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The Legal Status of the Parties to a Joint Operating Agreement (KSO) Based on the Principle of 'Pacta Sunt Servanda' (Case Study: Court Judgment No. 391/Pdt.G./2024/Pn. Jkt.Utr.)

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Abstract: An Operational Cooperation Agreement (KSO) is a form of unnamed contract (innominate contract) that has developed in accordance with the principle of freedom of contract as set out in the Civil Code. In practice, KSOs often give rise to disputes due to the failure of the parties to fulfil their rights and obligations. This study aims to analyse the legal status of the Operational Cooperation Agreement (KSO), the forms of breach of contract, and the legal consequences arising therefrom based on Judgment No. 391/Pdt.G./2024/PN Jkt.Utr. The study employs a normative legal method using a statutory approach, a conceptual approach, and a case-based approach. The legal materials used include primary, secondary, and tertiary sources, which were analysed qualitatively through deductive reasoning. The results of the study indicate that an Operational Cooperation Agreement (KSO) is legally binding in accordance with the provisions of Article 1338 of the Civil Code; consequently, the parties are obliged to fulfil the terms of the agreement in good faith. Breach of contract in this case occurred because one party failed to fulfil its agreed obligations, thereby causing loss to the other party. The court's ruling confirms that a breach of the terms of a contract gives rise to legal liability in the form of an obligation to pay damages in accordance with the provisions of civil law. It is hoped that this research will contribute to the development of contract law, particularly with regard to the resolution of disputes arising from Production Sharing Agreements in Indonesia.

Keywords: Joint Operating Agreement, KSO, Pacta Sunt Servanda, Breach of Contract, Civil Law.

INTRODUCTION

The development of the property sector in Indonesia has spurred the emergence of various forms of business cooperation between business operators, one of which takes the form of a Joint Operation Agreement (KSO). In practice, KSOs are widely used in apartment, housing and infrastructure development projects as a form of collaboration between landowners, developers and other supporting parties (Cahyo & Kurnianingsih, 2023). This demonstrates that KSOs play a strategically important role in investment efforts and in driving national growth. However, the increasing prevalence of KSOs is not matched by legislation that clearly regulates their structure and processes within Indonesian laws and regulations. Normatively, a KSO is not a separate legal entity in the same way as a limited liability company, but rather a contractual relationship subject to the provisions of contract law as set out in Book III of the Civil Code (KUHPerdata). Therefore, a KSO may be categorised as an unnamed contract (innominaat contract) formed in accordance with the concept of freedom of contract set out in Article 1338(1) of the Civil Code. Furthermore, the validity of a KSO requires compliance with the conditions for the validity of a contract as set out in Article 1320 of the Civil Code.

As a contract, the KSO binds the parties in accordance with the principle of pacta sunt servanda, as reflected in Article 1338(1) of the Civil Code, which states that all contracts validly entered into are binding as law upon the parties who have entered into them (Priyono et al., 2025). Furthermore, the performance of a contract must also be based on the principle of good faith, as provided for in Article 1338(3) of the Civil Code. These two principles form the main foundation for determining the rights and obligations of the parties in a contractual relationship (Syamsiah et al., 2023).

Although, in theory, an Operational Cooperation Agreement (KSO) falls within the legal framework of contracts governed by the Civil Code, many issues remain unresolved in practice, such as the lack of clear statutory provisions for KSOs, which leads to uncertainty in their application (Sari, 2019). This absence of regulations often leads to varying interpretations of the KSO, particularly regarding the nature of the legal relationship and the scope of the parties' obligations. Furthermore, the legal status of the KSO which is not a legal entity often gives rise to its own set of issues. In practice, a KSO acts as a legal entity by entering into cooperation with third parties. This raises questions as to who bears responsibility for legal activities carried out under the KSO, and how responsibility is shared amongst the parties involved (Pambudi & Yustanti, 2025).

In the implementation of the agreement, there is uncertainty regarding the definition of the boundaries of breach of contract within a Joint Operating Agreement (KSO). The failure to fulfil certain obligations, such as granting authorisation or approving changes to management, is not always easily categorised as a breach of contract. This raises the question of the extent to which an action may be regarded as negligence, or conversely, as the exercise of the parties' rights under the agreement. In this regard, the application of the principle of good faith is crucial, yet it also leaves considerable room for interpretation and has the potential to create legal uncertainty (Sujoko, 2020).

In practice, it is not uncommon for problems to arise in the implementation of a KSO, particularly when one of the parties fails to fulfil its contractual obligations (Kadafi et al., 2025). The issue becomes even more complex when such obligations relate to matters of authority and legal actions, such as changes to the management, the granting of special powers of attorney, or approval of amendments to the articles of association. Given that a KSO does not have independent legal status, any legal proceedings relating to its implementation must be carried out by the parties involved in accordance with the authorisations set out in the contract. This provision has legal consequences if one party fails to grant the necessary authorisation, as this may hinder the performance of the contract and have a negative impact on the other party (Cahyaningtyas & Wibowo, 2023).

In civil law, failure to fulfil obligations under a contract is regarded as a breach of contract. However, in an Operational Cooperation Agreement (KSO), there are still legal issues that require more in-depth analysis, particularly regarding the distinction between administrative negligence and breach of contract, as well as the extent to which the duty to act cooperatively can be imposed on the parties involved based on the principle of good faith. This highlights the need for a more detailed examination of the legal obligations of the parties involved in an Operational Cooperation Agreement (KSO) (Rosalind & Sari, 2023).

Disputes arising from Joint Operation Agreements (KSO) typically occur when the implementation of the cooperation does not proceed in accordance with what has been agreed by the parties. Legally, such agreements are indeed binding, as stipulated in Article 1338 of the Civil Code, meaning that each party is obliged to fulfil the terms of the agreement in good faith (Ariayuda et al., 2025). However, in practice, this is not always the case. There are times when one of the parties fails to fulfil its obligations as required, thereby causing losses and leading to a dispute that must be resolved through the courts. This situation can be seen in Judgment No. 391/Pdt.G./2024/PN. Jkt.Utr, which arose from a dispute over the implementation of an OCA between the parties. In that case, the Plaintiff argued that the Defendant had failed to fulfil its obligations as set out in the Joint Operation Agreement and its amendments, particularly regarding the authority and approvals required for the implementation of the cooperation. This resulted in the cooperation's operations being hampered and caused losses. The Panel of Judges subsequently assessed the validity and binding force of the agreement and ruled that the Defendant had been in breach of contract and was obliged to compensate for the resulting losses.

Based on the above discussion, it is evident that Joint Operation Agreements (KSO) are widely used, but there remains a lack of clarity regarding their legal status and the definition of the parties' obligations in their implementation. Therefore, this research is of great importance in providing a legal analysis of the legal status of the parties to a Joint Operation Agreement (KSO) based on the principle of pacta sunt servanda in Indonesian civil law (Dali et al., 2025). It is hoped that this research will make a theoretical contribution to the development of contract law in Indonesia, as well as provide legal certainty in the practical implementation of KSO agreements within the property sector and other commercial projects.

METHOD

This study employs a normative legal research method, which focuses on the legal norms contained in legislation, as well as the legal theories, concepts and principles relevant to the issue under investigation. The research was conducted by examining primary legal sources, namely legislation, relevant legal doctrines, and court decisions relating to the Joint Operating Agreement (KSO). This study employs a case-based approach, using Judgment No. 391/Pdt.G./2024/PN Jkt.Utr as the subject of analysis to examine the application of the principle of pacta sunt servanda and the principle of good faith in determining the legal liability of the parties to an Operational Cooperation Agreement (KSO).

This study employs three approaches: the statutory approach, the conceptual approach and the case approach. The statutory approach involves examining various pieces of legislation relating to the subject of the study, including both laws and other regulations governing contract law. Through this approach, the researcher analysed the applicable legal provisions, interpreted legal norms based on the rules of legal interpretation, and identified the suitability and weaknesses of the regulations relating to the Joint Operating Agreement (KSO). The conceptual approach is employed by examining various perspectives, doctrines and legal theories that have developed within legal scholarship in order to gain an understanding of the legal concepts, legal principles and definitions relevant to the research issue. This approach serves as the foundation for constructing a legal argument regarding the legal status of the Joint Operation Agreement (KSO), the application of the principle of pacta sunt servanda, the principle of good faith, and the responsibilities of the parties in a contractual relationship. Furthermore, the case study is conducted through an in-depth analysis of Judgment No. 391/Pdt.G./2024/PN Jkt.Utr, examining the legal facts, the arguments of the parties, the judge's legal reasoning, and the legal consequences arising from the judgment. It is hoped that this approach will provide a comprehensive understanding of the application of the law in the resolution of disputes arising from Cooperation of Operations Agreements (KSO).

The legal sources for this research were obtained through a literature review and document analysis. The legal materials used comprise primary, secondary and tertiary legal sources. Primary legal materials include Book III of the Civil Code (KUHPerdata), specifically Article 1338(1) and (3) of the Civil Code, as well as Court Judgment No. 391/Pdt.G./2024/PN Jkt.Utr, which serves as the main subject of the research. Secondary legal sources consist of books, research findings, academic articles, seminar proceedings, expert opinions, and various literature relating to contract law, Joint Operation Agreements (KSO), the principle of pacta sunt servanda, the principle of good faith, and breach of contract. Tertiary legal materials include legal dictionaries, encyclopaedias, newspapers, journals, papers, and various other sources that provide guidance or explanations regarding the primary and secondary legal materials.

The data analysis technique employed in this study was normative-qualitative. The analysis was carried out from the initial stage of collecting legal materials until all data had been gathered through literature reviews and document analysis. All the legal materials obtained were then systematically organised, classified, interpreted and analysed on the basis of legal norms, legal principles, legal doctrines and theories relevant to the research problem. Subsequently, the researcher constructed the legal provisions regarding the binding force of agreements, the principle of pacta sunt servanda, and the principle of good faith in Indonesian civil law, and then linked these to the judge's legal considerations in Judgment No. 391/Pdt.G./2024/PN Jkt.Utr. The results of this analysis are then used to draw deductive conclusions in order to address the research questions concerning the legal status and construction of the parties' liabilities under an Operational Cooperation Agreement (KSO).

RESULTS AND DISCUSSION

The Legal Status and Binding Force of an Operational Cooperation Agreement (KSO) as an Innominate Contract under Indonesian Civil Law

Pursuant to Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), a valid contract must satisfy four essential requirements: (1) the mutual consent or agreement of the parties; (2) the legal capacity of the parties to enter into a legal obligation; (3) a specific subject matter; and (4) a lawful cause. The requirement of mutual consent or agreement constitutes a subjective requirement because it relates to the individuals or legal subjects entering into the contract. If this subjective requirement is not fulfilled, the contract is not automatically void but may be declared voidable upon the request of one of the parties through the applicable legal process.

A valid agreement, in the sense that it meets the legal requirements under the law, shall be binding on the parties who have entered into it. As set out in Article 1338(1) of the Civil Code. Meanwhile, paragraph (2) states that such agreements cannot be revoked except by mutual consent of both parties, or for reasons deemed sufficient by law. If a contract is terminated unilaterally, this means that the contract between the parties who entered into it is no longer binding; consequently, the contract cannot be terminated unilaterally. There are clearly grounds for rescission if one party fails to fulfil its obligations. A claim for rescission must be brought before the court to ensure that neither party can subsequently rescind the agreement unilaterally on the grounds that the other party has failed to fulfil its obligations (breach of contract).

A contract constitutes the fundamental source of a legal relationship that establishes the rights and obligations of the parties involved. Under Indonesian civil law, the legal framework governing contracts is primarily contained in Book III of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), which adopts an open system. This system grants individuals the freedom to create various types of contracts that are not expressly regulated by statutory law, provided that such contracts do not conflict with prevailing laws and regulations, public order, or principles of morality. This open system has given rise to the concept of innominate contracts (*perjanjian innominaat*).

An innominate contract is a contract that does not have a specific designation under the Indonesian Civil Code. Article 1319 of the Indonesian Civil Code provides that: *"All agreements, whether they have a specific designation or are not known by a particular designation, shall be governed by the general provisions contained in this Chapter and the preceding Chapter."* Pursuant to this provision, contracts are classified into two categories, namely nominate contracts (*nominaat*) and innominate contracts (*innominaat*). Innominate contracts are those that arise, develop, and evolve within society in response to practical legal needs. Both nominate and innominate contracts are governed by Book III of the Indonesian Civil Code.

The distinction established under Article 1319 of the Indonesian Civil Code reflects that certain contracts are governed solely by the general provisions contained in Titles I, II, and IV of Book III, whereas nominate contracts are also subject to the specific provisions contained in Titles V through XVIII, which regulate particular types of contracts. These specific provisions partially deviate from the general rules governing contractual relationships. Consequently, nominate contracts are characterized by three principal elements: they are expressly regulated in the Indonesian Civil Code, they are governed by both the general provisions in Titles I, II, and IV and the special provisions in Titles V through XVIII of Book III, and their types are limited to those specifically recognized by law.

An innominate contract refers to a contract that arises from business operational needs and is not specifically regulated in the Civil Code. Nevertheless, its validity is recognised on the basis of the principle of freedom of contract. In the modern business world, one form of innominate contract that has emerged is known as an Operational Cooperation Agreement (KSO).

An Operational Cooperation Agreement (KSO) is a legal relationship formed through a contract between the parties involved. Within the context of Indonesian civil law, the basis for entering into such a contract is set out in the Civil Code (KUHPerdata). Article 1313 of the Civil Code states that a contract is an act whereby one or more parties bind themselves to obligations towards one or more other parties. Furthermore, to ensure the legality and enforceability of the agreement, the contract must fulfil the requirements set out in Article 1320 of the Civil Code, which include the consent of the parties, the legal capacity of the individuals involved, a specified subject matter, and a valid cause. Furthermore, Article 1338(1) of the Civil Code affirms that all agreements entered into lawfully are as binding as law upon those who enter into them (the principle of freedom of contract), and such agreements must be performed in good faith as provided for in Article 1338(3) of the Civil Code.

In general, there are two forms of business collaboration recognized in Indonesia, namely Operational Cooperation (*Kerja Sama Operasional* or KSO), also referred to as a Joint Operation (JO), and Joint Venture (JV). Both forms share similar principles and characteristics, as they originate from a written agreement between two or more companies to combine their resources or capital for the purpose of carrying out a particular project. The principal distinction lies in the legal structure established by each arrangement. A Joint Venture (JV) creates a new legal entity, generally in the form of a Limited Liability Company (*Perseroan Terbatas*), which operates under its own legal framework independently of the parent companies. In contrast, a Joint Operation (JO)/Operational Cooperation (KSO) does not establish a new legal entity separate from its participating companies. Consequently, the establishment of a JV must obtain approval from the Ministry of Law and Human Rights in accordance with the Company Law, whereas a KSO is established solely through a Cooperation Agreement executed before a Notary.

The Joint Operation Agreement (KSO) Deed Number 38, including all of its amendments, constitutes a valid legal instrument executed by a Notary within the scope of the authority granted under Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary. Such authority derives from the legal nature of a KSO agreement, which specifically governs the contractual relationship between the parties concerning their respective rights and obligations in implementing the cooperation, rather than regulating legal acts such as the transfer of land rights, which fall within the authority of a Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT). From a normative legal perspective, Joint Operation Agreement Deed Number 38, together with its amendments, was executed by a competent public official and satisfies the requirements of an authentic deed as stipulated under Article 1868 of the Indonesian Civil Code.

As an authentic deed, Joint Operation Agreement Deed Number 38, together with its amendments, possesses external evidentiary force (*uitwendige bewijskracht*). External evidentiary force means that a deed which, on its face, fulfills the formal requirements of an authentic deed must be presumed valid and accepted as evidence unless proven otherwise. In the present case, there is no evidence or court decision declaring that the deed is forged, formally defective, or has lost its status as an authentic deed.

In addition to its external evidentiary force, the deed also possesses formal evidentiary force (*formele bewijskracht*). Formal evidentiary force guarantees that all statements, agreements, and legal acts embodied in the deed were genuinely made and declared by the parties before the Notary in accordance with the procedures prescribed by law. In other words, the Notary certifies that the parties were personally present, freely expressed their intentions, signed the deed, and agreed to all of its provisions after the deed had been read and explained to them.

Furthermore, Joint Operation Agreement Deed Number 38, together with its amendments, also possesses material evidentiary force (*materiële bewijskracht*). Material evidentiary force signifies that the contents of the deed are presumed to be true and legally binding upon the parties unless proven otherwise through the applicable legal process. Accordingly, all rights and obligations of the parties, the mechanisms for implementing the cooperation, the distribution of profits, and the respective responsibilities stipulated in the deed constitute the primary legal basis for the court in determining whether a breach of the agreement has occurred.

The evidentiary value of an authentic deed is further affirmed under Article 1870 of the Indonesian Civil Code, which provides that an authentic deed constitutes perfect evidence (*volledig bewijs*) against the parties and their heirs with respect to the matters contained therein. As an instrument of perfect evidence, the contents of an authentic deed must be presumed true unless and until proven otherwise. Accordingly, any party challenging the validity or contents of the deed bears the burden of proving the existence of legal defects, forgery, or any other grounds capable of depriving the deed of its evidentiary value. In the absence of such proof, the court is entitled to rely upon the authentic deed as the primary basis for its legal considerations and judgment.

In Decision Number 391/Pdt.G./2024/PN.Jkt.Utr, the existence of Joint Operation Agreement Deed Number 38, together with its amendments, provided the Plaintiff with a particularly strong evidentiary position. The Plaintiff's assertions concerning the existence of a legal relationship and the contractual obligations to be performed by the Defendant no longer required additional proof regarding either the existence or the contents of the agreement, as these had already been established through an authentic deed possessing external, formal, and material evidentiary force. Consequently, the Plaintiff was only required to demonstrate that the Defendant had failed to perform the obligations stipulated in the agreement. Conversely, if the Defendant sought to dispute the contents or validity of the deed, the burden of proof shifted to the Defendant to establish legal grounds capable of negating the deed's evidentiary force.

A Joint Operation Agreement (KSO) constitutes an innominate contract based on the mutual intention of two or more business entities to combine their capital and resources in order to conduct a business activity and achieve a common objective, namely generating profits while minimizing business risks. Through a KSO, a separate business entity commonly referred to as a KSO business entity is established. In general, a KSO agreement regulates only the respective rights and obligations of the participating parties and is founded upon Article 1320 in conjunction with Article 1338 of the Indonesian Civil Code. In practice, the KSO business entity is often treated as a distinct entity separate from the participating companies, as it is authorized to conduct legal affairs and act in its own name without requiring representation by the participating business entities. Nevertheless, from a juridical perspective, a KSO business entity does not possess the status of a legal entity. Under Indonesian law, legal entity status requires the execution of a notarial deed of establishment and formal approval from the Ministry of Law and Human Rights of the Republic of Indonesia, requirements that are not applicable to a KSO.

The differences between an Operational Joint Venture (KSO) and a Limited Liability Company (PT) or a partnership are evident in their legal status, the purpose for which they are formed, and the legal relationship between the parties involved. A KSO is a form of cooperation established through a contract between two or more parties to carry out a specific project or task without creating a new legal entity. In a KSO, each participant retains their own legal status and is bound only by the terms of the cooperation set out in the agreement. Thus, the roles of the parties in a KSO are determined by the details of the contract and the rights and responsibilities agreed upon in advance.

Under these provisions, a Joint Operating Agreement (KSO) is recognised as a collaborative arrangement formed through an agreement between two or more parties to pool resources, funding, operational skills or specific assets in order to achieve financial objectives and generate shared profits without establishing a new legal entity. Thus, a KSO places greater emphasis on a contractual arrangement than on creating a separate business organisation.

In practice, property development in Indonesia frequently utilises the KSO as a collaborative method, as it affords participants the flexibility to determine the allocation of rights, duties, responsibilities, financial contributions, project oversight and the distribution of profits in accordance with the needs and terms set out in the contract. This flexibility is a key factor in the widespread use of the KSO in projects involving multiple parties with varying capabilities and contributions.

The characteristics of a KSO are as follows: (1) it arises from a mutual agreement between the parties involved; (2) it has no clear legal entity classification; (3) it is temporary in nature, linked to a specific duration or the completion of a project; (4) there is a sharing of investment, risk and profits; and (5) the obligations of each party are determined in accordance with the terms of the agreement. It is important to distinguish a KSO from a Limited Liability Company (PT) or a partnership. A PT is a legal entity with assets separate from those of its shareholders and is recognised as a separate legal entity under the law. In contrast, a partnership typically involves a business arrangement with a more permanent organisational framework and legal relationships. Unlike these two forms, a KSO does not form a new legal entity as it merely represents a framework for cooperation based on an agreement; therefore, the rights and responsibilities remain with each party involved in the agreement.

Thus, a KSO is a collaborative endeavour between two or more parties who agree to pool resources, capital, operational capacity or specific assets to achieve financial objectives without forming a new legal entity. In the context of property development in Indonesia, a KSO is frequently used as a means of collaboration as it offers flexibility in defining the rights and responsibilities of the parties involved.

In Case No. 391/Pdt.G./2024/PN. Jkt.Utr., the legal relationship between the parties arose from the formation of an Operational Cooperation Agreement (KSO) established by Deed of Operational Cooperation Agreement No. 38 dated 9 December 2003, which underwent several amendments up to the Sixth Amendment No. 100 dated 23 March 2017. The legal facts indicate that the relationship between the parties involved did not arise from a specific contract such as a sale and purchase agreement, a lease agreement, or a cooperation agreement, but emerged from a contractual framework created by the parties in accordance with their business needs. Thus, the cooperation in this situation can be categorised as an unnamed agreement.

The validity of an innominate agreement remains subject to Article 1320 of the Civil Code, which sets out the conditions required for an agreement to be valid, including the existence of consent, legal capacity, a clear subject matter, and a valid cause. Provided these criteria are met, the agreement becomes binding on the parties involved, much like a legal status.

In this case, the Panel of Judges ruled that the Joint Operating Agreement, together with all its amendments, is valid and legally binding. This ruling is based on Article 1338 of the Civil Code, which emphasises that any agreement validly entered into is binding on the parties. By referring to Article 1338 of the Civil Code, the judges indicated that they were not questioning whether the Joint Operating Agreement was categorised as a specific or non-specific agreement. Rather, they focused on whether the criteria for a valid agreement had been met and whether the agreement had been carried out in good faith.

The principle of pacta sunt servanda serves as a key foundation in this regard. This principle treats the terms of a contract as a standard that must be adhered to by the parties involved. Therefore, when one party fails to fulfil its agreed obligations, this is regarded not only as a breach of contract but also as a breach of legal certainty within the binding relationship. Having reviewed this case, the judge ruled that the Claimant possessed the authority, derived from an amendment to the contract, to appoint, dismiss and replace members of the KSO's management committee. However, the exercise of this authority was impeded by the Defendant's lack of response and consent, which resulted in the KSO's operations not proceeding as intended.

In the judge's assessment, it was determined that the Claimant had the authority, in accordance with the amended agreement, to select, remove and replace individuals on the KSO's management committee. However, the exercise of this authority was hindered by a lack of feedback and approval from the Defendant, which resulted in the KSO's activities not running smoothly. From this situation, it is clear that the existence of an unnamed agreement does not diminish its binding effect. In fact, as the rules stem from the parties' agreement, compliance with the provisions set out in the agreement becomes all the more important.

Thus, it can be concluded that the initial statement of the issue is that the legal status of the KSO in Judgment No. 391/Pdt. G./2024/PN. Jkt. Utr. is that of a valid innominate contract which remains enforceable in the same way as an ordinary contract, as provided for in Article 1338 of the Civil Code. Consequently, all rights and obligations arising from this contract must be fulfilled by the parties involved in accordance with the terms of the agreement and the principle of good faith.

Forms of Breach of Contract in the Implementation of a Joint Operating Agreement (KSO) in Judgment No. 391/Pdt.G./2024/PN. Jkt.Utr.

From a legal perspective, it is crucial to distinguish between administrative negligence and fundamental breach of contract (non-performance). Administrative negligence usually relates to errors in administrative procedures or governance, which can generally still be rectified and do not prevent the parties from achieving the objectives set out in the contract. Conversely, fundamental breach of contract occurs when one party fails to fulfil a primary obligation (performance), thereby preventing the achievement of the objectives agreed upon in the contract. Therefore, determining whether an act constitutes a breach of contract is not based solely on the existence of a procedural violation, but also on the extent to which that violation affects or hinders the primary performance process under the contract.

In an Operational Cooperation Agreement (KSO), the establishment of a management team is essential for carrying out the functional duties under the contract. This is because a KSO is not a legal entity with its own management structure, such as a limited liability company, but rather a contractual relationship whose operational continuity depends on the cooperation, coordination and good faith of the parties. Consequently, any major decision, such as the formation of a management team, can only take place if the parties properly and actively fulfil their contractual obligations as set out in the agreement.

A breach of contract refers to a failure to fulfil the obligations agreed upon by the parties to the contract. Under Indonesian civil law, the concept of a breach of contract arises when one party fails to fulfil its obligations as set out in the contract. Such a breach is not limited to a complete failure to perform, but also encompasses situations where an obligation is fulfilled inadequately, there is a delay in fulfilling an obligation, or actions are taken contrary to what is permitted under the contract.

According to the principles of civil law, a breach of contract can be categorised into four distinct types:

1. Failure to fulfil an obligation in full;
2. Fulfilment of an obligation, but not in the correct manner;
3. Fulfilment of an obligation, but after the specified time;
4. Taking actions prohibited by the contract.

However, before determining whether a contract has been breached in a given situation, it is vital to review the details of the agreement, the rights and obligations of the parties involved, the legal facts presented in court, and the judge's legal reasoning. This analysis is important because not every obstacle encountered whilst performing a contract can be regarded as a breach.

In Case No. 391/Pdt. G./2024/PN. Jkt. Utr., the Claimant argued that, under the revised Operational Cooperation Agreement (KSO), they had the authority to appoint, dismiss and replace members of the KSO Management Committee to facilitate the implementation of the operational cooperation. However, the Plaintiff states that this authority cannot be exercised due to the lack of consent or action from the Defendant, which has subsequently hindered the operational activities of the Paladian Park KSO.

The Plaintiff claims that this situation has led to delays in the marketing of the remaining apartment units and kiosks, thereby causing financial losses due to ongoing operational and maintenance costs for unsold properties. In relation to these claims, the Claimant, through its legal submissions, requests the court to confirm that the KSO Agreement and all its amendments are valid and enforceable, to declare that the Defendant has breached the contract, to recognise the losses suffered by the Claimant, and to permit the Claimant to carry out the KSO's operational duties without the need for prior approval.

In light of these legal details, to determine whether a breach of contract has occurred, it is important to first assess the rights and responsibilities of the parties involved as set out in the Joint Operating Agreement (KSO) and its subsequent amendments. Thus, identifying a breach does not merely depend on a conflict between the parties, but also requires an examination of whether specific contractual obligations have clearly been disregarded.

With regard to the categorisation of breaches in civil law, the claim brought by the Claimant may be interpreted as a case of non-performance of an obligation, provided it can be proven that the obligation to give consent or to carry out specific actions falls within the Defendant's responsibilities in accordance with the provisions of the agreement.

In contract law, the obligations of the parties involved are not limited to payment or the delivery of goods, as they may also encompass specific legal acts necessary to fulfil the purpose of the contract. Consequently, a failure to perform the acts required as part of a contractual obligation, which hinders the ability to cooperate, may constitute a breach of contract. The determination of whether a breach has occurred in this situation must ultimately depend on the judge's legal analysis of all available evidence, the terms of the contract, and the legal relationship between the parties during the course of their cooperation.

Furthermore, several amendments to the Joint Operation Agreement indicate that the parties involved had previously made efforts to adapt their legal arrangements to suit the project's operational requirements. However, if the proposed amendments cannot be implemented because one party has failed to fulfil its agreed obligations, this may affect the efficiency of the collaboration.

From a contractual law perspective, this situation may also be linked to the principle of good faith. This principle requires the parties not only to comply with the terms of the contract, but also to assist in achieving the objectives for which the agreement was entered into. If it is established that there has been an act or omission that hinders the cooperation, this may constitute grounds for a breach of contract.

Consequently, determining the nature of the breach of contract in Judgment No. 391/Pdt. G./2024/PN. Jkt. Utr. cannot rely solely on one party admitting fault. It must be based on evidence demonstrating that contractual obligations have not been fulfilled, an assessment of the Joint Operation Agreement (KSO), and the judge's evaluation of the facts presented during the trial. With this approach, it can be effectively determined whether a breach of contract has indeed occurred in this case. The assessment should be based on evidence of unfulfilled obligations, the provisions set out in the KSO Agreement, and the judge's view formed during the course of the proceedings, as it is only through this framework that the nature of the breach of contract can be accurately identified and legal liability established.

Legal Consequences of Breach of Contract for the Parties to a Joint Operating Agreement (KSO)

Under Indonesian civil law, every obligation arising from a contract gives rise to legal consequences in the form of rights and responsibilities that must be fulfilled by the parties involved. If one of the parties fails to fulfil its commitments as stipulated, this will be regarded as a breach of contract, resulting in legal liability for the aggrieved party. Provisions relating to the legal consequences of a breach of contract are typically found in Articles 1238 and 1243 of the Civil Code. Article 1238 addresses the concept of default, whilst Article 1243 states that liability for the payment of costs, damages and interest falls on the debtor if they continue to neglect their obligations after being deemed to be in default. In the application of contract law, the legal consequences of a breach of contract may include:

1. The obligation to fulfil the terms of the contract;
2. Compensation for losses;
3. Rescission or cancellation of the contract;
4. Reallocation of risk;
5. Bearing of legal costs.

The imposition of these legal sanctions depends largely on the nature of the breach and the extent of the losses suffered by the affected party. In case number 391/Pdt. G./2024/PN. Jkt. Utr., the judges ruled that the Defendant's failure to fulfil its contractual obligations under the Joint Operation Agreement (KSO) had caused economic losses to the Plaintiff, and therefore ordered the Defendant to pay compensation. Pursuant to the judgement, the court ordered the Defendant to pay the Plaintiff the sum of Rp 11,703,765,155. The award of compensation in this situation demonstrates that the Panel of Judges applied the restorative approach (the restorative purpose of contract law), which aims to restore the affected party to the position they would have been in had the contract been performed as intended.

In addition to giving rise to legal consequences, such as the obligation to be held liable for breach of contract, the performance of a contract must also be assessed in accordance with the principle of good faith in performance, as set out in Article 1338(3) of the Indonesian Civil Code. This provision requires all agreements to be performed honestly, properly and cooperatively. This principle obliges the contracting parties not only to fulfil the agreed obligations, but also to assist one another in ensuring that the objectives of the agreement are achieved. Consequently, the assessment of a breach of contract does not merely consider whether the contractual obligations have been fulfilled, but also examines the conduct of the parties in the performance of the agreement, including an assessment of their good faith in addressing any issues and obstacles arising under the agreement.

In Judgment No. 391/Pdt. G/2024/PN. Jkt. Utr., the defendant's persistent failure to heed the warning letters and requests for the establishment of a joint venture management team submitted by the claimant since 2021 demonstrates a clear lack of willingness to cooperate in fulfilling its contractual obligations. This conduct has persisted over time, despite the claimant having given the defendant several opportunities to comply with its obligations. The defendant's actions cannot simply be viewed as a breach of one or more procedural provisions in the contract; rather, they demonstrate a lack of good faith in the performance of the agreement, as they effectively prevent the achievement of the objectives of the cooperation originally agreed upon by both parties.

This bad faith has legal consequences that extend beyond a mere failure to fulfil obligations. The inability to establish a management structure for the Joint Operating Entity (KSO) due to the defendant's lack of involvement has prevented the KSO's activities from operating effectively. This situation directly led to the postponement of several business activities, including the rejection by the bank of an application for an Apartment Purchase Loan (KPA) because the administrative and institutional requirements of the Joint Operating Entity (KSO) had not been met. Consequently, the objective of establishing the KSO to carry out collaborative projects could not be achieved, thereby causing greater losses to the claimant. This demonstrates a clear causal link between the defendant's actions and the disruption to the KSO's operations.

Under the principles of civil law, compensation in cases of breach of contract serves not only as a punitive measure against the breaching party, but also as a legal safeguard for the party that has duly fulfilled its obligations. Thus, the award of compensation must demonstrate a clear causal link between the breach and the resulting loss.

In the case in question, the Claimant suffered losses as a result of the Defendant's failure to implement the KSO management system in accordance with the terms of the revised contract. The Defendant's failure to act impeded the Claimant's ability to operate and exercise its rights, which ultimately had a negative impact on the economic benefits of their cooperation.

When viewed from a contractual law perspective, it is abundantly clear that the consequences extend beyond mere financial loss; they also include disruption to the achievement of the primary objective of establishing a cooperative relationship. This is particularly significant because a Joint Operating Agreement (KSO), being a type of agreement not formally categorised, is essentially designed to realise mutual benefits for the parties involved. Thus, if one party fails to fulfil its obligations, the impact is not only felt on a personal level but may also hinder the entire framework of cooperation.

In addition to financial compensation, this decision also implicitly reinforces the principle of pacta sunt servanda, which affirms that the terms of a contract must be respected and carried out in accordance with the legal provisions agreed upon by the parties. By imposing sanctions on the breaching party, the judge ensures that a breach of contract will have clear legal consequences. From the perspective of legal protection, this decision demonstrates that the judicial system not only resolves disputes but also plays a role in safeguarding the integrity of business partnerships by enforcing the responsibilities set out in the contract.

In the author's view, the decision handed down by the judge in this case is consistent with the principle of accountability enshrined in contract law. The judge did not simply terminate the legal relationship between the parties involved; rather, the judge prioritised the restoration of the aggrieved party's rights through compensation. This approach demonstrates that the primary objective in addressing a breach of contract goes beyond merely dissolving the contractual relationship; the aim is to ensure protection for the party suffering loss as a result of the breach.

Consequently, the legal consequence of the breach of contract in Judgment No. 391/Pdt. G./2024/PN. Jkt. Utr. is the establishment of legal liability for the party that has failed to fulfil its commitments, which includes the obligation to pay damages as a means of restoring the rights of the aggrieved party. This compensation not only serves to cover the losses incurred but also reinforces the principle that every contract entered into by the parties involved must be performed in good faith and in accordance with the agreed terms. Therefore, it can be legally affirmed that the KSO contract relating to this case possesses significant binding force and must be complied with by all parties involved without exception, in accordance with the principle of pacta sunt servanda.

CONCLUSION

Based on the results of the research and analysis of these judgements, the conclusions of this study are as follows:

1. A Joint Operation Agreement (KSO) falls within the category of unnamed (innominate) contracts of a mutualistic nature, arising from the intention of two or more business entities to pool their capital in order to carry out a business and achieve a common objective, namely to generate profit and minimise risk. Through a KSO, a new business entity known as the KSO business entity is formed. The KSO agreement itself generally only regulates the rights and obligations of the parties involved in the cooperation, based on Article 1320 in conjunction with Article 1338 of the Civil Code (hereinafter referred to as the Civil Code). It can therefore be concluded that the initial issue at hand is that the legal status of the KSO in Judgment No. 391/Pdt. G./2024/PN. Jkt. Utr. is that of a valid innominate contract which remains enforceable in the same way as an ordinary contract, as provided for in Article 1338 of the Civil Code. Consequently, all rights and obligations

arising from this contract must be fulfilled by the parties involved in accordance with the terms of the agreement and the principle of good faith.
2. The form of breach of contract in Judgment No. 391/Pdt.G/2024/PN Jkt. Utr. is non-performance, namely that the Defendant failed to fulfil its contractual obligations as set out in the Joint Operating Agreement (KSO) and its amendments, in that it did not grant approval or take the necessary actions, thereby preventing the Plaintiff from exercising its management authority over the KSO. Consequently, the operational and marketing activities of the Paladian Park project were hampered, causing losses to the Plaintiff. Thus, determining the nature of the breach of contract in Judgment No. 391/Pdt. G./2024/PN. Jkt. Utr. cannot rely solely on one party admitting fault. It must be based on evidence demonstrating that contractual obligations were not fulfilled, an evaluation of the Joint Venture Agreement, and the judge's assessment of the facts presented during the trial.

Recommendations
1. Parties entering into an Operational Cooperation Agreement (KSO) should draft the agreement in a manner that is clearer, more comprehensive and more detailed with regard to rights, obligations, implementation mechanisms, dispute resolution and the consequences of a breach of contract.
2. Legal practitioners and notaries are advised to provide legal assistance in the drafting of Operational Cooperation Agreements (KSO) to ensure that every clause is in accordance with applicable legal provisions, reflects the principle of pacta sunt servanda, and provides balanced legal protection for the parties.
3. For future researchers, it is recommended to conduct further research on Operational Cooperation Agreements (KSO) by examining the application of other legal principles of contract, such as the principle of good faith, the principle of balance, or legal protection for the parties across various business sectors, thereby enriching research on KSO in Indonesia.

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