

Jurists Analysis on the Development of Limited Partnership in Indonesia

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ABSTRACT

This paper aimed to examine the legal developments occur to the *Commanditaire Vennootschap* or Limited Partnership or CV in Indonesia. This paper employed qualitative research method relying on secondary data. Data were obtained through library research by analyzing relevant documents, expert opinions, cases and books. This research combined secondary and primary data in exploring the problems. The results of this study showed that there had been a deviation on the law that govern CV in Indonesia. This type of business entity is still governed by a commercial law that was established in 1848, while changes have been taken place since then. These changes create a deviation on the legal aspect of CV. The deviation occurs in the CV registration, leasing the company to others, or the status of assets owned by the company. The implications of these deviations are invalid CV action and ownership conflicts over assets.

Keywords: *Limited Partnership, legal development, uncertain legal development*

1. INTRODUCTION

In Indonesia, there are currently three forms of companies [1] that can be chosen to run business, namely: (a) sole proprietorship, (b) limited liability company, (c) partnership company (partnership). The development of the company structure in the partnership results in a partnership in a special form, namely the Alliance of Commandaries (*Commanditaire Vennootschap*), hereinafter referred to as "CV" or Limited Partnership. [2].

CVs are regulated in Articles 19-21 of the Commercial Law Act (KUHD). In its arrangement, a CV consists of two types of allies, the first is 'limited allies' or passive allies, known as investments. Then the "compliant allies" (*complimentaris or daden van beheer*) is also known as the management allies or active allies. The Allied Commandant will only bear the limited amount of capital invested (*beakte aansprakelijkheid*, limited liability). Meanwhile, the Allied Complementary has unlimited liability to cover the personal assets. [3]

2. Implementation Of Loan Business Entity Name Cv As A Form Of Legal Deviation

In some countries, CV business entities that are included in the category of unincorporated business entity [4] is a classic reason for CV activities continue to grow without being followed by legal reform and new thinking to address the challenges created in national economic activities.

One consequence of a marketing strategy that is commonly applied by consulting companies and individuals as an effort to get a project either through an auction process or direct appointment/procurement. Some consider this act as a market opportunity so that businesses that offer loan services to emerge to auction a project either closely or openly. [5]

A common example of a business entity's name and loan practice is when a contractor (for example, Mr A), who works on a construction project belong to a non-construction service company, that wins a tender in the auction process. Mr. A borrowed the name of CV X, where Mr. B acted as Director to get the desired construction project. After completing the construction project, Mr. A will give a 3% fee to Mr. B. As a legal guarantee, Mr. A and Mr. B then establish a deed of cooperation agreement before the notary, which states all project work and responsibilities arising from the work towards the third party is fully borne by Mr. A. While Mr. A then comes to CV.X as an active company. Mr. A's position in the CV is only during the project, so once the project is completed, Mr. A exits CV.X.

Lending names is not justified, but the practice has developed widely and is considered to be common in businesses. The practice of borrowing names that often occur between two legal subjects (both individuals and legal entities) is done orally or in writing, which is often done underhanded. The name lending practices, which are generally underhanded agreements, can happen because of several factors, such as the borrower does not have a business entity to follow a mechanism, such as tenders and other things that require a business entity to participate, the

borrower does not meet the Business Entity Certificate Qualification (SBU), the borrower does not meet the basic capabilities of the field/sub-field of work, the borrower has limitations on Remaining Financial Ability (SKK) and Remaining Package Ability (SKP). [6]

From a legal point of view, the practice of borrowing names in the procurement of government goods / services is prohibited because it contradicts the legislation, as regulated in Article 87 paragraph (3) of Presidential Regulation Number 54 of 2010, concerning Procurement of Government Goods/ Services. The Republic of Indonesia Presidential Regulation Number 70 of 2012, concerning the Second Amendment to Presidential Regulation Number 54 of 2010, concerning Government Procurement of Goods/Services, mentions a prohibition for Goods/Services Providers to transfer the implementation of main work under contract, by subcontracting to other parties, except for the part of the main work to specialist goods/services providers. It can be concluded that the name loan does not meet the legal requirements of the agreement, namely objective conditions, a legal cause. Therefore, an agreement that contains a loan is invalid and null and void by law. It means that there was never an agreement.

In the Supreme Court Decision Number 758 K/Pdt.Sus-KPPU/2015, between Moh. Nori, the owner of CV Burung Nuri, and Reza Febriant. The ruling stated that it was invalid, a cooperation agreement consisting a name loan made before a public notary.

The ban on the practice of borrowing this name continues. Notaries, as the creator of company change deeds, are often not aware of this practice. Thus, the company management changes or even the cooperation agreement with the notary deed that is the basis for the name borrowing act continues. [7]

3. The Mixing Of Company Finance And Family Finance In Cv

Fifty percent of the administrators and holders of CV are individuals. Seven-percent of the relationship between the management and limited allies are siblings or siblings due to marriage. The remaining 43% do not have family relations but are based on friendships.

The selection of a wife, child or sibling to occupy a limited allied position shows that the founder of the CV wants to keep his control over the company, and shows a high level of trust between the CV's partners.

In addition, if it is viewed from the origin of the CV formation, a form of cooperation in which one party, who has his own wealth, "entrusts his money" to another party, then the separate wealth that must be owned by limited allies is appropriate. CV with a family relationship between the management allies and limited partners (husband and wife) is essentially an individual company because capital and assets come from one person only, except if between husband and wife have an agreement of separation assets. To date, for some legal actions, CVs, with family relationship between the management allies

and limited allies, require to include others as limited allies.

4. The Provision Of Building Right (As Subject Of Building Right) As Cv Assets

Articles 35 and 39 of the Basic Agrarian Law (UUPA) state that the Right to Build (HGB) is the right to erect and own buildings on the land that does not belong to him, for a maximum period of 30 years and can be extended for another 20 years. It can be transferred to other parties, can be used as collateral for debt by being encumbered with Mortgage Rights.

The LoGA also stipulates that those entitled to receive HGB are Indonesian citizens, as well as legal entities established under Indonesian law and is in Indonesia.

However, recently, there have been a number of problems where there is a CV given the HGB. There are two different opinions regarding the legal status of the CV. One states that a CV is not a legal entity [8], while another believes that a CV is a legal entity [9].

However, the Decision of the Supreme Court of the Republic of Indonesia Number 879 K/ Sip /1974 states that a limited partnership company or CV, is not yet a legal entity, meaning that it in legal system but its not yet a separate legal subject regardless of its executive members. Members management can carry out legal actions in trade. Hence, in the case of a CV sues in court or also if it is sued, then the sue is not the CV, but members of the executive board.

It is clear that CV in Indonesia is not a legal entity, so it is not entitled to receive HGB, either in the purchase as a result of profit or as a recipient of the inclusion of the company (*Inbreng*). Thus, if the subject of land rights with the status of HGB is not fulfilled, the subject of land rights must release their rights or transfer the rights to other parties who meet the requirements under the Indonesian Land Law.

5. CONCLUSION

In summary, many changes have occurred related to CV and this requires the establishment of new regulations that can accommodate the business needs.

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