIC) is the same as the conferment of authority by the participants of Joint Operation (JO) to the board of directors as such the board of directors may carry out the activities and implement the project that have been agreed in the Joint Operation (JO).

An Agreement which is made between investment manager and custodian bank in Collective Investment Contract (CIC) shall bind the investors as the buyers of securities portfolios in the investment contract. Furthermore what about the legal status in the Collective Investment Contract (CIC). Because the construction of collective investment contract serves as a frame that collects funds from the public, specifically investors, then collective investment contract which is formed based on a contract (agreement) can be categorized as an entity that does not need a validation from the authorized institution.

Nevertheless, investment manager who is given an authority to manage securities portfolio may act for and on behalf of collective investment contract as such the investment in the form of collective investment contract may be called quasi legal entity and juridical formal is not a legal entity. The characteristics are similar to the construction of Joint Operation (JO) agreement which implement the research of a project which is also qualified as quasi legal entity. Therefore, collective investment contract and Joint Operation (JO) have a similarity as such both may be categorized as a quasi legal entity.

### **Joint Operation (JO) in the practice in indonesia:**

Implementation of Joint Operation (JO) in practice. Joint Operation (JO) as one of cooperation models in project implementation would certainly involve the roles of the parties that have potentials or expertise in their field to carry out the research. In such a cooperation, the parties are expected to support each other to implement project development and building, so that, project completion will be achieved optimally.

The establishment of Joint Operation (JO) entity started with an agreement among the parties intending to enter into a cooperation (participant candidate) in developing and carry out a certain project. The facilities and infrastructures to be undertaken and managed jointly among the parties by establishing or incorporating Joint Operation (JO) entity. The establishment of such Joint

Operation (JO) usually is made using a certain name according to the name of the project to be developed and operated based on a mutual agreement or according to the names of the participants. The Joint Operation (JO) is for example Joint Operation (JO) of apartement biola or SOWJ JO (Shimizu-Obayashi-Wijaya Karya-Jaya Konstruksi Joint Operation). In such Joint Operation (JO) entity, the people that have been appointed by the parties shall have the position as board of directors in Joint Operation (JO) entity (Anonymous, 2008).

In the project implementation, the parties shall mutually agree to appoint and confer power and authority to Joint Operation (JO) entity that which is implemented by the board of directors of Joint Operation (JO) appointed mutually by the parties in Joint Operation (JO). If the funds are not sufficient to finance the project, the capital owner with the approval of all parties of Joint Operation (JO), may obtain financing from the bank or other financial institution through loan or credit. The profit gained from the completion of project by the board of directors of Joint Operation (JO) shall later be distributed among the parties according to the percentage agreed upon in a Joint Operation (JO) agreement. The percentage of each party shall be determined according to the value of participation invested in the Joint Operation (JO).

Joint Operation (JO) Model in practice in Indonesia among others is Joint Operation (JO) for a property development and sale project and Joint Operation (JO) for a construction project.

Joint Operation (JO) for property development and sale. In this Joint Operation (JO) Model, the participants are as follows. A one or more parties that have land but do not have sufficient capital to cultivate the land, b one or more parties that have capital but do not have land and C one or more parties that have expertise, experience and human resources.

In Joint Operation (JO) with the model of property development and sale project, the parties that participate are expected to support each other to implement property project development, so that, project completion can be achieved optimally and more efficiently. Optimization and efficiency may be achieved because, a the party that owns land but does not have capital may gain profit due to the capital from other participants that have capital and the party that have capital and expertise but does not have land, may have business opportunities by utilizing the capital and expertise existing in the land owned by other participants that have land.

Implementation of Joint Operation (JO) in the project development by the parties is carried out by entering into a cooperation in terms of planning, supervision,

development and marketing of project. In the implementation of property development project, the parties mutually agree to appoint and confer power to the Board of directors of Joint Operation (JO) that have the duties to implement and conduct planning, building, operation and marketing or sale of property including arrangements for required licenses. The land owner delivers the land to the board of directors Joint Operation (JO) dan investor through Joint Operation (JO) entity financing the building of property on the land provided by the land owner.

If the funds are not sufficient to finance the project, Joint Operation (JO) with the approval of all parties of Joint Operation (JO) may obtain financing from banks or other financial institutions through loan or credit. To the loan or credit, securities may be given against the asset controlled and owned by Joint Operation (JO) which has been transferred by the participants of Joint Operation (JO). Board of directors in Joint Operation (JO) is given an authority to bind the goods included in the cooperation as securities for the debt to the bank or financial institution except for goods in the form of land (movable goods), the board of directors of Joint Operation (JO) shall act as the agent of the party in Joint Operation (JO) that owns the land.

If the property project development has been completed, the sale of property units to consumers (end users) shall be conducted by the board of directors of Joint Operation (JO) who are acting as the agent of and on behalf of the land owner. The profit from operating and sale of the land by the board of directors of Joint Operation (JO) will later be divided among the parties according to the amount of percentage agreed upon in Joint Operation (JO) agreement. The amount of percentage for each party shall be determined proportionate to the amount of participation in the Joint Operation (JO). Joint Operation (JO) for construction project: In this Joint Operation (JO) Model, the participants are as follows a one or more parties having capital but does not or do not have the expertise or sufficient human resources and b one or more parties having the expertise and sufficient human resources but do not have sufficient capital.

The establishment of Joint Operation (JO) for a construction project can also be done by the participants who have expertise, sufficient human resources and capital but due to the value of construction project to be undertaken, the participants feel it necessary to enter into a cooperation to join all the strengths among the participants to ensure that the successful rate of project completion is higher with lower risks or the requirements from government that some elements of project participants are domestic business entities.

Some examples of Joint Operation (JO) for construction project in Indonesia are Joint Operation (JO) between Shimizu Corporation and PT. Total Bangun Persada who conducted Astra Tower ([http://www.shimz.co.jp/english/news\\_release/2017/2016051.html](http://www.shimz.co.jp/english/news_release/2017/2016051.html)) (Anonymous, 2007) development project Joint Operation (JO) between Tokyu Corporation and PT. Wijaya Karya and Joint Operation (JO) between Sumitomo Mitsui Construction Company (SMCC) and PT. Hutomo Karya that conducted part of Mass Rapid Transit (MRT) Jakarta Development Project.

The implementation of Joint Operation (JO) for the construction project is similar to Joint Operation (JO) for property development and sale project, namely in the implementation of Joint Operation (JO) the parties jointly agree to appoint and give power and authority to the Board of Directors of Joint Operation (JO) only that for a construction project, the obligation to provide land and operation (including marketing and sale) is not part of the obligation and responsibility of Joint Operation (JO) for example Joint Operation (JO) of Astra Tower development conducted by Joint Operation (JO) between Shimizu Corporation and PT. Total Bangun Persada at the request of PT. Astra International Tbk. The obligation of Joint Operation (JO) for Astra Tower development is only for construction research (that includes planning, development and guarantee for construction in a certain period as well as arrangements for required licenses). However, after construction research have been completed, the operational authority (including marketing and sale of office units) became the right and authority of PT. Astra International Tbk.

### **BANKRUPTCY IN JOINT OPERATION (JO)**

In Indonesia, bankruptcy is governed in Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligation (Bankruptcy Law). Bankruptcy law governs that those that may be filed for bankruptcy are debtors that have two or more creditors and do not fully settle at least one debt that has fallen due and payable. Debtor in this case is the person that has a debt arising from an agreement or law which settlement can be demanded before the court. Definition of person in this case is natural person or corporation, including corporation in the form of legal entity or non-legal entity in liquidation.

By referring to the previous description that Joint Operation (JO) is a quasi legal entity and referring to the arrangement in bankruptcy law, despite Joint Operation (JO) is a quasi legal entity, Joint Operation (JO) may become a bankruptcy subject. If Joint Operation (JO) is

not able to fulfill its obligations to the creditors, a petition for bankruptcy may be filed against Joint Operation (JO) to commercial court. Bankruptcy against Joint Operation (JO) as a quasi legal entity cannot be filed against the parties participating in such Joint Operation (JO). In this case, the one filed for bankruptcy is the boedel or estate that has been delivered in the Joint Operation (JO).

### **BASIC STRUCTURE OF JOINT OPERATION AGREEMENT**

In principle, Joint Operation (JO) agreement has a structure which generally is the same as other agreements in general, however, surely it has some characteristics or content of agreement which is in line with the basic concept of Joint Operation (JO) itself. The basic structure of Joint Operation (JO) Agreement is as follows:

**Title of Joint Operation (JO) agreement:** The title of Joint Operation (JO) agreement is usually “Joint Operation agreement” complete with the name of Joint Operation Project. As an example, Joint Operation (JO) agreement of biola apartment project.

**Capacity to act of the parties (Komparisi):** Capacity to act of the Parties (Komparisi) of a Joint Operation (JO) agreement contains information of the parties that intend to bind each other in a Joint Operation (JO) agreement.

**Background or recital:** Background of Joint Operation (JO) agreement contains a brief description concerning the intentions of the parties which is the background of the Joint Operation (JO) agreement.

**Content of agreement:** Definition: This study contains definitions of the terms used in Joint Operation (JO) agreement. Subject matter of this agreement or purpose and objective. This study contains the basis or purpose and objective of the drafting of Joint Operation (JO) agreement.

**Period of cooperation agreement:** This study contains the period of Joint Operation (JO) agreement where in general also contains a clause that based on the agreement of the parties, the period of cooperation may be extended.

Appointment of board of directors of Joint Operation (JO). This study contains the structure, procedure for appointment and names of board of directors of Joint Operation (JO) who are responsible to carry out Joint Operation (JO) project.

**Stages of Joint Operation (JO)L:** This study contains the stages of implementation or implementation of Joint Operation (JO) agreement.

**Distribution of profit:** This study contains the distribution of profit, basis of calculation and procedure of profit distribution.

**Financing from third party and securities:** This study contains the availability of options to obtain financing from any third party, regarding the party responsible to seek and responsible for funding and the party obligated to provide securities related to the funding by a third party.

**Implementation and completion of project:** This study contains the stages of implementation and completion of project and the parties responsible to carry out.

**Sale:** This study contains the procedure for sale of object produced from Joint Operation (JO) project for example land and building or plot of land ready to build.

**Power:** This study contains the conferment of power from the parties to the board of directors of Joint Operation (JO) related to the implementation of Joint Operation (JO) project.

**Representation and warranty:** This study contains representation and warranty of the parties related to Joint Operation (JO) agreement.

**Restriction:** This study contains restriction for the parties in taking certain legal study in particular those related to Joint Operation (JO) project.

**Termination of agreement:** This study contains termination of Joint Operation (JO), agreement, procedure and causes that may result into a termination of Joint Operation (JO) agreement and the legal consequences of the termination of Joint Operation (JO) agreement.

**Force majeure:** This study contains the conditions beyond the intention and control of the parties which is of force majeure that could be given as reasons for the parties in Joint Operation (JO) agreement to delay the performance of obligations.

**Transfer of rights and obligations:** This study contains prohibition to transfer rights and obligations arisen based on Joint Operation (JO) agreement without the approval of the other parties.

**Dispute:** This study contains the procedure for dispute settlement and choice of legal domicile.

**Correspondence:** This study contains the correspondence, procedure for correspondence and change of correspondence address.

**Survival of agreement:** This study contains the consequences to Joint Operation (JO) agreement if one of the provisions in Joint Operation (JO) agreement is declared not valid by the applicable legal provisions and procedure for the amendment of the provisions which are no longer valid.

**Miscellaneous:** This study contains other matters which are not governed in the study of Joint Operation (JO) agreement. The basic structure of Joint Operation (JO) agreement as mentioned above is standard and may be amended according to the agreement of the parties and shall be adjusted with the nature and purpose and objective of Joint Operation (JO).

## CONCLUSION

From the description in the foregoing that discussed Joint Operation (JO) entity, the Writer can withdraw the following conclusion, Joint Operation (JO) is one of juridical construction of cooperation between two parties where one party as the party that has or provides facilities and the other party is the owner or provider of funds, capability or expertise to support the implementation of research or project. Joint Operation (JO) is qualified as Entity as governed under Article 3 Paragraph (1) of government Regulation No. 1 of 2012 on the implementation of Law No. 8 of 1983 on value added tax and luxury goods sales tax as amended several times last by Law No. 42 of 2009.

Joint Operation (JO) is not a formal legal entity but rather a “quasi legal entity” because the establishment of Joint Operation (JO) entity is based on mutual agreement without having to obtain a validation from the authorities. Nevertheless, Joint Operation (JO) entity may act represented by the board of directors similar to legal entity of limited liability company (PT). Therefore, Joint Operation (JO) entity is a quasi legal entity and as such Joint Operation (JO) may have wealth or assets independently and separate from the parties of Joint Operation (JO), either movable goods or immovable goods, except land (because the laws and regulations on land does not allow business entity other than legal entity to have title to a certain land such as rights to build, right of use and right to cultivate). If there is an asset (in the



form of land) that has been possessed or will be possessed such asset will be put under the name of one or all parties in Joint Operation (JO) according to the agreement.

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