



TAX INCENTIVE ARRANGEMENT FOR JOINT VENTURE COMPANIES POST-CIPTAKER IN THE CASE OF PT KCIC

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Keywords: *Abstract*

Joint Venture, Tax, Company. A Joint Venture Contract is a commercial activity carried out by two or more parties through an institution formed to carry out a common goal. One form of the Joint Venture in Indonesia is the Jakarta and Bandung High Speed Rail Project which involves a joint venture between a consortium of SOEs through PT Pilar Sinergi BUMN Indonesia (PSBI) and China Railway International Co. Ltd. Consortium. The purpose of this paper is to find out the arrangements related to post-Ciptaker Joint Venture tax incentives in the case of PT. KCIC. This research was conducted using a normative juridical approach based on a collection of relevant documents and literature studies that had been processed and put together. The results of this study indicate that PT KCIC cannot be subject to Income Tax because it is based on the provisions of Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects and Article 111 of Law Number 11 of 2020 concerning Job Creation which adds Article 2 paragraph (3) letter b in The Income Tax Law is a form of eliminating income tax on dividends from within the country.

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A. Introduction

In improving the development, welfare and prosperity of its people, each country tries to improve it in various ways that differ from one country to another. One of the things that is always done by the country is to attract as much foreign investment into the country (Yulianto, 2003). In Indonesia itself, the presence of foreign capital is a demand for both economic and political conditions. By making direct capital investment, it will be better compared to withdrawing international funds such as foreign loans which can be an alternative to collecting funds for the development of the Indonesian economy through capital investment (Syahyu, 2003). The benefits of Capital Investment can also accelerate national economic development, to process economic potential into real economic strength by using foreign capital, to create jobs, and so on.

Investment activities in a country certainly vary, the existence of an open nature for the public from the country with its citizens or with other countries will create a cooperation that is of a nature seeking profit from both parties. The existence of parties

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or people who have a common desire to build or establish a company with parties from within the country or parties from abroad which makes a company carry out a joint venture with its shareholders from various countries in the world. In terms of foreign investment there is a term Joint Venture which is a joint venture between two or more people or companies to establish a joint business in the form of togetherness into a company, either an existing company or a company established for that purpose. The term Joint Venture in society is very often used to carry out cooperation in certain fields that involve foreign parties in it.

In addition, the term Joint Venture in the government is given specifically for a certain form of cooperation between domestic capital owners (private or state-owned companies) and foreign capital owners. For business actors, the term Joint Venture is one effective way to develop and improve business. As stated by Ian Hewitt, Joint Ventures are very important for the business world because they have become an important strategic choice for many companies, especially those operating internationally.

Joint Venture Contract or joint venture contract is an effort of a commercial activity (with risk) by two or more parties (acting) through an institution or organization formed to carry out common goals (Head, 1997). According to the expert, Peter Mahmud, a Joint Venture contract is a contract between two companies to form a new company. This new company is then called a Joint Venture Company (Stutrisno, 2008). Joint Venture is a collaboration between foreign capital owners and domestic capital owners based on an agreement (contractual).

The regulation regarding Joint Venture in Indonesia itself is regulated in the Law, including Law Number 25 of 2007 as a Foreign Investment activity, Law Number 1 of 1967 Article 23 concerning Foreign Investment, PP Number 7 of 1993 concerning Shareholders of Foreign Investment Companies, PP Number 20 of 1993 concerning Share Ownership in Companies Established in the Framework of Foreign Investment and Decree of the Minister of State for Investment Fund Mobilization/Chairman of the Investment Coordinating Board Number: 15/SK/1994 concerning provisions for implementing share ownership in companies established in the framework of foreign investment.

One example of a joint venture project currently being carried out by Indonesia is the Jakarta-Bandung high-speed railway joint venture project. This project is a joint venture project which is also included in the national strategic project so that it is certain that there are many business facilities obtained for both parties, namely for Indonesia and its partner investor, namely China, which in this case is represented by China Railway International Co. Ltd.

National Strategic Projects are Indonesian infrastructure projects during the administration of President Joko Widodo which are considered strategic in increasing economic growth, equitable development, community welfare, and regional development. In order to increase economic growth through infrastructure

development in Indonesia, the Government is making efforts to accelerate projects that are considered strategic and have high urgency to be realized in a short period of time. In this effort, the Government through the Coordinating Ministry for Economic Affairs initiated the creation of a mechanism for accelerating the provision of infrastructure and issuing related regulations as a legal umbrella that regulates it. By using this mechanism, the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP) selects a list of projects that are considered strategic and have high urgency and provides facilities to facilitate project implementation. By providing these facilities, it is hoped that strategic projects can be realized more quickly.

In mid-2016 to early 2017, an evaluation and selection of strategic projects and mechanisms for accelerating their development were carried out. The results of the evaluation and selection were outlined in Presidential Regulation No. 58 of 2017 concerning amendments to Presidential Regulation No. 3 of 2016 concerning Acceleration of the Implementation of National Strategic Projects. Based on this Regulation, 245 National Strategic Projects (PSN) were decided plus 2 programs, namely the electricity program and the aircraft industry program (KPPIP, 2017). However, there were changes Based on Presidential Regulation No. 56 of 2018 concerning amendments to Presidential Regulation No. 58 of 2017, 223 National Strategic Projects (PSN) were decided plus 3 programs, namely the electricity program and the aircraft industry program as well as economic equality.

Among the 223 National Strategic Projects (PSN), there is a Jakarta-Bandung high-speed train project. Coordinating Minister for Maritime Affairs and Investment Luhut B. Pandjaitan inaugurated the Jakarta-Bandung High-Speed Train Project Outlet Tunnel 1 Breakthrough on the Jakarta-bound Toll Road KM 5 + 500 DK 4 Halim, Bekasi, West Java on Tuesday (15-12-2020). This inauguration aims to support national strategic projects for the people of Indonesia (KPPIP, 2020). The high-speed train project is an important project that is another point of modernization of public transportation in Indonesia. The Jakarta-Bandung high-speed train was built to be a modern mass transportation to solve the problem of people's mobility needs in traveling. With the presence of high-speed trains in Indonesia, it is hoped that it will have a positive impact on the economy, public welfare, and the progress of the Indonesian nation.

To build this project, a joint venture was formed between a consortium of state-owned enterprises through PT Pilar Sinergi BUMN Indonesia (PSBI) and China Railway International Co. Ltd. This consortium was approved by the Minister of Law and Human Rights on October 20, 2015. On April 4, 2017, KCIC and the High Speed Railway Contractor Consortium (HSRCC) signed an EPC (Engineering, Procurement, and Construction) contract for this project. KCIC's President Director at that time, Hanggoro Budi Wiryawan, said that the EPC design was discussed very carefully before being agreed upon.

From the background and problems, we formulate the problems that we will discuss in this paper, namely: 1) How are the regulations regarding pre-Ciptaker joint ventures in the case of PT KCIC and 2) How are the regulations regarding tax incentives for post-Ciptaker joint venture companies reviewed from the case of PT KCIC.

B. Method

This research was conducted using a normative juridical approach, namely, library research or document research indicated in applicable laws and regulations that are relevant to the problem being studied. The data analysis method is carried out by collecting data reviews from secondary data or library materials which include primary legal materials, secondary legal materials and tertiary legal materials, consisting of laws and regulations and documents related to tax incentives for Joint Venture companies after the Ciptaker Law.

In analyzing the legal materials that have been collected, this study uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by explaining policies concerning tax incentives for Joint Venture companies which are then assessed regarding whether the implementation of these policies is in accordance with the normative provisions.

Primary legal materials, namely research materials sourced from legislation related to the title and problems that are the subject of the research, such as: 1. Article 111 of Law Number 11 of 2020; 2. Presidential Decree Number 3 of 2016 concerning Acceleration of National Strategic Project Implementation; 3. Article 2 paragraph (3) letter b in the Income Tax Law; and other related laws. Descriptive is a description of the results of research with the aim of obtaining a comprehensive but systematic picture of the facts related to the problems that will be raised in this research. Analytical is a picture obtained based on careful analysis so that the objectives of this research itself can be obtained, namely demonstrating the problems as formulated in the formulation of the problems contained in the background of this research. This research aims to convey the truth systematically, methodologically and consistently. Through the research process, construction and analysis are carried out on the data that has been collected and processed (Muchtar, 2015).

C. Result & Discussion

1. Joint Venture Arrangement and Pre-Ciptaker Period Incentives in the Case of PT KCIC

Regulations regarding foreign investment have long been rigidly stated in Law No. 1 of 1967 concerning Foreign Investment which was later amended to Law No. 25 of 2007 concerning Investment. In Law No. 1/1967, it is interpreted that foreign investment only includes direct foreign investment carried out according to or based on the provisions of this Law and which is used to run a company in Indonesia, in the sense that the owner of the capital directly bears the risk of the investment. In this PMA Law, foreign investment is stated as an act of direct investment carried out in a business entity in Indonesia by a foreigner. So we can see

that Law 1/1967 concerning PMA does not yet have any provisions that can differentiate the actions of business actors in making investments either in whole or in part to business entities in Indonesia.

Only then in Law 25/2007, we can see that there has been a shift and expansion of the meaning of foreign investment in Indonesia. We can see this in the provisions of Article 1 number 3 of the Investment Law, where PMA is defined as an 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.

In the provisions of Article 1 number 3 of Law 25/2007, we can see that there is an expansion of the meaning of foreign investment itself, from previously direct or entirely in accordance with the provisions of Law 1/1967 to full or joint as regulated in Law 25/2007. Then this foreign investment itself can be carried out through several forms of cooperation such as joint ventures, joint enterprises, production sharing contracts or other forms of cooperation as long as they are in accordance with the provisions of existing laws and regulations (Sukananda, 2019). However, the most common form of cooperation is cooperation using a joint venture.

The definition of joint venture can then be found in the book Investment Law published by Siti Anisah and Lucky Surya Wicaksono where a joint venture contract is defined as an effort of a commercial activity (with risk) by two or more parties acting through an agency or institution or organization formed for a common purpose (Wicaksono, 2017). Meanwhile, according to Peter Mahmud, the definition of a joint venture itself is a contract between two companies to form a new company. This company then became the forerunner of a joint venture company (Sutrisno, 2012).

This joint venture contract is not only carried out to increase business capital, but is usually also carried out for other interests. For example, interests in knowledge transfer (know-how) (Supardji, 2008), expansion of marketing networks, and tools to maintain good relations with other countries. So with the many advantages in carrying out joint contracts, it is not uncommon for recipient countries to provide various conveniences and certain incentives for foreign investors. Even in the perspective of Law Number 1 of 1967 concerning PMA, the government offers incentives in the form of rights to use foreign workers, land rights, tax relief, transfer and repatriation rights, and other legal guarantees (Sukananda, 2019).

One example of a joint venture contract that is commonly known to the public is the joint venture contract in the construction of the Jakarta-Bandung high-speed railway. This contract was signed by PT KCIC, a joint venture between a BUMN and a Chinese consortium, namely China Railway International Co. Ltd (Gusman, 2020). This joint venture contract was signed by both parties in order to accelerate the development of transportation, especially in the field of intercity railways. In fact, this high-speed railway project was planned to be part of the National Strategic Project.

In the construction of the Jakarta-Bandung high-speed train, we can analyze that the government through Presidential Regulation No. 44 of 2016 concerning the List of Closed Business Fields and Business Fields Open with Conditions in the Investment Sector does not prohibit or close the possibility of foreign investment in the transportation sector. However, it should be noted that in the provisions of Article 5 paragraph (1) of Law 25/2007, the form of the foreign investment business entity itself must be in the form of a limited liability company based on the provisions of Indonesian law and must be domiciled within the territory of the Republic of Indonesia. Unless otherwise specified by law. So in this case, it must first be ensured that the developer is valid, namely China Railway International Co. Ltd. from an Indonesian legal perspective. The initials "Co. Ltd" actually indicate that the business entity is in the form of a company. Co in this case means Company and "Ltd" in this case means Limited. So that China Railway International Co. Ltd. from an Article 5 paragraph (1) perspective has fulfilled the provisions of the form of the business entity itself.

Then, from the perspective of foreign investment based on Presidential Regulation Number 44/2016, it is determined that the maximum limit of foreign share ownership in land transportation companies is 49%. In the Jakarta-Bandung high-speed railway consortium, four BUMNs are recorded as being involved in this project, including PT Wijaya Karya (Persero) Tbk (WIKA), PT Jasa Marga (Persero) Tbk, PT Kereta Api Indonesia (Persero), and PT Perkebunan Nusantara VIII, each of which recorded fairly balanced share ownership with 1 dominant shareholder. The details are: 38 percent owned by PT WIKA; then Jasa Marga as much as 12 percent; PT KAI as much as 25%; PT PTPN VIII as much as 25% so that the accumulation of domestic shareholders is 60 percent of PT KCIC shares. While the remaining 40 percent is held by the Chinese consortium. On this basis, we can also see that in the high-speed railway project, PT KCIC does not violate share ownership exceeding 49% as mandated by PP 44/2016.

Furthermore, the regulation regarding the amount of investment in the provision of intercity railway facilities and infrastructure as regulated in the Minister of Transportation Regulation Number PM 45 of 2015 concerning Requirements for Capital Ownership of Business Entities in the Transportation Sector in Article 17 includes:

- a. Regarding railway infrastructure (referring to Article 16 paragraph (1) of the Minister of Transportation Regulation No. PM 45/2015), investors must have paid-up capital of at least IDR 1,000,000,000,000.00 (one trillion rupiah) for the provision of intercity public railway infrastructure; and.
- b. Regarding the business of providing railway facilities, investors in this case must have paid-up capital of at least IDR 250,000,000,000.00 (two hundred and fifty billion rupiah).

Where then in the provisions of this Ministerial Regulation, the capital can come from within the country and/or abroad. So with a total investment of IDR 66.775 trillion, with an estimated increase to IDR 80 trillion, this high-speed railway

project has met the investment requirements in this public railway procurement project. Then, the related regulations related to licensing for the implementation of public railway infrastructure can be seen in the Regulation of the Minister of Transportation Number PM 66 of 2013 as amended by the provisions of the Regulation of the Minister of Transportation Number PM 21 of 2019 concerning Amendments to the Regulation of the Minister of Transportation Number PM 66 of 2013 concerning Licensing for the Implementation of Public Railway Infrastructure, as well as in the provisions of the Regulation of the Minister of Transportation Number PM 64 of 2020.

Furthermore, because this project is also a National Strategic Project, referring to PP Number 3/2016 in conjunction with Presidential Regulation Number 58/2017 concerning the Acceleration of the Implementation of National Strategic Projects in the context of public infrastructure development, the government guarantees the availability of facilities for business actors, both in terms of licensing at the regional level through the Regional DPMPTSP to the national level through BKPM.

2. Tax Incentive Arrangements for Joint Venture Companies Post Ciptaker in the Case of PT KCIC

The existence of joint venture companies in foreign investment in general has a very large meaning and benefits for domestic and foreign investment, namely (Sutrisno, 2012):

- a. Limiting risks in carrying out a business activity that is actually full of risks. By forming cooperation, the risk can be spread to the participants.
- b. Financing through cooperation to further utilize capital carried out by pooling the required capital.

The meaning and benefits above have a continuous cause in the government's decision to enact Law Number 11 of 2020 concerning Job Creation which aims to encourage investment in the midst of the global economic slowdown, in order to absorb the widest possible workforce. The Job Creation Law makes changes to various statutory provisions, including three tax laws, namely the KUP Law, the Income Tax Law, and the VAT Law in a relatively short time. This has a special impact on joint venture agreement companies where the subject of the agreement consists of foreign investors who cooperate with domestic investors in an equity joint venture, namely PT Kereta Cepat Indonesia China (KCIC).

The provisions of Article 111 of Law Number 11 of 2020 concerning Job Creation revise several provisions that have been stipulated in the previous Income Tax Law, such as changes to the tax subjects subject to Income Tax. Previously, Income Tax was written in Article 2 paragraph (1a) and that the tax subjects subject to Income Tax are:

- a. A body is a group of people and/or capital that is a unit that either does business or does not do business, including limited liability companies, limited partnerships, other companies, state-owned enterprises or regional-

owned enterprises with any name and in any form, firms, partnerships, cooperatives, pension funds, associations, associations, foundations, mass organizations, socio-political organizations, or other organizations, institutions and other forms of bodies including collective investment contracts and permanent business forms.

- b. Entrepreneurs (individuals) or bodies in any form that in business activities or work produce goods, import goods, export goods, conduct trade, utilize intangible goods from outside the Customs Area, conduct service businesses including exporting services, or utilize services from outside the Customs Area.

PT KCIC as a body established or domiciled in Indonesia with its formation based on the provisions of laws and regulations (Presidential Decree Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects) cannot be subject to Income Tax. This is stated in Article 111 of Law Number 11 of 2020 concerning Job Creation which adds Article 2 paragraph (3) letter b in the Income Tax Law as a form of elimination of Income Tax on dividends from within the country. Article 2 paragraph (3) letter b is continuous with the provisions in Article 4 paragraph (3) letter f number 1 where dividends from within the country are not subject to Income Tax. This is different from the previous regulation where domestic Corporate Taxpayers with ownership of $\geq 25\%$ were not subject to Income Tax, $<25\%$ were subject to normal rate Income Tax.

Article 112 contains the main changes regarding Value Added Tax which previously regulated that the delivery of Taxable Goods (BKP) was the delivery of Taxable Goods on consignment. However, now it is the opposite as regulated in Article 1 Paragraph (1) letter g of the VAT Law. Then regarding Input Tax on the acquisition of BKP and/or Taxable Services (JKP), import of BKP and utilization of intangible BKP and/or utilization of JKP from outside the Customs Area within the Customs Area before the Entrepreneur is confirmed as a PKP, it can be credited by the PKP by using the Input Tax credit guidelines of 80% of the Output Tax that should be collected.

Considering that PT KCIC is a joint venture company between Indonesia and China in the form of a Limited Liability Company. According to Erman Rajagukguk, there are several reasons why foreign investment must be in the form of a PT, including that the capital of a PT consists of shares, and the establishment of a PT aims to accumulate capital, if the PT wants to increase capital, it issues new shares. Furthermore, that the voting rights of a PT depend on the size of the shares owned. Usually one share is one vote, so if a foreign investor, for example, owns the majority of the shares, then he makes the decisions in running the company and he also holds key positions in the company (Rajagukguk, 2006). So dividends originating from abroad, in this case China (China Railway International Co. Ltd) and after-tax income from BUT abroad are not subject to PPh in Indonesia, if invested or used to support other business activities in the territory of the Republic of Indonesia for a certain period of time.

The main topic related to the PT KCIC case is the provision of tax incentives to the joint venture company. The government has revised the corporate income tax reduction facility or tax holiday in PMK Number 130/PMK.010/2020. In the new policy, the government added the criteria for taxpayers (WP) who can obtain a tax holiday, namely WP who have committed to realizing the investment plan no later than 1 (one) year after the decision to reduce corporate income tax. The PMK emphasizes three criteria for Corporate WP who want to obtain tax holiday facilities for up to 20 years, including (Suwiknyo, 2020):

- a. WP who are entitled to receive tax holiday facilities are not WP who have received tax facilities as regulated in Article 31A of the Income Tax Law. The form of tax reduction facility according to the article is a maximum net income reduction of 20% of the amount of investment made up to the imposition of PPh on dividends of 10%.
- b. Non-taxpayers who have received a net income reduction on new capital investment for business expansion in certain business fields that are labor-intensive industries based on Article 29A of the Government Regulation concerning the calculation of taxable income and settlement of income tax in the current year.
- c. Non-taxpayers who receive PPh facilities in Special Economic Zones based on the Government Regulation concerning Facilities and Facilities in Special Economic Zones.

Based on the provisions above, it can be concluded that PT KCIC as a joint venture company between Indonesia and China has the right to receive tax incentives in the form of tax holidays. Considering that this project is classified as a National Strategic Project that is not located in a Special Economic Zone. So if the West Java Regional Government will implement an incentive policy on the Land and Building Acquisition Fee (BPHTB) rate for PT KCIC, it can be done considering the main changes to the central VAT which should be in synergy with the BPHTB reduction stimulus which is the authority of the regional government. Also considering the president's appeal since 2016 to reduce BPHTB to 2.5%.

D. Conclusion

The tax incentive regulation for PT KCIC as a joint venture company that carries out the construction of the Jakarta-Bandung high-speed train as a foreign investment in Indonesia is regulated in Law No. 1 of 1967 concerning Foreign Investment which was later amended to Law No. 25 of 2007 concerning Investment which explains that foreign investment may be carried out by joint venture companies. The construction of the Jakarta-Bandung high-speed train is also regulated in Presidential Regulation No. 44 of 2016 concerning the List of Closed Business Fields and Business Fields Open with Conditions in the Investment Sector does not prohibit or close the possibility of foreign investment in the transportation sector, and China Railway International Co. Ltd has complied with these provisions. PT KCIC also does not violate the ownership of foreign

Tax Incentive Arrangement For Joint Venture Companies Post-Ciptaker In The Case Of PT KCIC

investment shares exceeding 49% as regulated in Presidential Regulation No. 44 of 2016 and Ministerial Regulation Number PM 21 of 2019 concerning Amendments to the Regulation of the Minister of Transportation Number PM 66 of 2013 concerning Licensing for the Implementation of Public Railway Infrastructure, as well as in the provisions of Ministerial Regulation Number PM 64 of 2020. This project is a National Strategic Project, so it refers to PP Number 3/2016 in conjunction with Presidential Regulation Number 58/2017 concerning the Acceleration of the Implementation of National Strategic Projects so that the government guarantees convenience for business actors through BKPM.

For the Regulation of Tax Incentives for PT KCIC as a joint venture company After the enactment of the Job Creation Law, PT KCIC cannot be subject to Income Tax because based on the provisions of Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects and Article 111 of Law Number 11 of 2020 concerning Job Creation which adds Article 2 paragraph (3) letter b in the Income Tax Law as a form of elimination of Income Tax on dividends from within the country. The government has revised the corporate income tax reduction facility or tax holiday in PMK Number 130/PMK.010/2020 and PT KCIC as a joint venture company between Indonesia and China has the right to receive tax incentives in the form of a tax holiday, considering that this project is classified as a National Strategic Project that is not located in a Special Economic Zone.

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Tax Incentive Arrangement For Joint Venture Companies Post-Ciptaker In The Case Of PT KCIC

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