



## The implementation process and the role of operational cooperation agreements (KSO) between unincorporated business entities

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### Abstract

Operational Cooperation Agreements (KSO) are important business instruments that enable businesses to pool resources to undertake large projects and access bank credit facilities. However, KSO implementation often faces legal challenges related to legal certainty and protection. The purpose of this study is to analyze the implementation of Operational Cooperation Agreements under the Civil Code and the role of notaries in Operational Cooperation Agreements, as reviewed in light of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. The research method used is normative research with a descriptive approach, utilizing a statutory approach. The data used in this study are primary and secondary data. Data collection methods were conducted through literature review and qualitative data analysis. The results of the study indicate that the implementation of Operational Cooperation Agreements (KSO) is carried out through several stages, starting from the pre-agreement stage, the implementation stage, and the post-agreement stage. The implementation of Operational Cooperation Agreements (KSO) is carried out with reference to the legal principles of agreements under the Civil Code. The role of a notary in this process is crucial, starting from the pre-agreement stage, through the implementation of the agreement, and after the agreement. Notaries provide legal advice, ensure the fulfillment of valid agreement requirements, and even create authentic deeds that guarantee legal certainty for the parties. Notaries also play a role in post-contract processes, such as dispute resolution and document storage. Notaries ensure that corporate documents are complete and comply with legal provisions. Notaries also play a crucial role in drafting agreement addenda, if necessary.

**Keywords:** Business entity, operational cooperation (KSO), agreement

### Introduction

Agreements are a source of obligations that play a fundamental role in social life and business activities in Indonesia. Formally, agreements are regulated in Book III of the Civil Code on Agreements, where Article 1313 of the Civil Code defines an agreement as "an act by which one or more persons bind themselves to one or more other persons." This definition emphasizes that an agreement is a legal act that creates a legal relationship between the parties involved, thus creating rights and obligations that can be enforced. The Civil Code regulates several important principles that form the legal basis for agreements in Indonesia, particularly the principle of freedom of contract contained in Article 1338 paragraph (1) of the Civil Code, which states that all agreements made legally apply as law for those who make them. This principle gives the parties the freedom to make an agreement with the form and content according to their wishes, as long as it does not conflict with the law, morality, and public order. In addition, there is also the principle of *pacta sunt servanda* which emphasizes that the agreement must be carried out in good faith as regulated in Article 1338 paragraph (3) of the Civil Code.

An agreement is born when an agreement is reached between the parties regarding the main matters agreed upon, which is an implementation of the principle of consensualism. The principle of consensualism is rooted in the doctrine of "*pacta sunt servanda*," which means that a legally entered into agreement binds the parties like a law. The process of creating an agreement begins with negotiation and an offer, followed by acceptance, and then

reaching an agreement, which is expressed in written or oral form according to the wishes of the parties. To be considered valid and legally binding, an agreement must meet the requirements stipulated in Article 1320 of the Civil Code: agreement of the parties, capacity to enter into an agreement, a specific matter, and a lawful cause. Failure to fulfill one of the conditions can result in the agreement being invalid, either null and void (*nietig*) or voidable (*vernietigbaar*), which will ultimately affect legal certainty for the parties involved.

Operational Cooperation Agreements (KSO) fall into the category of anonymous agreements (*innominaat*) that are not specifically regulated in the Civil Code, but are still subject to the general provisions of contract law. Operational cooperation agreements are a manifestation of the principle of freedom of contract, where the parties are free to determine the form and content of the agreement according to their business needs. KSOs have their own special features due to their flexibility in accommodating the interests of the parties. In contrast to the establishment of a legal entity that requires formal procedures and special permits, KSOs can be formed through a relatively simpler contractual agreement.

This form of cooperation is very popular in the business world because, with KSO the parties can combine resources, expertise, and capital from two or more parties to achieve common goals without having to form a new legal entity, thus enabling small and medium-sized companies to be able to access large projects that are difficult for each company to work on individually due to limited capital and technical capacity. KSO is one of the important instruments in

applying for bank credit facilities that enable business actors with limited capital to be able to access larger financing to carry out strategic projects.

### **Research Methods**

This research uses a normative legal research method. Normative legal research attempts to examine and analyze law beyond its mere normative principles or norms contained in legislation and examines how the law operates and is applied in reality in society. The descriptive research method used in this study is descriptive legal research. Descriptive legal research is the systematic and up-to-date presentation of a legal issue to obtain a complete and clear description of the legal situation in society. This paper uses a statute approach as the primary method. This statute approach examines all laws and regulations related to the legal issue being addressed. This approach is carried out by identifying, inventorying, and analyzing laws and regulations that are relevant to the research problem.

### **Discussion**

#### **1. Process of Implementing Operational Cooperation Agreements (KSO) between Non-Legal Entities**

##### **a. Pre-Operational Cooperation Agreement (KSO) Stage**

##### **b. Identification of Parties Between Unincorporated Business Entities**

The initial stage in implementing an operational cooperation agreement (KSO) begins with a thorough identification process of the three parties involved. This identification reflects the elements of the valid conditions for an agreement as stipulated in Article 1320 of the Civil Code, specifically regarding the legal capacity of the parties. Article 1320 of the Civil Code stipulates that four conditions are required for an agreement to be valid: the consent of those who bind themselves, the capacity to enter into an agreement, a specific matter, and a lawful cause. The aspect of legal capacity is the primary focus that must be met in the context of identifying the parties. Article 1330 of the Civil Code stipulates that those incompetent to enter into an agreement include minors, those placed under guardianship, in cases stipulated by law, and generally all persons for whom the law prohibits entering into certain agreements.

The identification process of the parties in this case demonstrates the proper application of the principle of legal prudence in forming agreements. Based on Article 1320 of the Civil Code in conjunction with Article 1330 of the Civil Code states that the legal capacity of the parties is a subjective requirement which, if not fulfilled, can result in the agreement being cancelled (*vernietigbaar*).

#### **2. Preparation of the Operational Cooperation Agreement (KSO) Concept**

Drafting an agreement implements the principle of freedom of contract (*vrijheid van contract*) as stipulated in Article 1338 of the Civil Code, which states that "all agreements legally made shall be lawful for those who make them." This principle grants the parties the freedom to determine the content, form, and method of implementation of the agreement, as long as it does not conflict with law, public order, or morality.

The process of drafting an agreement also reflects the application of the principle of consensualism, which states that an agreement arises from a mutually agreed-upon will

between the parties. As stated in civil law doctrine, consensus must be free from defects in will in the form of error (*dwaling*), coercion (*dwang*), and fraud (*bedrog*), as stipulated in Article 1321 of the Civil Code.

In trilateral agreements such as this Joint Operation between business entities, the principle of balance (*evenwicht*) is crucial to ensure that no party is disadvantaged or dominated within the cooperation structure. This aligns with Article 1339 of the Civil Code, which states that an agreement is binding not only for matters expressly stated therein, but also for anything that, by the nature of the agreement, is required by propriety, custom, or law. The operational cooperation concept was chosen because it provides flexibility for the three parties to contribute according to their respective capabilities and resources, while maintaining their legal independence as separate business entities. The drafting of the agreement also involved discussions regarding the project financing mechanism through a credit facility from Bank Lampung.

The drafting stage of the KSO agreement between these business entities demonstrates the concrete implementation of the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. Freedom of contract in a trilateral context is more complex than in a bilateral agreement, as it requires harmonizing the interests of three different parties. A structured drafting process helps clarify each party's expectations, identify potential conflicts of interest, and formulate solutions acceptable to all parties. The choice of an operational cooperation structure that does not create a new legal entity demonstrates a deep understanding of the principle of balance (*evenwicht*) in the trilateral agreement, allowing each CV to maintain its independence while still being able to collaborate effectively.

#### **3. Negotiation and Finalization of Clauses**

The negotiation stage is a concrete manifestation of the principle of consensualism in contract law. Based on Article 1320 of the Civil Code, consensus is one of the requirements for a valid agreement, which must be reached without any flaws of will. The negotiation process must ensure that the agreement reached truly expresses the free will of the parties. The negotiation process must ensure that the agreement reached is free from flaws of will, as stipulated in Article 1321 of the Civil Code, namely, there is no coercion, error, or fraud.

The parties are bound by the principle of good faith, as reflected in Article 1338 paragraph (3) of the Civil Code, which states that agreements must be executed in good faith. This principle applies not only to the implementation of the agreement but also to its formation, including the negotiation stage. The formation of agreement clauses is based on the provisions of Article 1320 of the Civil Code concerning the objective requirements of an agreement (a specific matter and a lawful cause), which serves as an important reference. Each negotiated clause must fulfill a clear objective and not conflict with applicable law.

Negotiations in a Joint Operation (KSO) agreement are significantly more complex than other agreements. The intensive, multi-round negotiation process demonstrates the application of the principles of prudence and transparency, in line with Article 1338 paragraph (3) of the Civil Code concerning good faith. The allocation of rights and obligations is the most crucial focus of the negotiations,

considering the varying capacities and contributions. The multi-round negotiation process demonstrates an effort to reach a mutually beneficial agreement and takes into account the provisions of Article 1321 of the Civil Code concerning defects of will. A balanced approach in addressing differences of interest demonstrates an awareness of avoiding coercion (*dwang*) that may arise from a party with a stronger financial bargaining position. Within the context of the objective requirements stipulated in Article 1320 of the Civil Code, the negotiation results have fulfilled the element of "a certain matter" through a clear allocation of rights and obligations, and the element of "lawful cause" through an agreement to open a legal joint credit facility. The multi-level dispute resolution mechanism and comprehensive force majeure clause demonstrate anticipation of various business risks, reflecting a preventative role that protects the interests of the parties.

#### **4. Preparation of the Draft Operational Cooperation Agreement (KSO)**

The drafting of the agreement must comply with the provisions of Article 1320 of the Civil Code concerning the requirements for a valid agreement, particularly the objective requirements, namely "a certain thing" and "a lawful cause." Clarity about the object of the agreement is crucial to avoid uncertainty in its implementation. Article 1338 of the Civil Code also provides a foundation for drafting the agreement by emphasizing that a legally concluded agreement applies as law for the parties. This requires careful formulation of each clause to avoid ambiguous or contradictory interpretations. The draft agreement has been specifically defined as follows:

- a. The scope of the cooperation specifically includes a partnership in handling the procurement of goods/services.
- b. The object of the agreement is a limited and temporary partnership in handling the procurement of goods/services, applicable only to projects obtained by the parties as implementers.
- c. The rights and obligations of the parties are carried out in a balanced manner according to their respective roles.
- d. The payment and profit-sharing mechanism is designed with an integrated system and banking facilities.
- e. Provisions on force majeure and dispute resolution are formulated comprehensively using a multi-level approach.

The drafting of the agreement in this case meets the legal standards set out in Article 1320 of the Civil Code, particularly regarding the clarity of the object and compliance with applicable legal provisions. The clarity of the object of the agreement, defined as "partnership in handling the procurement of goods/services," satisfies the element of "a certain matter" required by law. The limited and temporary nature of the cooperation provides certainty regarding the scope and duration of the collaboration, avoiding uncertainty that could lead to future disputes.

The systematic agreement structure, with a clear division of roles between capital providers and operational implementers, demonstrates a thorough understanding of the dynamics of trilateral cooperation. Integration with the banking system through a Bank Lampung credit facility demonstrates innovation in the KSO financing structure, but

also creates legal complexity that requires synchronization with banking regulations. The force majeure provisions and multi-level dispute resolution mechanisms demonstrate anticipation of various operational and legal risks that may arise in the implementation of the cooperation.

#### **5. Implementation Stage of the Operational Cooperation Agreement (KSO)**

##### **a. Penandatanganan Perjanjian Signing of the Agreement**

The signing of an Operational Cooperation Agreement (KSO) between business entities is carried out before a notary and witnesses who have fulfilled the formal requirements stipulated in the Civil Code. According to Article 1868 of the Civil Code, an authentic deed is defined as a deed drawn up in a form prescribed by law by or before a public official authorized to do so at the location where the deed is drawn up. The presence of a notary as a public official and witness during the signing process provides authenticity and legally binding force to the agreement. Article 1320 of the Civil Code stipulates the requirements for a valid agreement, which must be met: agreement between the parties, capacity to enter into a contract, a specific matter, and a lawful cause.

During the signing process, the aspect of the parties' agreement is reflected in the direct presence of the three main parties, each represented by a company director. The "specific matter" aspect as the object of the agreement has been clearly fulfilled through the formulation of the partnership agreement for handling the procurement of goods/services in government and private institutions. Meanwhile, the lawful cause is fulfilled because the objectives of the cooperation are within the legal framework and do not conflict with the law, morality, or public order. The signing process in the context of this Joint Operation (KSO) agreement demonstrates greater complexity than conventional agreements. The direct presence of the three directors reflects a serious commitment from each party, but also poses challenges in coordinating and synchronizing diverse interests. The KSO structure requires extra care to ensure that the agreement reached does not disadvantage either party and reflects a fair balance.

From a practical perspective, the signing of this KSO agreement meets the legal formalities required to provide legal certainty for the parties. Compliance with the provisions of the authentic deed provides optimal legal protection, while verification of identity and legal capacity prevents potential future disputes. However, the complexity of the KSO relationship requires closer monitoring during the implementation phase to ensure that the spirit of cooperation embodied in the deed is realized in operational practice.

##### **b. Implementation of the Provisions of the Operational Cooperation Agreement (KSO)**

The implementation of the provisions of a Joint Operation (KSO) agreement is based on the principle of *pacta sunt servanda*, as stated in Article 1338 of the Civil Code, which states that "all agreements made legally apply as law for those who make them." This principle requires the parties to implement all provisions agreed to in the agreement in good faith. Article 1234 of the Civil Code stipulates that every obligation is to provide something, to do something, or to refrain from doing something. In the context of

implementing a Joint Operation (KSO) agreement, the obligation to "provide something" includes the provision of working capital, support for raw materials, equipment, and supervisory assistance.

Article 1338 paragraph (3) of the Civil Code emphasizes that the agreement must be implemented in good faith. The implementation of a clear division of roles between the three parties reflects the application of this principle of good faith, where each party carries out its obligations according to its competence and capacity without harming the other party. The freedom of contract aspect in Article 1338 of the Civil Code is reflected in the flexibility of the agreed scope of cooperation, namely a partnership in handling the procurement of goods/services in government and private institutions, with the limitation that the cooperation only applies to projects acquired by the parties as project implementers.

The implementation of the Joint Operation (KSO) agreement in practice presents significant challenges in managing the expectations and contributions of three different parties. The theoretically clear division of roles is not always easy to implement in operational practice, especially when there are areas that require intensive coordination between capital providers and technical implementers. The financing structure through Bank Lampung adds a dimension of complexity because every operational decision must consider its impact on joint credit obligations. From a risk management perspective, the implementation of this KSO requires a more sophisticated monitoring and evaluation system than conventional cooperation. The involvement of three parties with different interests creates a wider range of potential conflicts, ranging from differences in operational vision to disputes over profit sharing. The limited nature of the cooperation to specific projects provides flexibility, but also creates uncertainty in long-term planning. The integration of financing aspects into the KSO structure, although innovative, requires strict coordination to prevent abuse of authority and ensure that all parties have fair access to information and decision-making related to the management of credit funds.

### c. Closing

#### Conclusion

The process of implementing a Cooperation Agreement between non-legal entities takes place in three main stages that refer to the principles of agreement law based on the Civil Code. The pre-agreement stage includes identifying the parties according to the legal capacity requirements according to Articles 1320 and 1330 of the Civil Code, drafting an agreement concept based on the principle of freedom of contract referring to Article 1338 of the Civil Code, negotiations by applying the principle of good faith based on Article 1338 paragraph 3 of the Civil Code, and drafting an agreement that meets the objective requirements of "a certain thing" and "a lawful cause". The implementation stage of the agreement begins with the signing of an authentic deed before a Notary in accordance with the provisions of Article 1868 of the Civil Code, followed by the implementation of the provisions of the agreement based on the principle of *pacta sunt servanda* as referred to in Article 1338 of the Civil Code and the

obligation to carry out the obligations stated in Article 1234 of the Civil Code. The post-agreement stage includes an evaluation of implementation based on the default parameters contained in Article 1243 of the Civil Code, a change mechanism through an addendum in accordance with the principle of freedom of contract, and settlement of the agreement based on the provisions on the cancellation of obligations regulated in Article 1381 of the Civil Code.

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