

Legal Protection of Consortium Agreement Deeds by Notaries in Infrastructure Projects in Indonesia

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Abstract. *Indonesia, as a developing country with increasing economic growth, requires adequate infrastructure development to support progress in various sectors, such as transportation, energy, telecommunications, and others. Various infrastructure development efforts are funded and implemented by various projects involving consortia. However, in practice, the implementation of infrastructure projects involving consortia often encounters obstacles in the matter of legal protection of the consortium agreement itself. Therefore, this study aims to identify the form of legal protection of the consortium agreement deed by a notary in infrastructure projects in Indonesia. The research method used is a qualitative approach with a descriptive analytical research type, which aims to obtain data in depth and analyze it comprehensively. Data were obtained through literature studies and interviews with related parties, including notaries, business actors, and legal experts. The results of the study indicate that the deed of consortium agreement prepared by a notary has binding legal force, but there are several challenges related to the lack of supervision of notary practices and the ambiguity in several clauses of the agreement that can cause disputes.*

Keywords: *Agreement; Consortium; Legal; Protection.*

1. Introduction

Indonesia, as a developing country with increasing economic growth, requires adequate infrastructure development to support progress in various sectors, such as transportation, energy, telecommunications, and others. The Indonesian government has identified infrastructure development as one of the main priorities in the national development agenda, such as toll roads, bridges, flyovers, and underpasses. One way used to fund and implement these large projects is by involving a consortium, which is a collaboration between several companies or legal entities to manage and finance joint projects.

Sudrajat states that a consortium is a form of cooperation between several parties to carry out a particular project, involving various expertise and resources from each party. The parties maintain their respective identities and autonomy, but work together to achieve common goals that cannot be achieved by each party individually.

However, in practice, the implementation of infrastructure projects involving consortiums often faces various challenges, both in technical, financial, and legal aspects. One of the problems that often arises is legal protection for the consortium agreement itself.

Unclear or inadequate consortium agreements can lead to disputes between the parties involved, potentially hampering the smooth running of the project and harming all parties involved. Therefore, the need for effective legal protection for such agreements is very important.

Notaries, as public officials who have the authority to make authentic deeds, play a very important role in the preparation and implementation of consortium agreements in Indonesia. In this context, according to Aminah, notaries not only function to prepare and ratify agreements, but also provide assurance that the agreement meets applicable legal provisions and protects the rights and obligations of each party involved. As a party who has legal knowledge and the authority to ratify documents, notaries are responsible for ensuring that the consortium agreements made have legal certainty, can be accounted for, and do not pose legal risks in the future.

However, although the role of notaries is very important in this process, many parties feel that legal protection for the consortium agreements made is still not optimal. Some problems that can arise include a lack of understanding of the consortium mechanism, weaknesses in the preparation of agreement clauses, and a lack of supervision of the implementation of the agreement. This can result in the potential for legal disputes that can be detrimental to the parties involved, either in terms of financial losses, reputational damage, or even contract cancellation.

Along with the development of the business world and the increasing complexity of infrastructure projects, a comprehensive study is needed on the role of notaries in legal protection of consortium agreements. As part of the Indonesian legal system, notaries need to be involved in evaluating their role in maintaining legal certainty in every step taken by the parties in the consortium, as well as contributing to creating a more effective and sustainable legal protection mechanism.

According to Halimah, without adequate legal protection, the risk of disputes that can hinder the smooth running of infrastructure projects is very high. Therefore,

the role of a notary as a legalizer and maintainer of the validity of the contract is very crucial.

One example of a case that occurred is the Jakarta Mass Rapid Transit (MRT) construction project, a large infrastructure project involving a consortium between state-owned companies and private companies. In this project, the consortium made a deed of agreement that was legalized by a notary to regulate the obligations, rights, and division of responsibilities of each party in the project. However, several years after implementation, one of the parties in the consortium claimed that the deed of agreement that was legalized by the notary was invalid because there were discrepancies in the signed documents, and there were changes that were not changed in the deed.

The parties filed a lawsuit in court, arguing that the notary who drafted the deed of agreement did not carry out sufficient verification regarding changes in the document before signing it, thereby harming them.

In this context, this study aims to examine in more depth the role of notaries in legal protection of consortium agreement deeds in infrastructure projects in Indonesia.

This study will focus on the role of notaries in preparing, validating, and providing legal certainty for consortium agreement deeds, as well as identifying challenges and solutions to increase the effectiveness of legal protection for the parties involved in the agreement.

2. Research Methods

The research approach method used in this thesis is a qualitative approach with an empirical research type, with analytical descriptive research specifications, namely a type of research that aims to obtain in-depth data and describe it in the form of analysis. Data sources come from primary data and secondary data. Data collection methods include interviews, document studies or Library Materials. Descriptive analysis was conducted by reviewing information obtained from interviews and literature, and analyzing it to find conclusions relevant to the role of notaries in legal protection of consortium agreements.

3. Results and Discussion

3.1. Legal Protection of Consortium Agreement Deeds by Notaries in Infrastructure Projects in Indonesia

Legal Protection of Consortium Agreement Deeds by Notaries in Infrastructure Projects in Indonesia According to the law, it can be seen from several aspects related to the legal status of notarial deeds, the responsibilities of notaries, and the applicable dispute resolution mechanisms. In this context, several relevant laws provide legal protection for deeds made by notaries, especially those related to consortium agreements used in infrastructure projects.

Article 15 Law no. 2 of 2014 emphasizes that the notary is responsible for ensuring that the deeds he makes do not conflict with the law and ethics. In this case, legal protection is provided by ensuring that the notary acts in a legitimate manner to create legal certainty for the parties involved in the consortium agreement.

The deed of consortium agreement made by a notary also provides legal protection for third parties. For example, in the case of creditors or contractors involved in an infrastructure project, an authentic deed of consortium agreement provides legal certainty that the contents of the agreement are valid and can be used as a basis for carrying out the obligations stated in the agreement.

Article 1338 of the Civil Code (KUHP) states that a valid agreement binds the parties who make it and has the power to influence third parties who can rely on the contents of the agreement. This is the basis for strong legal protection for all parties involved in infrastructure projects, both as parties directly involved in the consortium and third parties.

If a dispute arises regarding a consortium agreement in an infrastructure project, the law governing the dispute resolution mechanism also provides protection. For example, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides an option for resolving disputes outside the courts, which is more efficient and faster.⁸ In the context of a consortium agreement, disputes can be resolved through an arbitration mechanism that can prioritize justice and legal certainty for all parties.

The form of legal protection for the deed of consortium agreement made by a notary in infrastructure projects in Indonesia involves several aspects that focus on strengthening the legal position of the deed, as well as steps to minimize potential disputes that may arise during the project. In the context of infrastructure projects in Indonesia, a consortium agreement is usually made between several companies to work together on a large project. The deed of consortium agreement made by a notary has an important function in providing legal guarantees to the parties involved.

The forms of legal protection for this agreement deed include: The evidentiary power of the notarial deed, Protection of the Interests of Third Parties, Responsibility of the Notary in Drafting the Deed, Recording the Consortium Deed, Protection for the Injured Party.

1) The evidentiary power of a notarial deed

A deed made by a notary is considered valid evidence and has strong legal force (as regulated in the Civil Code/KUHP) data). A notarial deed becomes valid evidence in court if a dispute occurs. According to Subekti in his book "Indonesian Civil Law", a deed made by a notary has a stronger position than an ordinary deed, because it has higher evidentiary power before the court.⁹ In this case, a notarial

deed is considered valid, correct, and in accordance with applicable provisions as long as there is no evidence of error or fraud.

2) Protection of Third Party Interests

In infrastructure projects involving many parties, a consortium agreement made by a notary provides legal guarantees for third parties involved, such as creditors or other related parties. Andi Hamzah stated that legal protection for third parties is very important to maintain legal certainty, especially in terms of financial transactions or obligations arising from the agreement.¹⁰

3) Notary's Responsibilities in Drafting Deeds

Notary's Responsibilities in Drafting Deeds refers to the obligations and authorities held by a notary in making authentic deeds.

As a public official, a notary is responsible for ensuring that the deeds he drafts are legally valid, meet all formal requirements, and do not harm any party, whether the party directly involved in the agreement or any interested third party.

According to Subekti, notaries have a very big responsibility in preparing deeds, because deeds made by notaries are considered as authentic evidence that has very strong legal force.⁹

4) Recording of Consortium Deed

Recording of consortium deeds has an important function in providing legal certainty. In the context of a consortium, recording not only functions as evidence for the parties involved in the agreement, but also plays a role in protecting third parties who have an interest in the consortium. This is because consortia are often related to large projects, such as infrastructure projects, which involve many parties, including contractors, investors, and the government.

The registration of the consortium deed is a very necessary step so that the agreement can be considered authentic and valid in the eyes of the law. Wibowo emphasized that a consortium deed that is not recorded or not registered with related institutions such as the government or an agreement registration agency can raise doubts about its validity.¹¹ A registered consortium deed ensures that all parties involved in the project have bound themselves to a valid and legally accountable agreement.

5) Protection for the Injured Party

In practice, even though the consortium agreement deed has been drawn up correctly by a notary, it does not rule out the possibility that a party will be harmed due to the implementation of an infrastructure project that fails or violates the contract.

According to Soeharsono, the injured party has the right to receive legal protection in the event that the agreement is violated by one of the parties. Protection for the injured party is not only for the restoration of rights but also for the prevention of further losses.

3.2. Obstacles and Solutions in Legal Protection of Consortium Agreement Deeds by Notaries in Infrastructure Projects in Indonesia

Although the deed of consortium agreement is made with legal procedures, in practice there are still many obstacles in law enforcement, such as parties who do not fulfill their obligations or disputes related to the implementation of the contract. The slow legal process and lack of understanding of the protection of rights in the consortium agreement are the main obstacles.

Infrastructure projects often involve various complex legal aspects, including corporate law, contract law, and government regulations related to public projects. Differences in interpretation and inconsistencies between the deed prepared by the notary and existing regulations can be one of the legal obstacles that arise.

Although notaries have an obligation to act in accordance with the law, supervision of notary activities is sometimes not effective enough. Errors in procedures or even abuse of authority can occur, resulting in legal problems that are detrimental to the parties involved.

The consortium agreement deed is the basis of the legal relationship, but in practice, dispute resolution that arises in infrastructure projects often encounters obstacles. The courts or arbitration institutions involved may take a long time to decide the case, which can delay the implementation of the project.

According to Aminuddin in his book entitled *Notaries and Legal Challenges in the Preparation of Consortium Agreement Deeds*, there are several main obstacles in the legal protection of consortium agreement deeds prepared by notaries in infrastructure projects in Indonesia. Some of these obstacles and solutions include:

1) Difficulties in Drafting a Deed that Meets Legal Requirements

One of the major obstacles is the ambiguity in drafting a deed of consortium agreement that fully meets the applicable legal provisions. In this case, notaries often face the challenge of ensuring that the deed made is in accordance with existing legal principles, especially in the context of infrastructure projects involving many parties with diverse interests.

The solution:

a. **Improving Legal Understanding and Notary Training:** Notaries must be continuously trained on applicable laws and regulations governing infrastructure

projects. They need to be well-versed in any changes in regulations or policies that may affect the validity of the agreement.

b. **More Flexible and Structured Deed Preparation:**Notaries can use a more flexible approach in drafting deeds, paying attention to more detailed and specific legal aspects according to the ongoing project, so that no legal loopholes are left open.

2) Differences in Interests of the Parties

Consortiums in infrastructure projects often involve various entities with different interests and objectives, such as contractor companies, investors, and governments. These differences in interests become obstacles in drafting a deed of agreement that is acceptable to all parties. This can lead to ambiguity in determining the rights and obligations of each party involved, as well as the risk of legal uncertainty in the event of a dispute.

The solution:

a. **More Intense Mediation and Consultation:**The consultation process between the parties involved in the consortium must be strengthened. A competent mediator or legal consultant can help formulate a deed that accommodates the interests of all parties in a fairer and more balanced manner.

b. **Clear Division of Tasks:**Drafting an agreement with more detailed provisions regarding the division of tasks and responsibilities, so that there is no ambiguity that could trigger a dispute.

3) Limitations of Supervision and Law Enforcement

Although the deed has valid legal force, in practice it is often difficult to enforce the provisions contained in the consortium agreement, especially if there is a violation by one of the parties. This shows a gap in the legal protection of the consortium agreement.

The solution:

a. **Enhanced Supervision and Implementation of Stricter Supervisory Mechanisms:**The government needs to introduce stricter oversight mechanisms, either by government agencies or independent bodies, to ensure that each party in the consortium fulfills its obligations under the agreed agreement.

b. **Clear Dispute Resolution Agreement:**Drafting more detailed dispute resolution clauses, for example by designating arbitration or a specific court as the dispute resolution forum to avoid delays in the legal process.

4) Challenges in Adapting to Frequently Changing Regulations

Inconsistent regulatory changes related to infrastructure projects can be an additional obstacle. When regulations governing infrastructure projects change frequently, this affects the validity and implementation of the consortium agreement deed. This legal uncertainty can be detrimental to the parties involved, because the previously drafted agreement deed may no longer be in accordance with the new regulations in force.

The solution:

- a. **More Adaptive Agreement Drafting:**The notary may suggest adding a flexibility clause to the agreement, which allows for adjustments to regulatory changes that may occur during the project.
- b. **Regular Monitoring of Regulatory Changes:**Involve notaries in monitoring applicable regulations so that agreements can be adjusted immediately if there are changes in relevant policies or laws. This will help the parties in the consortium to always comply with applicable regulations.

5) Legality Issues and Certainty of Deed Status

Issues related to the legality of the deed are also an important issue. In some cases, the deed of consortium agreement prepared by a notary often faces challenges regarding its validity, either because it does not meet the requirements stipulated by law or because there are errors in the procedure for preparing the deed. If a party feels aggrieved, they can sue the validity of the deed, which ultimately threatens legal certainty.

The solution:

- a. **Standardization of Deed Preparation Procedures:**Notaries need to ensure that all procedures in the preparation of the deed of agreement are carried out carefully and in accordance with applicable legal regulations. The preparation of the deed must be carried out with great care to avoid technical errors that can affect the legality of the deed.
- b. **Preparation of Deeds with Careful Proof:**Collecting strong evidence and documenting the agreement negotiation process can help maintain the validity of the agreement deed, so that it is not easily cancelled if a party feels aggrieved.

Obstacles in legal protection of consortium agreement deeds by notaries in Indonesia are related to technical problems in the preparation of the deed, differences of interest between the parties involved, limitations in law enforcement, and inconsistent regulatory changes. Therefore, it is important for notaries to work carefully, fully understand the applicable regulations, and ensure that all parties involved in the consortium agreement can agree to the provisions contained in the deed.

4. Conclusion

The conclusion of this study explains that notaries have a very important role in the process of drafting and validating consortium agreement deeds, especially in infrastructure projects in Indonesia. Deeds made by notaries have valid and binding legal force, provide legal protection to all parties involved in the consortium, and can be used as valid evidence in disputes or disputes. However, although notaries have great authority, there are several obstacles in implementing legal protection for these deeds. These obstacles include a lack of understanding and supervision of notarial practices, ambiguity in several clauses of the agreement that lead to the potential for different interpretations, and the possibility of abuse of authority by certain parties. In addition, the process of drafting consortium agreement deeds by notaries must comply with applicable laws and regulations, such as Law No. 30 of 2004 concerning the Position of Notaries, which regulates the obligations and rights of notaries in ensuring the validity of agreements. Clear regulations regarding this matter are very important to maintain legal certainty and prevent disputes in the future. The suggestions that can be given are for the government and authorized institutions to increase supervision of notaries in making consortium agreement deeds, ensure that notaries follow applicable regulations, and provide stricter training and certification. In addition, clearer and more detailed regulations regarding consortia need to be drafted to avoid ambiguity in agreements that can lead to disputes. Education for related parties in infrastructure projects regarding the importance of the role of notaries and agreement deeds also needs to be strengthened, while efficient dispute resolution mechanisms, such as arbitration or mediation, can be optimized to accelerate the resolution of problems that arise. With these steps, it is hoped that legal protection for consortium agreement deeds can be more guaranteed and provide legal certainty for all parties.

5. References

- Aminah, Siti. (2015). *Peranan Notaris dalam Pembentukan dan Pengesahan Kontrak Bisnis di Indonesia*. Jakarta: PT. Raja Grafindo Persada.
- Aminuddin, M. (2017). *Notaris dan Tantangan Hukum dalam Penyusunan Akta Perjanjian Konsorsium*. Alfabeta.
- Andi Hamzah. (2006). *Perjanjian dan Perlindungan Hukum*. Jakarta: Rineka Cipta.
- Halimah, Siti. (2019). *Prinsip-Prinsip Perlindungan Hukum dalam Kontrak Bisnis Internasional*. Jakarta: Kencana.
- Civil Code (KUHP). (1847). State Gazette of the Republic of Indonesia of 1847 Number 23.
- Santosa, Budi. (2016). *Hukum Perdata dan Kontrak Bisnis: Teori dan Praktik*. Jakarta: Gramedia Pustaka Utama.
- Soeharsono, Bambang W. (2008). *Hukum Kontrak Indonesia*. Jakarta: Pradya Paramita.

- Subekti, H. (2004). *Hukum Perdata Indonesia*. Bandung: Alumni.
- Sudrajat, H. (2004). *Manajemen Proyek*. Bandung: Alfabeta.
- Law no. 2 of 2014 concerning Notary Positions. State Gazette of the Republic of Indonesia 2014.
- Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. State Gazette of the Republic of Indonesia 1999 Number 138.
- Wibowo, Hedy Teguh. (2010). *Perjanjian Konsorsium dalam Proyek Infrastruktur*. Jakarta: Rajawali Press.