

Ownership of Land Right for Joint Partnership in Indonesia

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ABSTRACT--*The Joint partnership (commanditaire vennootschap) or often known by the abbreviation CV is a partnership established by one or several people who entrust money or goods to one or several people who run the company and act as leaders. The limited partnership was established with a notarial deed and is now registered at the Ministry of Law and Human Rights of the Republic of Indonesia. This alliance is not a legal entity, so it does not have its own wealth. Circular Letter Number: 2 / SE-HT.02.01 / VI / 2019 concerning Granting of Building Use Rights for Limited Partnership, gives CV the opportunity to obtain Building Use Rights (HGB), even though Article 36 of the Basic Agrarian Law says that those who can have building rights are Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. Implementation of Circular Letter Number: 2 / SE-HT.02.01 / VI / 2019 concerning the Granting of Building Use Rights for Limited Partnership can not be done by the Land Office in Regency / City. Legislation hierarchy Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Regulations of the Law that the Basic Agrarian Law has a higher position than Circular, means that lower regulations must not conflict with higher regulations. During this time the ownership of land owned by CV in the name of one or its allies, because it has not been explicitly regulated regarding the prohibition of the practice of nominees in the field of land, so that there can be indications of tax evasion or embezzlement.*

Keywords: *limited partnership, building rights*

I. INTRODUCTION

Joint Partnership (Comanditaire Vennootschap) or often abbreviated as CV according to Article 19 of the Commercial Law Code (KUHD) is a company to run a company formed by one person or several state-owned companies who bear responsibility for all of them (slider responsibility) on one party and one or more persons providing capital (geldscheiter) to another party. People prefer CVs because the process of establishing it is easy and the company's risk can be borne jointly by allies. The disadvantage of a limited partnership is that operations are dependent on active allies acting as allied leaders so that the survival of the company is uncertain, the capital that the company has deposited is difficult to withdraw, it is easy for conflicts to arise between its allies. Besides that, CV is a type of partnership business entity that does not yet have a legal entity. The establishment of a CV uses a notarial deed and is now registered at the Ministry of Law and Human Rights of the Republic of Indonesia.

The Government through the Ministry of Agrarian Affairs and Spatial Planning / ATR BPN facilitates land services by issuing Circular Letter of the

Minister of Agrarian Affairs and Spatial Planning Number 2 / SE-HT.02.01 / VI / 2019 regarding the Granting of Building Use Rights to the Alliance of Commanders. Article 36 of the Basic Agrarian Law or Law Number 5 of 1960 says that those who can have the right to use the building are Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. A limited partnership is a business entity not a legal entity. The two regulations contradict each other. Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Regulations of the Law stipulates the legislative hierarchy that the Basic Agrarian Law has a higher position than Circular. The status of the rules that are below it may not conflict with the regulations that are above it.

Another problem in item 5 letter b of the Circular is that the applicant is a limited partnership or complementary company in the CV, but they act not for and on behalf of the CV, but for and on behalf of all the companies in the CV. Number 5 letter a states that the applicant for a certificate of Building Use Rights is a limited partnership, but the name of the holder of the Land Rights listed in the certificate is the name of the individual company CV, not the name of the CV business entity.

All this time, ownership of land owned by a CV has been carried out by including the name of one or several or all of the state-owned companies in their land title certificates. Problems that arise if named one or several state-owned companies, will be prone to problems arising later on, especially if the company dies. In addition, the amount of income from each company is different, while in the CV certificate, now only the name is written without the amount of income of each company. The state-owned companies usually make name loan agreements or often known as nominee agreements. The nominee agreement which states that ownership of the land rights is actually owned by the CV purchased with the results, income and profits from the CV.

In Indonesia, there are no specific and explicit regulations for the borrowing of names (nominee) between Indonesian citizens and Indonesian citizens. Nominee agreements contain empty meaning / empty norms, because they can be categorized as legal smuggling. The problem is how the binding power of the nominee agreement to ownership of land rights in a limited partnership in Indonesia based on the Circular of the Minister of Agrarian and Spatial Planning Number 2 / SE-HT.02.01 / VI / 2019.

II. RESEARCH METHODS

The research method used is normative juridical, which is a research method that refers to legal norms contained in the legislation. According to Soerjono Soekanto, a normative juridical approach is legal research carried out by examining library material or secondary data as a basic material to be examined by conducting a search of regulations and literature relating to the problem under study.[3]

III. FINDINGS AND DISCUSSION

a. Partnership Alliance (CV)

Joint Partnership (CV) is a form of partnership business entity established by two or more people in which some members have unlimited responsibilities and some other members have limited responsibilities. Limited partnership is one form of company not a legal entity.[1]

The capital owners in CV are divided into 2 (two) types, namely active and passive allies. Active allies or often referred to as complementary allies are allies who run the company. Passive allies or often called limited allies are allies who only give up capital in the partnership and do not interfere in the management or activities of the company.[2]

Komantider / CV alliance is not a legal entity company, although the elements or material requirements to become a legal entity have been fulfilled by the CV, but because there is no element of recognition or endorsement from the government, the CV cannot be recognized as a legal entity company.

b. Ownership of Land Rights in Indonesia

Ownership of Land Rights in Indonesia is regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or often referred to as the Basic Agrarian Law (UUPA). The law is a unified land law in Indonesia (unification). The purpose of the enactment of this law is the creation of legal certainty in Indonesia. The government follows up on this regulation by providing written legal instruments in the form of other regulations in the field of national land law that support legal certainty, which subsequently through existing legal instruments is implemented in the form of effective land registration.

According to Article 9 of Government Regulation Number 24 of 1997 concerning Land Registration, which can be the object of land registration are:

1. Plots of land that are owned with ownership rights, business use rights, building rights and use rights.
2. Unmanaged land.
3. Waqf land.
4. Proprietary rights to flat units.
5. Mortgage rights.
6. State land.

Land rights are rights that give authority to someone who has the right to use or take advantage of the

land. Characteristics of land rights is someone who has the right to land has the authority to use and take advantage of the land that is his right. The land rights referred to in Article 16 in conjunction with Article 53 of the BAL are:

1. Proprietary rights.
2. Cultivation Rights.
3. Building Rights.
4. Right of Use.
5. Rental Rights.
6. Right to Open Land.
7. The Right to Collect Forest Products.
8. Other rights that are not included in the above mentioned rights stipulated by the law as well as temporary rights as mentioned in Article 53.

According to Circular Letter Number: 2 / SE-HT.02.01 / VI / 2019 concerning the Granting of Building Use Rights for the Military Command. The Right to Build is regulated in Articles 35-40 of the LoGA. Further regulation, then regulated in Government Regulation Number 40 of 1996 concerning Land Use Rights, Building Use Rights and Land Use Rights. Definition of Building Use Rights as the right to erect and own buildings on land that are not their own for a certain period of time.

The title of Building Use Rights according to Article 36 paragraph (1) of the LoGA is an Indonesian citizen and a legal entity established under Indonesian law and domiciled in Indonesia. Article 32 PP No. 40 of 1996 stipulates that the holder of a building right has the right to control and use the land granted with building rights for a certain period of time to build and own a building for his personal or business needs and to transfer the said right to another party and burden it.

Obligations of building rights holders according to Article 30 PP No. 40/1996 is:

1. Paying income the amount and method of payment determined in the decision to grant rights.
2. Use the land in accordance with its designation and the requirements set out in the decision and agreement to grant rights.
3. Maintain good land and buildings on it as well as protecting the environment.
4. Re-surrender land granted with building use rights to the state, management rights holders or ownership holders after the building rights are abolished.
5. Submit certificate of use rights of buildings that have been deleted to the Head of the Land Office.

Land that can be given building use rights are

1. State land.
The Right to Build is granted with a decision on the granting of rights by a designated minister or official.
2. Land management rights.
The Right to Build is granted with a decision to grant rights by the minister or an appointed official based on the proposal of the holder of management rights.
3. Land of ownership.

The Right to Build is granted through a gift by the holder of the right with a deed made by the Land Deed Makers Officer.

Every assignment of building use rights must be registered at the Land Office.

Building Use Rights originating from state land and land management rights are granted for a maximum period of thirty years and can be extended for a maximum period of twenty years. Building rights can be extended with the following conditions:

1. The land is still used properly in accordance with the circumstances, nature and purpose of the granting of the right.
2. The conditions for granting rights are fulfilled properly by the rights holder.
3. The holder does not still qualify as a rights holder.
4. The land is still in accordance with the relevant Regional Spatial Plan.
5. For Building Use Rights that originate from the management right of land, approval from the management right holder is required.

Building Use Rights are deleted because:

1. The time period is over and not renewed or renewed.
2. Terminated before the end of the period by the competent authority, because it does not meet the following requirements:
 - 2.1. Non-fulfillment of rights holder obligations.
 - 2.2. Fulfillment of conditions or obligations agreed by the holder of building rights with the holder of management rights or ownership holders.
 - 2.3. The court's decision is legally binding.
3. Released by the rights holder before the period ends.
4. Revoked in the public interest

The issuance of Circular Number: 2 / SE-HT.02.01 / VI / 2019 concerning the Granting of Building Use Rights to the Military Commitment Alliance aims to increase investment and encourage economic growth in Indonesia. In the case of submitting an application, Article 20 of the Commercial Law Code states that passive or limited partners can not be involved in company activities or carry out CV management actions even though they are based on authorization. Limited partnership companies have the right not to approve because the limited partnership does not need to share the burden of losses which amount is greater than the capital deposited into the company.

c. Nominee Agreement

A nominee agreement is an agreement made between someone who according to the law cannot be the subject of certain land rights[4]. Nominee agreement is a form of legal smuggling to avoid the regulation that stipulates that legal subjects who do not meet the requirements of being the holders of land rights in Indonesia. Maria SW Sumardjono said in her book that the main agreement which was followed by other agreements relating to the mastery of land rights showed that indirectly through legal notarial agreements had taken place.

The agreements made by the Notary with the aim of securing the assets which are the object of the nominee are essentially motivated by bad faith so that it

can be said that the agreement has damaged the authority of the Notary profession itself and is very contrary to Article 16 paragraph (1) letter a Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which states that:

"In carrying out his position, the Notary is obliged to act trustworthy, honest, thorough, independent, impartial and safeguard the interests of the parties involved in legal actions."

The agreement made is a fake agreement that does not have binding power as regulated in Article 1335 of the Civil Code which states that: "An agreement with false causes or contents is not legally binding"

So that it becomes a legal defect. Nominee agreements are often referred to as simulation agreements. Article 1320 and Article 1337 of the Civil Code states that the agreement must contain halal causes, in the sense that it does not conflict with the law, decency and public order. The consequence if it is against the cause is that the agreement is not valid.

IV. CONCLUSIONS

Seeing the applicable legislation, conclusions can be drawn regarding ownership of land rights for limited partnership, with the issuance of Circular Minister of Agrarian Affairs and Spatial Planning Number 2 / SE-HT.02.01 / VI / 2019 concerning the granting of Building Use Rights for limited partnership. in full because the name listed in the certificate is not the name of the CV concerned, but the names of the companies in the CV acting on behalf of the CV. In accordance with Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Statutory Regulations mentioned regarding the hierarchy of legislation, lower Regulations must not conflict with higher regulations. In this case the Circular is not contradictory but there is no function if it is related to the government's appeal to the public not to borrow nominees, let alone the ownership of land rights, so the government needs to make significant changes to the existing regulations long to be adapted to the development of the era which is of course for the progress of the nation and state and the welfare of society.

REFERENCES

- [1] Munir F., 2008, *Pengantar Hukum Bisnis : Menata Bisnis Modern di Era Global*, PT. Citra Aditya Bakti, Bandung.
- [2] Sentosa S., 2004, *Hukum Dagang*, PT. Citra Aditya Bakti, Cetakan ke-2, Bandung.
- [3] Soerjono S., Sri M., 2001, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Rajawali Pers, Jakarta.
- [4] Sumardjono, Vide Maria SW, 2006, *Kebijakan Pertanahan antara Regulasi dan Implementasi*, Kompas, Jakarta.