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### **Problems With The Provision Of Building Use Rights To A Limited Liability Company/Commanditaire Vennootschap (CV)**

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#### **ABSTRACT**

Circular Letter No. 2/SE-HT.02.01/VI/2019 concerning the Granting of HGB for CVs that have been issued provides an opportunity for non-legal entities in the form of CVs to apply for land rights in the form of HGB. The policy of the Minister of Agrarian & Spatial Planning / BPN aims to provide convenience for CV in increasing investment. The purpose of giving HGB to CV is in an effort to increase investment and it is hoped that having HGB will make it easier for CV to increase its working capital by applying for a loan to the bank. This research is a qualitative research with operationalization carried out according to the constructivism paradigm. The substance of the research is normative, namely legal research by examining legal materials (library studies) or secondary data. The type of data used is secondary data, namely data obtained from the results of a literature review or various literature or library materials to laws and regulations relating to research problems. The analysis technique is descriptive qualitative and based on the results of the analysis then interpreted or interpreted by law through grammatical interpretation and systemic interpretation. The results of the study show that: 1) Shared ownership in the CV of the HGB land certificate by including the names of allies, if properly implemented, will certainly lead to injustice and in the end, if the Circular Letter is actually enforced, it will clearly not provide benefits; 2) Legislation as a result of a shift in policy will eventually lead to injustice, and the occurrence of injustice will cause no benefit. Law enforcement that actually causes unrest among the people should be avoided, while rules made imperfect and not aspirational will result in injustice; and 3) The granting of HGB to CVs based on the Ministerial Circular Letter Number 2/HT.02.01/VI/2019 does not provide legal certainty. The law must be able to create certainty in society. Based on the existing elements, CV only fulfills the requirements of a non-legal entity because there is no separation between CV's assets and the assets of the partners. The position of the Circular Letter is not in the hierarchy of laws and regulations but is only limited to policy regulations that should be notified and not create new legal norms.

**Keywords:** Problematics, Regulation, Building Use Rights, Commanditaire Vennootschap (CV)

#### **Introduction**

Indonesia consists of a large land area, where all the activities of the people living in Indonesia are on land in the form of land. The unique and limited rights to land make land very valuable for life. Whoever controls the land, has indirectly mastered the potential contained in the land. So important and valuable for the existence of land for people's lives, the government has mandated in Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) which states that:

"To ensure legal certainty regarding land ownership by the Government is held for land registration throughout the Territory of the Republic of Indonesia according to the provisions regulated by a Government Regulation." This statement reinforces the contents of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) that:

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". This means that the government has an obligation to regulate land use and guarantee legal certainty and legal protection for holders of land rights so that land can function optimally to increase people's prosperity.

The development progress achieved by Indonesia is in line with increasing legal awareness. The community is increasingly active in fighting for justice and equal rights before the law in accordance with the 1945 Constitution, therefore the demands of legal development are urgently needed in order to meet the community's need for guarantees of legal certainty, especially with regard to land. The need for land continues to increase from year to year, along with the increase in development activities and the need for land for every aspect of life. This divides state power in principle into three categories, namely:

First, state power, where the state has power over all existing natural resources, as stated in Article 33 paragraph (3) of the 1945 Constitution, the notion of "controlled by the state" does not mean that all these natural resources and other natural resources that are within the territorial territory of the Unitary State of the Republic of Indonesia, are defined as resources that are controlled and owned absolutely (literally) and distributed by the state or government with all its management institutions for the prosperity and welfare of the Indonesian people. entirely.

Legal certainty and protection of ownership of land rights is one of the supporters in national development, because conflicts about ownership of land rights can be eliminated. Provisions related to state power in this case the government, so that in carrying out land registration it is expected that it can run in a socially just manner.

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Second, state power determines policy, the state has the ability and authority to determine legal policies that take place in Indonesia. All existing regulations are the result of the ideals contained in the elements of the legislation.

Third, power can be interpreted as a coercion, but it can also be in the form of things that arise because of one's awareness to obey or not to obey a rule. The existence of power will form a regulation that has positive and good values for the needs of the community, especially in this case the community as the applicant to register the land.

The explanation that has been put forward is the main basis for the community to be able to own or use existing land, and for that it is necessary to register land as mandated in Article 19 paragraph (1) of the BAL. Sociologically, land registration is highly demanded related to the progress of the people's economy and the national economy. Related to these progress, demands for legal certainty are increasingly felt. This certainty, one of which is realized in the form of the issuance of land certificates. Land is an inseparable part of life and human life so that land rights are human rights that legally contain control and ownership. In addition, land is used to build residences or for businesses such as agriculture, plantations or other types of business.

Land rights are rights that authorize the right holder to use and/or take advantage of the land to which they are entitled. The word "use" implies that land rights are for the purpose of constructing buildings (non-agricultural), while the words "take benefits" implies that land rights are for non-building purposes, for example for the interests of agriculture, fisheries, animal husbandry and plantations.

The authority in terms of land rights is stated in Article 4 paragraph (2) of the LoGA, namely using the land in question, as well as the body of the earth and water and the space above it is only needed for interests that are directly related to the land within the limits according to the law. this law and other higher legal regulations.<sup>6</sup> The birth and ratification of the LoGA on 24 September 1960 had the following objectives: to lay the foundations for the preparation of the National Agrarian Law; to lay the foundations, establish unity and simplicity in land law; and to lay the foundations for providing legal certainty regarding land rights for the people as a whole. There are 3 (three) objectives of land registration in Indonesia, namely: (1) providing legal certainty and legal protection to holders of rights to a plot of land, (2) providing information to interested parties, (3) implementing orderly land administration. The National Land Agency (hereinafter referred to as BPN) as agencygovernment Indonesia, which has the task of carrying out government duties in the land sector in accordance with the provisions of the legislation, is aware of the demands for services to the community that require the implementation of the land registration process in accordance with the laws and regulations. which exists. Legal certainty is one of the important goals in land registration in Indonesia.

The object of land law is land tenure rights, which are divided into two, namely: as a legal institution and as a concrete relationship. Land tenure rights are a legal institution if they have not been linked to the land and a certain person or legal entity is the holder of the rights. For example, it can be called Hak Milik (hereinafter referred to as HM), Hak Guna Usaha (hereinafter referred to as HGU), Hak Guna Bangunan (hereinafter referred to as HGB), Right to Use (hereinafter referred to as HP) and Right to Rent (hereinafter referred to as HS) for the buildings referred to in Articles 20 to 45 of the LoGA. Land tenure rights are concrete legal relationships (usually called "rights") if they have been linked to certain lands as subjects or rights holders.<sup>10</sup> This study focuses more on land with HGB status.

The policy of land rights for individuals and legal entities established by law and domiciled in the territory of the Republic of Indonesia is given the same opportunities as land rights. UUPA which stipulates that HGB can only be owned by Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia. This means that only business entities that are legal entities can obtain HGB. One of the articles that regulate HGB is Article 16 paragraph (1) letter c of the UUPA. In particular, HGB is regulated in Article 35 to Article 40 of the LoGA. According to Article 50 paragraph (2) of the UUPA, more provisions regarding HGB are regulated by laws and regulations, what is meant is Government Regulation Number 40 of 1996 concerning HGU, HGB, and HP on land, HGB is regulated in articles 19 to 38.

In the midst of a slowing global economy influenced by the dynamics of the trade war and geopolitics, the decline in commodity prices and the economic slowdown in many countries, the economic sector was still able to experience growth. Overall, Indonesia's economic growth in 2020 was minus 1.7% to 0.6%<sup>11</sup>, compared to 2019 which increased by 5.02%, although slightly lower than that achieved in 2018 of 5.17%. .

The characteristics of legal entities are that there is a separation of the owner's wealth from the assets of the business entity, so that the owner is only responsible for the assets he owns. Business entities whose legal entities consist of: Limited Liability Companies (hereinafter referred to as PT), Foundations/Associations and Cooperatives. While business entities that are not in the form of legal entities in this form of business entity, there is no separation between the assets of the business entity and the assets of the owner consisting of: Civil Partnership, Firm and Limited Partnership / Commanditaire Vennootschap (hereinafter referred to as CV). At this time a business entity that is a legal entity, with the aim of making a profit is PT.

The definition of PT according to Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with initial capital which is entirely divided into shares and fulfills the stipulated requirements. in the law and its implementing regulations. PT's wealth comes from initial capital, where the PT's assets are separated from the personal assets of shareholders, the Board of Directors and the Board of Commissioners. This is the main characteristic of a PT. Wealth owned by a PT in the form of assets or assets cannot automatically become the personal property of the Shareholders, the Board of Directors or the Board of Commissioners. On the other hand, assets or personal property of Shareholders, Directors and Board of Commissioners cannot immediately become the property of a PT, unless there has been a transfer of rights from private to PT or vice versa.

PT as a legal entity is growing rapidly in Indonesia. This can be seen from the number of PT establishments recorded in the Legal Entity Administration System (hereinafter SABH) at the Directorate General of the Ministry of Legal & General Administration (Ditjen AHU) on September 6, 2020, as many as 994,833. Interestingly, there are also non-legal entities that are in demand by the Indonesian people, namely the Komanditer/Commanditaire Vennootschap (hereinafter referred to as CV) with a total number of 379,850.18 registered at the same time. Its establishment is easy and the amount of capital is not determined, and the capital is obtained from each partner who enters into the company income or inbreng. There is no minimum income value, but it affects profit sharing. CV liability is borne by active partners only. Can be charged to a passive partner if the passive partner takes management actions. The UUPA does not regulate the ownership of land rights for business entities that are not legal entities.

In general practice that applies in Indonesia, people think that CV is a business entity and not a company that is a legal entity. It can be further explained in Articles 19, 20, 21 and 32 of the Commercial Code (hereinafter referred to as the KUHD). The elements or material requirements to become a legal entity have been fulfilled by CV, but because there is no element of acknowledgment or endorsement from the government, CV has not been recognized as a company with a legal entity.

establishment CV previous is sufficient to meet the establishment requirements to obtain a deed of establishment and be registered in the District Court. For 1 (one) year since the issuance of the Regulation of the Minister of Law and Human Rights Number 17 of 2018 which states that the registration for the establishment of a CV has been carried out at the Ministry of Law and Human Rights and is no longer in the District Court, this has indirectly affected the procedure for registering names to ratification. . The licensing itself is currently carried out through the Online Single Submission (OSS), the Implementation of Risk-Based Business Licensing through the Online Single Submission (OSS) System is the implementation of Law Number 11 of 2020 concerning Job Creation. The limited liability position should be limited to the partnership for the amount of its income and is obliged to pay off the income (capital) as promised to be included in the partnership. Meanwhile, in the event of bankruptcy, the debtor's assets included in the bankruptcy estate are general confiscation along with what was obtained during the bankruptcy. Article 21 of the UUK-PKPU states that bankruptcy covers the entire assets of the debtor at the time the bankruptcy declaration decision is pronounced as well as everything obtained during the bankruptcy.

The partners, both limited partners and complementary partners, at the time of the entry of assets in the CV must have been approved by the spouse (husband/wife agreement), as stated in Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law). Based on Article 20 of the KUHD, it is stated that limited partners only bear losses equal to the money that has been included in the CV, without being obliged to return the profits they enjoy. However, if a limited partnership partner manages or works in a CV, then he or she is jointly and severally responsible for all money and CV engagements (Article 21 of the KUHD). Thus the limited partnership partner who does not participate in the management, but because the HGB land assets are registered in his name, then when CV is unable to make payments, the ownership of the limited partnership partner will also become a guarantee in paying off CV's debts.

The government has tried to overcome regulatory problems that are felt to be overlapping through the establishment of the Job Creation Law (hereinafter referred to as the Job Creation Law), the existence of CV is one of the sectors affected because the Copyright Law was made in order to facilitate investment requirements. Through the Job Creation Law, the government hopes to provide various kinds of business facilities, empowerment and protection to Micro and Small Enterprises (UMK), especially those under the auspices of non-legal entities in the form of CV.

In fact, the policy of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency as stated in Circular No. 2/SE-HT.02.01/VI/2019 which contains HGB land ownership on CV has given multiple interpretations as if the CV is a legal entity. (das signal). Furthermore, there are several legal issues regarding the issuance of Circular No. 2/SE-HT.02.01/VI/2019 concerning the Granting of HGB for CVs which causes debate other than inconsistencies with the rules contained in article 36 of the LoGA. First, data on business entities in the form of CVs that are registered with the Director General of AHU of the Ministry of Law and Human Rights through SABU instead of SABH such as PT, Foundations and Cooperatives, where this creates legal uncertainty. Second, when referring to the Circular Letter, the SHGB explains ownership on behalf of people as Active Allies and Passive Allies so that the recording of the names of Active Allies and Passive Allies as well as CV names in the HGB certificate can be categorized as a nominee agreement 28. As a consequence of the issuance of HGB certificates for CV with the inclusion of the names of active partners and passive partners in it, will create a dilemmatic situation because if there is a change in the composition of the partners in the Articles of Association, it will automatically change the names of allies listed in the HGB certificate on the CV including.

The existence of a gap due to the inconsistency of these laws and regulations creates confusion and differences of opinion from various groups because the contents of the Circular are not in accordance with the regulations above, namely UUPA, PP Number 24 of 1997 concerning Land Registration, and PP Number 40 of 1996 concerning HGU, HGB, HP on land so it is necessary to ask, what is the reason for the Minister of Agrarian Affairs and Spatial Planning/National Land Agency in issuing a Circular regarding the permissible ownership of land rights with HGB status on CV and how the land registration system in granting HGB status land rights to CV. Based on the description of the background of the problem, it is interesting to conduct research that examines the problem with the title: PROBLEMS OF REGULATION OF GRANTING BUILDING USE RIGHTS (HGB) TO COMMANDITAIRE VENNOOTSCHAP (CV).

### Research methods

This research belongs to the tradition of qualitative research, its operation is carried out according to the constructivism paradigm. The constructivism paradigm sees that the truth of a legal reality is relative, applied according to a specific context that is considered relevant by social actors. Multiple realities vary based on individual social experiences because they are indeed human mental constructions, so the research carried out emphasizes empathy and dialectical interactions between researchers and those being studied to reconstruct legal reality through qualitative methods.

The use of qualitative methods is expected to be able to find hidden meanings behind the objects or subjects to be studied.<sup>72</sup> Bogdan and Taylor stated that qualitative research refers to research procedures that produce qualitative data, the expressions or notes of the people themselves, or their behavior observed. This approach leads to the individual situation holistically. The subject of the study is not simplified to the previously planned organization, but is seen as part and something as a whole.<sup>73</sup> this research tradition wants to examine the granting of land rights, especially HGB on CV. The standpoint uses the constructivism paradigm as intended by Soerjono Soekanto whose scope includes legal principles, vertical and horizontal synchronization of law, legal comparisons and legal history where this research analyzes the existence of laws and regulations and their implementing regulations, so that there is conformity between lower regulations and higher regulations in the hierarchy of laws and regulations. In addition, there is *ius constituendum*, namely the law aspired by the association of life.

Law enforcement, legal factors (substance), law enforcement officers, supporting facilities or facilities for law enforcement, society and legal culture influence its implementation in the field. The law enforcement process (the stages of making the law, its enforcement and enforcement) must be carried out properly without the influence of individual and group interests. The law is then enacted and enforced as a means to realize the interests and goals as well as to protect the interests of individuals, society and the nation and state.

This research uses the constructivism paradigm. This paradigm, seeing the truth of a legal reality is relative, applies according to the specific context that is considered relevant by social actors. Multiple realities, based on individual social experiences because they are indeed human mental constructions, so that the research carried out emphasizes empathy and dialectical interactions between researchers and those being studied to reconstruct legal reality through qualitative methods. land registration process in Indonesia. The legal reality in question, cannot be separated from human construction which is a human mental construction, therefore the law which contains legal norms that are plural in nature is manifested in various symbols and texts. The meaning is very diverse based on perceptions, beliefs, opinions, and human attitudes in interpreting it

## Results and Discussion

### Commanditaire Vennootschap As One of the Most Interested Business Entities in Indonesia

The existence of a CV as a form of business entity is relatively popular besides PT. As the name implies, this form of business is a relic of the rules of the Dutch era. Based on their responsibilities, the owner is divided into two. One is the owner with limited liability (passive partner) and the other has unlimited liability (active partner). In other words, passive partners usually only deposit capital for the establishment of a CV without the need to be involved in the company's operations. Meanwhile, an active partner can become the owner as well as be included in the management or management of CV.

Prior to establishing a company in the form of a CV, a partnership established by one or more limited partners with one or more complementary partners, to run a business continuously as stated in Article 1 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Partnerships Limited, there are several advantages of establishing a CV compared to PT:

1. Business capital. There is no minimum capital requirement set by the government when registering the establishment of a CV with the Ministry of Law and Human Rights. Without capital, a person can already have a formal business entity and its legality is recognized. The minimum deposited capital is often an obstacle for some people, especially for those who are just starting a business. Also read: IMB Management Procedure, Stages and Costs;
2. The establishment process is easier. From the procedural rules that apply to registration of business entities at the Ministry of Law and Human Rights, the process of establishing a CV is indeed easier than establishing a new PT. This is because the requirements needed in establishing a CV are much less than if you choose to establish a PT. The process is also faster to complete. That's the advantage of CV. The selection of CV names is also more free than PT. For business entities in the form of CV, there are no special rules for listing their status. The name of the company may have similarities or similarities between one CV and another;
3. Ownership and operations. CV owners are divided into two groups, namely active and passive owners. Passive owners only participate in investing without the need to be active in it and benefit from the company's business. In addition, legal liability in the CV will be borne by the owner or active partner. In other words, liability for negligence causing harm does not involve passive allies. In terms of company management, management can be occupied by active partners who do have expertise. Actually, in a company in the form of a PT, shareholders can also act passively or only invest and the company is managed by professionals. However, in a PT, shareholders can participate in making company policies such as in the GMS or outside the GMS. Especially if the status of the majority shareholder.
4. Easier taxation. The tax payment system on CV is not as complicated as in the tax administration of PT. The government only requires taxes on CV profits or profits at the end of the year or one time tax. The share of profits received by CV owners is not taxed. However,

individual income from CV owners, both active and passive partners, can be subject to income tax. This is different from the tax applied to PT.

5. In short, the advantages of establishing a CV are that the cost of establishing a CV is more economical; does not have special rules regarding the amount of capital; and is not bound by rules like PT, among others, is not obliged to hold an Annual Meeting, extraordinary GMS made with a notarial deed whose results must be registered or asked for approval to the Ministry of Law and Human Rights of the Republic of Indonesia (all of which are subject to notary fees and government PNPB) so that when viewed from this side, the CV in its implementation will be simpler and of course still more economical. Unfortunately CV has unlimited liability to the owner's personal property. In addition, in terms of taxation, CV tax is generally more economical than PT.

### **Terms of Establishment Commanditaire Vennootschap**

Among the various business entity options mentioned above, a CV or limited partnership is one of the favorite vehicles for business actors to develop their business. In contrast to other business entities that are not legal entities, in the CV there are 2 types of partners, namely:

1. Allies of management or complementary allies who act as allies of management in CV. This partner has the right to act for and on behalf of CV and is responsible for third parties jointly and severally to personal assets.
2. Limited partners, also known as non-working partners, whose status is only as a capital provider or lender. Because the limited partnership did not take care of the CV, he did not act out.

The procedure and requirements for establishing a CV are regulated in the Commercial Code ("KUHD"). Along with the times, the provisions relating to the establishment of a CV have undergone many changes, one of which is through the Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships ("Permenkumham 17/2018"). In addition, the enactment of Law Number 11 of 2020 concerning Job Creation ("UCK") and its implementing regulations also affect the procedures and requirements for establishing a CV. The establishment of a CV at this time must adjust to the establishment process that has been stipulated in the latest regulations, which include the following:

*"Checking the Validity of the Data of Founders, Persons in Charge, or CV Allies Since the entry into force of electronic-based integrated licensing or better known as Online Single Submission (OSS) ), the business licensing system in Indonesia has integrated data from the relevant Ministries/Agencies. The validity of the Population Identification Number (NIK) will be checked through the system, as will the Taxpayer Status Confirmation (KSWP). If the NIK or KSWP of the founder, person in charge, or CV ally is declared invalid, then the process of establishing and applying for business licensing for the CV will experience obstacles. If that happens, then the existing resident or tax documents must be updated so that the process can be resumed.*

Data from documents can be declared invalid, including if the data listed on a person's ID card, NPWP, and KK are out of sync. This discrepancy can be in the form of being registered in two different KK, the KTP and NPWP contain different addresses, and so on. In addition, another cause that often occurs is the negligence of taxpayers to submit their tax reports during the last 2 (two) years. Administrative problems like this, of course, will be a problem in the future when the person will set up a CV and apply for a business license.

### **Granting of Building Use Rights to Commanditaire Vennootschap**

Land for the business world is one of the factors of capital and business assets in a business entity. Land ownership for an entity is an important factor for the continuity of its business so that ownership of land is an important thing in life. In line with this fact, on June 28, 2019, a Circular Letter of the Minister of Agrarian Affairs was issued Number: 02/SE-HT.02.01/VI/2019 concerning the Granting of HGB for CVs which stated that in order to provide convenience for land services, CVs may apply for rights to land rights. land in the form of HGB which in general, the registration of HGB land by the CV is facilitated by the government through the BPN.

Furthermore, the registration of HGB registration for CV is done through writing the names of all limited partners and complementary partners in the HGB certificate. If only one limited partner or complementary partner is written with the approval of all limited and complementary partners, the HGB certificate will later be noted that the owners of the HGB are limited partners and/or complementary partners or each of these partners with the approval of the limited partners and complementary partners. . The provisions mentioned above in the case of an HGB application for a CV business entity are no different from the HGB application for other legal subjects (WNI / Legal Entities). It is said that there is no difference or specificity in the HGB land registration process on CV with other land rights registrations, because the land office will process the HGB land registration if all the requirements and supporting documents have been met.

The purpose of land registration is to find out who is the holder of land rights. This relates to the certainty of the subject; the certainty of the object, and the certainty of its location, area and boundaries. One form of legal certainty is the issuance of land rights certificates. Article 32 of PP Number 24 of 1997 states that a certificate is a certificate of proof of rights that applies as a strong evidence tool regarding physical data and juridical data which contains strong evidence regarding physical data and juridical data contained therein, as long as physical data and juridical data This is in accordance with the data contained in the letter of measurement and the book of land rights in question.

The definition of a certificate can be seen in Article 1 number 20 of PP Number 24 of 1997, namely a certificate of proof of rights as referred to in Article 19 paragraph (2) letter c of the BAL for land rights, management rights, waqf land, property rights to flat units and rights dependents, each of which has been recorded in the relevant land book. Land rights certificates are considered as strong evidence, which means that the name of the right holder listed in the certificate is the protected party as long as no one can prove otherwise. As long as the party whose name is on the certificate is the right party, then he will be protected. The provisions of the holders of land rights according to the laws and regulations are regulated differently. For example, those who can use HM are Indonesian citizens and legal entities determined by the Government, it is different with HGB that can be owned by Indonesian citizens and Indonesian legal entities. The issuance of the Ministerial Circular Letter provides an expansion of understanding of the provisions of the UUPA, especially the provisions of Article 36 paragraph (1) of the UUPA in conjunction with Article 19 PP Number 40 of 1996 concerning HGB, HGU and HP which determines that the subject of HGB is an Indonesian citizen or a legal entity established by law and domiciled in Indonesia.

The agreement as the initial gate of the existence of a legal act, which involves more than one party and creates rights and obligations between the parties involved in it, has many definitions or understandings that can be seen from various sources, both sources in the form of laws and regulations, opinion of experts as well as Indonesian or foreign language dictionaries.

### **Capital Requirements in Establishment of Commanditaire Vennootschap**

Sources of corporate law in Indonesia are regulated in the KUHD, KUHPer, Indonesian Laws, Customs and Jurisprudence, but the main source is the KUHD. Companies can be classified into several classifications, among others, nominal owners of the company, namely: individuals and partnerships. If classified based on ownership, there are privately-owned companies and state-owned companies, while if classified based on the legal form, there are companies that are legal entities and non-legal entities. The concept of a legal entity is essentially the rights and obligations of its members together and in it there are shared assets that cannot be divided. Each member is not only the owner as a person for each part in an indivisible unit, but also as a joint owner for the entire property so that each individual member is also the owner of the assets organized in the legal entity.

Legal entities that have the authority to support the rights of the soulless or rather human. In order to be said to be a legal entity, it must meet the elements of separate assets, have certain goals and have their own interests. A legal entity (recht person) is one of the legal subjects who can perform legal actions like a human (natuurlijk person). According to the general doctrine or teaching (de heersende leer), the notion of a legal entity must meet the following elements:



- a. has separate assets;
- b. has a specific purpose;
- c. has their own interests;
- d. has an organized organization.
- e. registered as a legal entity

Based on what has been described above, the main thing that an entity can be said to be a legal entity (recht person) is the existence of separate assets. This is in accordance with the theory of wealth which aims where according to the theory, a legal entity whose wealth is seen as separate or different from the one who holds it, so in this case it is not important who the legal entity is, but the separate wealth is intended to achieve certain goals so that according to this theory it is not distinguished whether human or not the most important thing is the purpose of the wealth. Thus, legal entities have rights and obligations like humans so that they can carry out their rights and obligations to third parties. In accordance with what is described above as well as the theory that has been described, the characteristic of a legal entity is the separation of the assets of the shareholders from the assets of the business entity so that the shareholders are only responsible to the extent of their assets.

### **Types of Capital Paid Up During the Establishment of Commanditaire Vennootschap**

CV arrangements are regulated in the KUHD, but are inserted in the middle of the articles regarding Firms because CV is a form of Firm specifically, namely firm partnerships that have one or more limited partners. CV itself in practice can be established by individuals or companies (legal entities). These arrangements are regulated in Articles 19, 20 and 21 of the KUHD. Article 20 of the KUHD, it is stated that the limited partnership cannot be charged more than the amount of capital that he puts into the CV. CV is a business entity established and owned by two or more people to achieve common goals, with different levels of involvement among its members. One party in the CV actively manages a business that involves personal assets and the other party only includes capital without having to involve personal assets during a financial crisis. CV managers who are active are called active partners, and those who only deposit capital are called passive partners.

The position of CV is not a legal entity but only as a business entity. As the provisions in the KUHD which confirms that all active partners (managers) and passive partners can be held responsible for the losses suffered by CV, which in Article 21 of the KUHD is called jointly and severally responsible. CV according to Article 19 of the KUHD is a company formed by lending money, established by one or several partners who are jointly and severally responsible and one or more partners who act as money lenders. If the article contains two important organs in a CV, first, active partners, namely partners who are fully responsible for joint and multiple responsibilities and complementary partners. The second is partners who provide a loan of money (passive partners, limited partners). In simple terms, it can be interpreted that an active partner is a party who has full responsibility in managing the company with the position of director. On the other hand, a passive partner is a person who is only responsible for the issued capital or can be said to be only a shareholder. CV when viewed from the elements in it does not meet the criteria as a legal entity but is only limited to a business entity not a legal entity because there is no separation between CV assets and the owner's assets.

### **Percentage of Capital of Each Allies in the Establishment of Commanditaire Vennootschap**

CV can be dissolved if one of the allies (both active and passive partners) dies. However, in the provisions of Article 1651 of the Civil Code, if one partner dies and it has been agreed that the civil partnership will be continued with the heirs of the deceased partner or continued by the remaining partners who are still alive, the agreement must be obeyed. Meanwhile, in the aspect of external relations, CV involves two things, as follows:

#### **1. Accountability to third parties**

. Allied members who are responsible for third parties are only allied members who carry out management. Allies who carry out management are complementary allies. All partners actually have the right to become administrators, but for accountability to third parties, it is the

responsibility of complementary partners, both individually and jointly. While limited partners are only responsible to working partners for the amount of capital income (Article 19 of the KUHD).

## 2. CV representatives in carrying out legal actions

CV is a business entity that is not a legal entity, so that CV cannot represent itself before the law like PT. A CV must be represented by a person or persons in carrying out legal actions. Complementary partners who represent CV in legal actions and their responsibilities so that if there is a lawsuit against CV, limited partners can file an exception as not being bound by all CV engagements, as long as they do not violate Article 20 of the KUHD which recognizes limited partners with investment, where their status and responsibilities are as follows:

- a. Do not interfere in the management of the company or do not work in the CV;
- b. This limited partnership only provides capital or money to benefit from the company's profits, so the limited partnership partner is also called a limited investment partner (commanditaire vennootschap, limited by shares)
- c. CV losses borne by limited partnership partners are only limited to the amount of capital or money deposited or invested (beperkte aansprakelijkheid, limited liability); and
- d. The name of a limited partnership ally cannot be known, that's why it is called a limited partnership or commanditaire vennoot which means sleeping partner or silent partner.

The opinions of experts on corporate law and commercial law express opinions regarding an entity that can be said to be a legal entity if: there are assets for a specific purpose that are separate from the personal assets of the partners or the founders of the legal entity. On the other hand, if you look back at a company in the form of a CV, it is a business entity that is not a legal entity because according to the KUHD, all CV instruments, both active partners (complementary) and passive partners (commandery) can be held responsible for losses suffered by CV. Especially for a passive partner (committee) can be held accountable, if proven guilty as regulated in Article 21 of the KUHD which in this case is referred to as joint responsibility. CV is said to be a business entity that is not a legal entity because it refers to CV's unlimited assets.

Indonesia as a country consisting of a large land area, most of the land or 56% of the land in Indonesia does not have a certificate. This means that the remaining 44 % are registered and certified 150, which are divided into HM certificates, HGB and others but regarding the number of HMs, the number of HGB and the number of certificates in other forms, cannot be detected accurately considering the land registration records. Previously it was still manual. Through the electronic certificate program, the government makes a program so that land registration records can be integrated between one land office and another so that the amount of land registered in every inch of land in Indonesia is known, both the number registered as HM land, HGB land, HGU and HP land.

## Conclusion

Based on the background of the problem, the formulation of the problem, the research objectives and the findings of the research, there are several conclusions that joint property ownership in the CV of HGB land certificates by including the names of allies if properly implemented will certainly lead to injustice and in the end if the Circular Letter is correct - really enforced clearly does not provide benefits. Ownership of wealth should be adjusted to the percentage of capital included in the CV, so that it will avoid an imbalance in the ownership of CV wealth.

Legislation as a result of a shift in policy will eventually lead to injustice, and the occurrence of injustice will cause no benefit. The principle of legal benefit accompanies the principle of legal certainty and the principle of justice. Everyone certainly hopes that there will be benefits in implementing law enforcement. Law enforcement that actually causes unrest among the people should be avoided, while rules that are made imperfect and not aspirational will result in injustice. The granting of HGB to CVs based on the Minister's Circular Letter Number 2/HT.02.01/VI/2019 does not provide legal certainty. Every legal norm must be formulated with sentences that do not contain different interpretations that result in obedient or disobedient behavior. The law must be able to create certainty in society. Based on the existing elements, CV only fulfills the requirements of a non-legal entity because there is no separation between CV's assets and the

assets of the partners. The position of the Circular Letter is not in the hierarchy of laws and regulations but is only limited to policy regulations that should be notified and not create new legal norms. Legal certainty is normative when a statutory regulation is made and promulgated with certainty, because it regulates clearly and logically. It is clear because it does not cause doubt (multi-interpretation), and it is logical because it becomes a system of norms with other norms so that they do not clash or cause conflicting norms.

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