



Legal Analysis of The Notary's Liability in The Drafting of The Joint Venture Agreement

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ABSTRACT

A Joint Venture Agreement is a legal instrument that plays a crucial role in the formation of joint ventures, particularly those involving foreign and domestic investors. This agreement serves as the foundation for regulating the legal relationships among the parties, ranging from capital contributions and the allocation of profits and losses to dispute resolution mechanisms. In the drafting process, the notary holds a strategic position as a public official authorized to execute authentic deeds and provide legal certainty for the parties. This study aims to analyze the notary's legal responsibilities in drafting a Joint Venture Agreement based on applicable laws in Indonesia. This study is a normative legal study employing both a statutory approach and a conceptual approach. The legal materials used consist of primary sources, namely laws and regulations pertaining to the office of notary, limited liability companies, and investment, as well as secondary sources such as books, academic journals, and relevant literature. The results of the study indicate that a Joint Venture Agreement is legally binding based on the principle of freedom of contract, provided it meets the legal requirements for a valid agreement. The notary is responsible for ensuring that the agreement drafted complies with applicable legal provisions, adheres to the principle of due diligence, and provides legal protection for the parties involved. If errors or negligence occur in the exercise of their authority that result in losses for the parties, notaries may be held liable in accordance with applicable legal provisions. Therefore, the notary's professionalism and due diligence are critical factors in ensuring legal certainty in the drafting of joint venture agreements.

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INTRODUCTION

A Joint venture is a form of cooperation between two or more companies to carry out a specific project or business, either through an existing company or a new company formed jointly (Hukum Online, 2023). In a joint venture², the parties combine their capital, expertise,

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and resources to achieve a common goal, and share the resulting profits and risks. The primary objective of a joint venture is to achieve synergy among the companies by combining their respective strengths to achieve better results than they would working alone (Hargrave, 2026). Joint venture may take the form of an operational cooperation or the formation of a new business entity. Joint venture is subject to contract law and the laws applicable in the jurisdiction where the joint venture is established.

The provisions contained in the joint venture agreement will serve as guidelines for the company's articles of incorporation. The agreement entered into by the parties will be incorporated into the articles of incorporation of the limited liability company (Wahyuni, 2023). The notary will review the contents of the agreement in the presence of the parties; if there are any discrepancies or changes in intent regarding the clauses, the parties will be advised to discuss the matter further in the presence of the notary so that the articles of incorporation are drafted in accordance with the parties' agreement.

The acceleration of rapidly growing economic sectors in every country is a phenomenon with implications for many nations around the world. This is particularly true for developing countries, which seek to attract foreign investors to invest in domestic companies. Joint ventures have become a key business strategy for enhancing both national and international economic growth (Putry et al., 2026). From a legal perspective, a joint venture is a form of collaboration between two or more business entities, whether domestic or foreign, to carry out a project or joint venture with a specific objective.

The formation of a joint venture, as a form of business cooperation involving domestic and foreign parties, requires a strong legal foundation to ensure legal certainty and legal protection for the parties involved. In practice, the Joint Venture Agreement (JVA) is a legal instrument that plays a crucial role as it governs various aspects of the collaboration, such as the rights and obligations of the parties, capital contributions, company management, the distribution of profits and losses, and dispute resolution mechanisms. The existence of the JVA serves as the primary foundation for the formation of a joint venture, particularly those involving foreign investment (Yusrizal, 2018). However, Indonesian positive law has not yet specifically regulated Joint Venture Agreements, thereby raising various legal issues regarding the status and binding force of such agreements within the Indonesian legal system, particularly in relation to contract law, limited liability company law, and investment law.

In the process of drafting a Joint Venture Agreement, the notary plays a strategic role as a public official authorized to execute authentic deeds. The notary is required to ensure that the agreement meets the legal requirements for validity, does not conflict with applicable laws and regulations, and provides legal certainty and protection for the parties. However, in practice, there remains a potential for errors or negligence in the drafting of agreements that could result in losses for the parties, whether caused by the agreement's substance being inconsistent with applicable legal provisions or the notary's suboptimal application of the principle of due diligence. These conditions raise questions regarding the limits of a notary's legal liability in drafting a Joint Venture Agreement, as well as the legal consequences that may arise if the notary commits an error or acts negligently in the exercise of their authority.

Several previous studies have examined the role of notaries in various aspects of investment activities and the establishment of business entities. Wahyuddin (Wahyuddin, 2025) examined the role of notaries in international investment cooperation; Oktasa (Oktasa, 2021) investigated the responsibilities of notaries in drafting cooperation agreements; and Moertiono (Moertiono, 2024) discussed the role of notaries in the establishment of foreign-invested limited liability companies. Meanwhile, Sari (Dian Novita Sari, 2018) examines the role of notaries in the process of drafting deeds of incorporation for limited liability companies. However, these studies have not specifically examined the legal responsibilities of notaries in drafting Joint

Venture Agreements as legal instruments that form the basis for the establishment of joint ventures.

Thus, this study is novel because it focuses on analyzing the legal responsibilities of notaries in drafting joint venture agreements, as well as the legal consequences that arise if a notary commits an error or acts negligently in the performance of their duties and authorities. Based on the above, the research question in this study is: What are the legal responsibilities of notaries in drafting joint venture agreements under the applicable laws in Indonesia?

RESEARCH METHOD

This study is a normative legal study conducted by examining the applicable legal norms regarding joint venture agreements and the notary's responsibilities in their drafting. The approaches used in this study are the statutory approach and the conceptual approach. The statutory approach is used to analyze various laws and regulations governing notaries and joint ventures, while the conceptual approach is used to examine legal doctrines, concepts, and theories relevant to the research subject.

The legal materials used in this study consist of primary and secondary legal sources. Primary legal materials include various laws and regulations, namely Law No. 2 of 2014 Amending Law No. 30 of 2004 on the Office of the Notary, Law No. 40 of 2007 on Limited Liability Companies, Law No. 25 of 2007 on Investment, Government Regulation No. 83 of 2001 on Amendments to Government Regulation No. 20 of 1994 on Share Ownership in Companies Established for the Purpose of Foreign Investment, and Presidential Regulation No. 10 of 2021 on Investment Business Sectors. Secondary legal materials consist of books, scientific journals, research results, and various other literature relevant to the research topic.

Legal materials were collected through library research by reviewing and cataloging various legal materials related to the research subject. Subsequently, the collected legal materials were analyzed qualitatively using a descriptive-analytical method to gain a comprehensive understanding of the legal status of the Joint Venture Agreement and the notary's responsibilities in drafting it under Indonesian positive law.

ANALYSIS AND DISCUSSION

Joint Venture

A Joint venture agreement (JVA), also known as a joint venture contract, serves as the basis for the formation or establishment of a joint venture, in which the shareholders are parties who have bound themselves through an agreement in accordance with applicable law. It is a form of cooperation between companies to carry out a joint business project. It involves contributions in the form of capital, resources, expertise, and various risks, as well as the benefits and losses agreed upon by the parties to the cooperation agreement, which aims to achieve specific business objectives (Tan et al., 2023).

Joint ventures in Indonesia are regulated by Law No. 25 of 2007 on Investment, Government Regulation No. 83 of 2001 amending Government Regulation No. 20 of 1994 on Share Ownership in Companies Established for the Purpose of Foreign Direct Investment (FDI), and Presidential Regulation No. 10 of 2021, which provides additional provisions governing joint venture investment. The characteristics of a joint venture are the traits that define a joint venture between two or more companies. By understanding the objectives and characteristics, the parties can utilize the joint venture as an effective strategy to achieve growth and success in a competitive business environment.

A joint venture has several characteristics, including the following:

- a. The formation of a new entity or the use of an existing entity. A joint venture can be established by setting up a new company or using an existing company as a vehicle for the partnership. A new entity will have a legal and financial identity separate from the companies involved. Meanwhile, if an existing entity is used, this may occur because one of the companies involved in the joint venture already possesses a suitable entity to house the joint venture activities, within which various joint venture operations will be managed.
- b. Capital contribution. The parties involved will contribute capital or other resources to the joint venture in accordance with the agreement. This serves as a form of financial or asset contribution by the parties participating in the joint venture.
- c. Profit and loss sharing. Profits and losses from the joint venture will be shared in accordance with the proportions agreed upon by the parties.
- d. Collaboration for mutual success. The ultimate goal is to achieve mutual success through collaboration, by leveraging each party's strengths to achieve better results.
- e. Joint oversight. The parties in a Joint Venture typically have the right to participate in decision-making and oversee business activities for the common good.

In practice, joint ventures have become a popular form of business collaboration because they offer various benefits to the companies involved. However, it is important to understand the legal aspects and draft a clear agreement so that the joint venture can operate successfully and be mutually beneficial to all parties. The joint venture agreement must be drafted clearly and comprehensively, covering all aspects of the collaboration, including objectives, management structure, profit sharing, and dispute resolution (Harahap, 2016). Companies entering into a joint venture must consider competition law to avoid monopolistic practices or unfair competition. A joint venture involves the sharing of risks and responsibilities, which must be clearly defined in the agreement. The management structure of the joint venture must be clear, including the division of authority and responsibility in decision-making. A joint venture involves the sharing of risks and responsibilities, which must be clearly defined in the agreement established from the outset (Suryana et al., 2020).

Joint venture differs from a merger or acquisition. A merger or acquisition involves the merger or takeover of one company by another, whereas a joint venture is a more flexible form of cooperation aimed at achieving specific objectives. The initial stages of establishing a joint venture company, which the parties have discussed, are then formalized in writing in a document known as a Memorandum of Understanding (MoU). This constitutes the initial written agreement between the foreign party and the Indonesian party, which has been drafted and signed by both the foreign and Indonesian parties. This agreement contains provisions such as the terms of the agreement, including the purpose, responsibilities, and obligations of the parties involved, confidentiality, legal compliance, limitation of liability, governing law, authorization, and execution.

Memorandum of Understanding (MoU) is a document containing a preliminary agreement between two or more parties regarding a collaboration or plan for joint action. This type of agreement, which has become widely used in recent years, is set forth in writing in the same manner as a standard agreement or contract. Similar to a joint venture agreement, which contains several clauses and is drafted in both English and Indonesian, an MoU also includes such provisions. An MoU is not intended for use once the joint venture company is established and operational. Therefore, the parties must draft a joint venture agreement that is further regulated in greater detail.

As stipulated in the Investment Law, foreign investments in Indonesia must be carried out through a legal entity domiciled in Indonesia. Foreign investors must comply with Law No.

40 of 2007 on Limited Liability Companies when investing; this law further explains that a limited liability company is a legally recognized entity established through a contract. The formation of a joint venture is based on an agreement grounded in the principle of freedom of contract (Nugroho & Purwaningsih, 2024).

The formation of a joint venture company generally begins with the drafting of a Joint Venture Agreement between the foreign investor and the domestic investor, which outlines the parties' rights and obligations, capital contributions, company management, and other aspects of the collaboration. This agreement is made based on the principle of freedom of contract, provided it does not conflict with applicable laws and regulations. Subsequently, the parties' agreement is formalized in the Deed of Incorporation of a Limited Liability Company, which includes the Articles of Association as the legal basis for establishing the joint venture as a legal entity. Thus, the Joint Venture Agreement serves as the contractual foundation, while the Articles of Association serve as the legal foundation for the establishment of the joint venture as a legal entity.

Joint venture is subject to contract law and must be a limited liability company under Indonesian law, in accordance with Article 5(2) of the Investment Law and Law No. 40 of 2007 on Limited Liability Companies. The Joint Venture Agreement serves as the basis for the establishment of a joint venture, where the shareholders are the parties who have bound themselves through an agreement in accordance with applicable law. Since the joint venture agreement will outline the scope or subject matter of the cooperation, national law will be more closely tied to the legal provisions regarding the establishment of a joint venture as set forth in the Limited Liability Companies Act. The cooperative relationship in this context involves foreign capital, thereby directly invoking the relevant national investment law, namely the Investment Law. If Indonesian law is chosen by the parties, then the essential elements of the agreement that constitute the requirements for the validity of the agreement apply, such as subjective and objective elements based on the Civil Code.

The importance of joint ventures lies in several factors, including market access, where joint ventures enable companies to enter new markets or expand their reach in existing ones. Another factor is the pooling of expertise, which involves combining the skills and resources of various parties to achieve goals more effectively. On the other hand, it relates to risk-sharing, where a joint venture distributes financial and operational risks with business partners. Finally, it involves fostering innovation to drive the development of new products.

This agreement is permitted under the principle of contractual freedom, provided it complies with Indonesian law. Second, the joint venture agreement is legally binding and forms the basis for establishing the joint venture company. The joint venture company will be subject to the terms of the agreement and must be a limited liability company under Indonesian law, in accordance with Article 5(2) of the Investment Law and Law No. 40 of 2007 on Limited Liability Companies.

The structure of a joint venture agreement generally defines the objectives and policies of the joint venture. The joint venture agreement may later serve as the basis for interpreting agreements entered into by the joint venture and its partners. In Indonesia, it is considered necessary to realign the joint venture agreement with the articles of association of the joint venture, which is structured as a Limited Liability Company (LLC), as the sole corporate form that complies with the provisions of the Investment Law (UUPM).

Provisions regarding the receipt of fixed interest on shares and provisions regarding the granting of personal benefits to founders or other parties are not permitted to be included in the articles of association. A joint venture agreement serves as the constitution for a joint venture. The Articles of Association of the joint venture govern all more technical matters. Given the substantive provisions of the Articles of Association of a limited liability company (PT), not all

provisions contained in the joint venture agreement can be included in the Articles of Association of the joint venture. Some of these provisions include: definitions and terminology, confidentiality, technology transfer, non-competition clauses, substitution of parties, choice of law, resolution of legal disputes, force majeure, termination, language, notices, breach of contract, and the agreement as a whole; not all provisions agreed upon in the joint venture agreement can be incorporated into the company's articles of incorporation, This is because the articles of incorporation issued by a notary are drafted in a standardized format. The purpose of this standardization is to streamline the process of assessing the completeness of documents to be submitted to the Ministry of Law and Human Rights.

The Role of a Notary in The Joint Venture Agreement

The notary's role in establishing a joint venture in Indonesia generally involves drafting the Articles of Incorporation for the limited liability company (PT) that will operate the joint venture and preparing the Joint Venture Agreement, which sets forth the rights and obligations of the parties. Notaries play a crucial role in providing legal certainty and preventing potential disputes among the parties by verifying the parties' identities, ensuring the legality of documents, and establishing key provisions within the agreement (Khalis, 2021).

By understanding the applicable regulations and drafting a clear and comprehensive agreement, a joint venture can serve as an effective means of expanding a business to achieve shared goals. In implementing a joint venture, the parties must draft a Joint Venture Agreement (JVA) that will govern the rights, obligations, and relationships among the parties involved. This agreement must meet the legal requirements for a valid contract, including the existence of mutual consent, legal capacity of the parties, a clear subject matter of the agreement, and a lawful purpose (Dewi, 2023).

General steps in the notary's procedures for a joint venture:

- a. Initial Consultation and Exploration. The notary will provide advice and explanations to the parties regarding the most appropriate legal form; particularly if foreign capital is involved, the entity must be established as a PT. The notary will provide legal counsel to the parties regarding the legal aspects of the joint venture, including obligations, rights, and potential risks that may arise (Rachmawati & Hanim, 2018).
- b. Drafting of the Joint Venture Agreement. The notary assists in drafting the Joint Venture Agreement (JVA), which is a written agreement that sets forth in detail the various aspects of the joint venture partnership.
- c. Preparation of the Articles of Incorporation for a Limited Liability Company (PT). If the joint venture is established as a new legal entity, the notary will prepare the Articles of Incorporation for the PT in accordance with Law No. 40 of 2007 on Limited Liability Companies. This document serves as an authentic and binding record for all parties involved. This deed will include the composition of the board of directors, the board of commissioners, share ownership, authorized capital, and paid-in capital.
- d. Legal Entity Registration. Once the Articles of Incorporation for the PT have been drafted, the notary will submit an application for legal entity registration to the Ministry of Law and Human Rights (Kemenkumham) (Fahira & Mahmudah, 2024). The notary must ensure that all documents and legal actions related to the joint venture comply with applicable laws and regulations in Indonesia, including regulations regarding foreign investment if the joint venture is international in nature.
- e. Handling of Other Documents. The notary can also assist in handling documents related to the establishment of the joint venture, such as the Business Identification Number (NIB), Business License, and the Company's Taxpayer Identification Number (NPWP). Additionally, the notary will retain the original deed as official evidence for 25 years.

It is important for the parties involved in a joint venture to select a competent and experienced notary, and to ensure that the notary fully understands their rights and obligations under the agreement. The risks that may arise in a joint venture agreement regarding the notary include legal uncertainty if the notary fails to perform their duties properly, such as failing to prepare a valid authentic deed or failing to properly oversee the signing process. Additionally, a civil lawsuit may be filed if errors or negligence occur during the drafting of the deed, which could result in losses for one of the parties. The parties involved in the joint venture agreement also bear the responsibility to understand the contents of the agreement and the risks that may arise in the future. In this context, the notary serves only as a facilitator in drafting the agreement and providing legal certainty, but the ultimate responsibility remains with the parties.

Law plays a crucial role in joint ventures, whether in their formation, operations, or dissolution. It provides a clear framework governing the rights and obligations of the parties, as well as various critical aspects of business collaboration. Understanding the legal aspects related to joint ventures is essential for business stakeholders to operate the venture legally, avoid potential issues, and achieve the business objectives desired by all parties.

In a joint venture agreement, a notary plays a vital role in ensuring the validity and legal certainty of the agreement (Maharani, 2022); however, there are several risks associated with the notary's role and the parties involved, such as potential discrepancies between the formalities of the deed and the agreement's content, misunderstandings among the parties regarding the agreement's terms, and the notary's liability for losses resulting from negligence. The following are the legal roles of a notary in a joint venture:

- a. **Legal Basis and Licensing.** The law provides the legal basis for the formation of a joint venture, including requirements regarding the legal entity structure (typically a PT), capital ownership, legal documents, and the licensing process.
- b. **Legal Protection.** The law provides protection for the parties involved in the joint venture. This includes protection regarding business confidentiality, intellectual property, and invested capital.
- c. **Contractual Provisions.** The law governs the joint venture agreement, which details the rights and obligations of each party, including contributions, the allocation of profits and losses, and dispute resolution mechanisms.
- d. **Dispute resolution.** The law provides mechanisms for resolving disputes that may arise in a joint venture, whether through negotiation, mediation, arbitration, or litigation.
- e. **Dispute resolution.** The law ensures that the joint venture operates in accordance with applicable laws and regulations, including the Competition Law and other relevant regulations.
- f. **Investment Protection.** The law governs investment protection for both domestic and foreign investors to ensure that their investments are secure and profitable.

Administrative sanctions in administrative law are instruments of public law that the government may use in response to noncompliance with obligations set forth in state administrative norms. Administrative sanctions imposed on notaries who violate the obligations and prohibitions of the Notary Law consist of: written warnings, temporary suspension, honorable dismissal, and dishonorable dismissal. Administrative sanctions may be imposed on a Notary for violating the following Articles: Article 7(1), Article 16, Article 17, Article 19, Article 32, Article 37, Article 54, Article 58, and Article 59 of Law No. 30 of 2004 on the Office of Notary.

The Notary Public Law's framework for administrative sanctions places a written reprimand as the first step in the sanctioning process; this serves as a warning to the notary from the Supervisory Board. If the notary fails to comply, this is followed by temporary suspension.

If the notary in question also fails to comply with this sanction, they may be subject to dismissal without honor. The application of the provisions of the above Article must, of course, take into account the severity of the violation committed by the Notary, in the sense that the application of these sanctions is gradual or tiered.

Risks associated with the role of a notary in a joint venture agreement include:

- a. Discrepancies between the formalities of the deed and the content of the agreement. The notary is responsible for drafting an authentic deed in accordance with the parties' intentions. However, if the content of the agreement provided by the parties is unclear or inconsistent with applicable laws and regulations, it may lead to legal issues in the future that will also affect the notary who drafted the agreement (Paskadwi, 2022).
- b. Lack of understanding on the part of the parties. Although the notary is tasked with explaining the contents of the deed, there is a risk that the notary may not be fully able to ensure that all parties deeply understand all the consequences, rights, and obligations in the joint venture agreement, especially if there are complex clauses (Putri, 2019).
- c. Civil liability of the notary. If a party suffers losses due to the notary's error or negligence in drafting a deed, the notary may be sued for civil damages. This includes nominal damages, compensation, or even punitive damages.
- d. Administrative liability. In the context of a joint venture, a notary may take certain actions that could lead to administrative proceedings. This includes failing to exercise due diligence, not thoroughly verifying identities and documents, and facilitating the preparation of a deed that does not comply with applicable law or contains false statements. In addition to civil liability, a notary may also face administrative sanctions if found to have violated applicable laws or regulations related to their duties.
- e. Errors in interpreting the deed. Notaries must also exercise caution in interpreting the contents of agreements to prevent misinterpretations that could harm the parties involved. This is because various risks may arise in the contractual relationship between the notary and the client regarding a joint venture agreement.

CONCLUSION

A joint venture agreement is a legal instrument that plays a crucial role in the formation of a joint venture, as it serves as the foundation for regulating the legal relationships among the parties, including their rights and obligations, capital contributions, corporate management, and dispute resolution mechanisms. Although not specifically regulated by Indonesian law, a joint venture agreement remains legally binding under the principle of freedom of contract as set forth in the Civil Code, provided it meets the requirements for a valid agreement and does not conflict with applicable laws.

Notaries bear significant legal responsibilities in drafting Joint Venture Agreements, namely ensuring that the agreement is drafted in accordance with applicable laws and regulations, meets the requirements for a valid agreement, and provides legal certainty and protection for the parties. In exercising their authority, notaries are required to apply the principles of prudence, professionalism, independence, and diligence in verifying the identities of the parties and the substance of the agreement. If a notary commits an error or acts negligently, resulting in losses for the parties, the notary may be held liable in accordance with applicable laws, whether in the form of civil liability, administrative liability, or other forms of liability as stipulated in the Notary Public Act. Therefore, a comprehensive understanding of the notary's responsibilities in drafting a Joint Venture Agreement is essential to ensure legal certainty and prevent future disputes.

AUTHOR CONTRIBUTION

HF served as the lead author, responsible for formulating research ideas and concepts, developing the research framework, analyzing legal materials, and drafting the manuscript. MA contributed to strengthening the literature review and conceptual analysis, and revised the manuscript to enhance the article's academic quality.

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