

Legal Certainty of Limited Partnership (CV) Registered In The District Court After The Enactment Of Minister Of Law And Human Rights Regulations Number 17 Of 2018

Diman Ade Mulada

Faculty of Law
Mataram University
Email : ademulada@gmail.com

Arief Rahman

Faculty of Law
Mataram University
Email: ariefrahmanburaeng@yahoo.com

ABSTRACT

The purpose of this research discusses the legal certainty of cv registered in the district court after the enactment of Minister of Law And Human Rights Regulations Number 17 Of 2018, the research method used is a normative research method. Normative legal research methods or library research methods are methods or methods used in legal research conducted by examining existing library materials. CVs registered at a district court prior to the enactment of the Minister of Law and Human Rights Regulation No. 17 of 2018 are legally valid because their establishment is based on provisions stipulated in the Commercial Code, thus providing legal certainty for the owner, with the obligation to record CV registration in the business organization application system (SABU).

Keywords: Certainty; Enactment; Legal.

INTRODUCTION

Progress The business world today has developed rapidly. The development of the business world so rapid, the business actors then compete with each other looking for greater profit opportunities through various means, by encouraging business actors to run their businesses by establishing business organization. That business organization is an organization engaged in a business field. The business entity is a place for one or many companies have the purpose of making a profit from the activities and risks that have been taking. Business entities have a role that can not be underestimated. The business entity acting as :

1. Sources of domestic revenue (taxes);
2. Domestic goods and service providers;
3. As a provider of employment for the people of Indonesia.

The forms of business organizations that we find in Indonesia today are diverse in number. In general, the business organizations consists of two forms, namely a business organizations that legal entity, and a business organizations that is not a legal entity.

Most of the forms of the business organizations are relics of the past, is the Dutch government. Some of them have been replaced with titles in Indonesian, but there are still some who still use their original names. The names that are still used and have not changed their use eg *Maatschap*, Firm abbreviated as Fa, and business organizations *Commanditaire Vennootschap* or abbreviated CV. An already Indonesian name such as a Limited Liability Company or a PT that is actually derived from the name with NV or *Naamloze Vennootschap*.¹

One type of business organization that is widely used by the people of Indonesia is the *Commanditaire Vennootschap* (CV). CV is a simpler business organization compared to a limited liability company (PT) which has a set up procedure and complex conditions because it is a legal entity

In Indonesia practical to establish limited partnership referring to the provisions of the establishment, registration and announcement of the firm as regulated in Articles 23, 24, 26, 27 and 28 of the Commercial Code (KUHD), by making a deed of establishment or based on a notarial deed, registered at the Registrar's Office of the District Court that authorized and announced in an official newspaper. However, after the enactment of the Minister of Law and Human Rights Regulation Number 17 Year 2018 on registration of limited partnership, firm alliance, and civil alliance as regulated in article 10 paragraph (1) that the application for registration of the establishment of CV, Firm and Civil Alliance must be submitted by the Petitioner through the Business organization Administration System. Business organization Administration System is an electronic business entity information technology services organized by the Directorate General of General Law Administration at the Ministry of Law and Human Rights. The factors for the issuance of Minister of Law and Human Rights Regulation No. 17 of 2018 i.e.:²

- a) As a follow up to the issuance of Government Regulation Number 24 of 2018 on licensing services, trying to integrate electronically or online single submission, hereinafter abbreviated as OSS. OSS is a business license issued by OSS institutions for and on behalf of the Minister, agency leadership, Governor, or Regent/Mayor to Business Actors through an integrated electronic system.
- b) Legal certainty is needed for users of limited partnership;
- c) For efficiency in the current of globalization in order to accelerate the registration of limited partnership.

Thus, in reality after the enactment of Minister of Law and Human Rights Regulation Number 17 Year 2018 there are still applicants who submit CV registration in the Registrar's Office of the District Court and by the Registrar's Office the District Court still accepts the registration, even though the applicable rules are the authority of the Registrar's District Court

¹ I.G. Rai Widjaya. (2005). *Hukum Perusahaan (Undang-Undang dan Peraturan Pelaksana Undang-Undang di Bidang Usaha)*. Bekasi: Mega Poin, Divisi dari Kesain Blanc, p. 1

² Sri Rumada Sihite. (2019). "Analisis Yuridis Atas Implementasi Pendaftaran Persekutuan Komanditer (*Commanditaire Vennootschap*) Secara Online Menurut Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 17 Tahun 2018 Tentang Pendaftaran Persekutuan Komanditer, Persekutuan Firma, dan Persekutuan Perdata (Studi di Kota Medan)". *Jurnal USU*. p. 13-14.

to ratify the registration of the limited partnership (CV) has been cancel with the Regulation Minister of Law and Human Rights Number 17 Year 2018

Based on the background description above, in this paper will raise the issue of how legal certainty of CV that has been registered (attestation) in the District Court after the enactment of the Minister of Law and Human Rights Regulation No. 17 of 2018

METHOD

The type of research used is normative legal research. The approach used in this legal research is the statutory approach and the conceptual approach. Normative legal research methods or library research methods are methods or methods used in legal research conducted by examining existing library³ materials.

ANALYSIS AND DISCUSSION

Legal Certainty of Limited Partnership (CV) Registered (attestation) in The District Court after The enactment of the Regulation of the Minister of Law and Human Rights Number 17 Year 2018

The provisions of the legislation are guidelines for individuals behaving in public area, both in relationships with fellow individuals and the community. The rules become a limit for the community to burden or take an action. The existence of regulations and the implementation of these rules give to legal certainty.⁴

According to Utrecht, legal certainty contains two meanings, firstly the existence of general rules makes individuals aware of actions may or may not, and secondly, in the form of legal security for individuals from the arbitrariness of the government because by the existence of general rules that individuals what the state may charge or do to individuals.

The existence of legal certainty is a hope for all people because with this existence the community will know the clarity of their rights and obligations according to the law. Without the legal certainty, the people will not know what to do, not knowing the activities is right or wrong, is prohibited or not prohibited by law. Legal certainty is achieved through penoramaan good and clear in an Act and be very clear applicability.

The provisions of Article 19 through Article 21 of the Commercial Code regulating Firma if studied further, it is clear that the CV is a firm with a special shape. The specificity lies in the existence of a limited partner who is not on the Firm. Firms only have active allies called firms, whereas in the CV besides active partners there are also limited partners or passive allies (sleeping partners).⁵ Allied complementary is an active ally which is also called the board ally or allies keepers who run the company and hold a legal relationship with a third party. Allied limited partnership is a passive ally who not authorized run the company, but only has the obligation to provide revenue to the company's capital.⁶

The explanation of the procedure or stages in registering the establishment of a CV as regulated in the commercial code with the Minister of Law and Human Rights Regulation No. 17 of 2018, there are some difference:

³ Soerjono Soekanto, Sri Mamudji.(2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cet. 11, Jakarta: PT Raja Grafindo Persada, p. 13.

⁴ Peter Mahmud Marzuki.(2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana Prenada Media Group, p. 58.

⁵ Soekardono. (1991). *Hukum Dagang Indonesia, Jilid 1 Bagian Kedua*. Jakarta: Rajawali Pers, p. 102.

⁶ Sentosa Sembiring. (2004). *Hukum Dagang*, Cetakan ke-2. Bandung: PT Citra Aditya Bakti, p. 23.

Commercial Code

**Minister of Law and Human Rights
Regulation No. 17 of 2018**

There is no submission of application for CV's name before the deed of establishment of CV.	Submitting a CV's name request before making the deed of establishment of CV.
Submission of the establishment of a CV does not use an electronic system	The submission of names and CV Registration of establishments using electronic systems through enterprise application systems (SABU)
Submission of registration of the establishment of a CV was submitted at the Registrar of the District Court.	Submission of CV establishment registration is submitted to the Minister
Registration of CV establishment has no time limit.	Registration of CV establishment has a time limit.

The enactment of Minister of Law and Human Rights Regulation No. 17 of 2018, registration for the establishment of limited partnership (CV) in the Ministry of Law and Human Rights and no longer in district courts. That gave an impact on the name registration procedure and its endorsement. However, after the enactment of the Ministerial Regulation, there were still a number of petitioners who submitted registration of CVs at the Registrar's Office of the local District Court and by the Registrar's Office of the District Court, they still received the registration, even though in accordance with the applicable rules the authority of the Registrar's District Court to authorize CV registration had been removed.

Then, question raise whether the establishment of a CV that has been registered in the state court both before and after the enactment of ministerial regulation has been legally valid so as to provide legal certainty for the limited partnership. Looking at limited partnership formed before the enactment of ministerial regulation, the formation of CVs is in accordance with applicable provisions as regulated in the commercial code CV has been legally valid to obtain legal certainty, while for alliance Registered registrar in the state court after the enactment is legally invalid so that the CV is considered by law to never exist, because after the enactment, registration for limited partnership is conducted at the Ministry of Law and Human Rights through the Business Organization Application System (SABU). However, CVs that have been registered before the state court before the enactment Regulation of Minister of Law and Human Rights number 17 of 2018 have obligations as regulated in Article 23 paragraph (1).

The difference between submitting and registering a CV registration begins with the submission of the request for the name of the CV to be made. The purpose of the process is to submit the first name so that no one can use the similar name in establishing the CV. When the name request is approved then a deed of establishment is made and registered through the administration system of business organization (SABU) Ministry of Law and Human Rights to get approval from the Minister. Whereas the CV registration does not necessarily go through the CV name submission process, it will directly to the CV registration process as described above.

So that later it turns out that the name of a limited partnership that records the registration of his name is the same as the CV that has been registered in the business organization application system will not be rejected by the system, because there are exceptions regulated in Minister of Law and Human Rights Regulation Number 17 Year 2018 in article 23 paragraph (2).

Thus, it is clear that CVs registered after the enactment of ministerial regulations get legal protection from the state when registered the CV even though later the name of the alliance registered by the registration has been used legally by other CVs that have been registered in the Business Organization Administration System (SABU). This is in contrast to the CV been registered at the District Court registration after these regulations, if the partnership's name limited partnership proposed in the application system entities (SABU) is equal to the name of a CV that is already registered in the Business Organization System Administration (SABU), then by the system request will be rejected that the deed of incorporation made change the name of the CV in accordance with the name approved by the minister through the administration system of Ministry of Law and Human Rights.

CONCLUSION

CV registered at a district court prior to the enactment of the Minister of Law and Human Rights Regulation No. 17 of 2018 are legally valid because their establishment is based on provisions stipulated in the Commercial Code, thus providing legal certainty for the owner, with the obligation to record CV registration in the business organization application system (SABU) as stipulated in the provisions of article 23 paragraph (1) by attaching a statement from the court. Whereas CVs that are registered at the district court are not legally valid because the registration process still uses the past provisions so the CV must submit re-registration according to the business organization administration system (SABU) and the CV receives a guarantee of legal certainty.

BIBLIOGRAPHY

Books:

- I.G. Rai Widjaya. (2005). *Hukum Perusahaan (Undang-Undang dan Peraturan Pelaksana Undang-Undang di Bidang Usaha)*. Bekasi: Mega Poin, Divisi dari Kesain Blanc.
- Peter Mahmud Marzuki. (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana Prenada Media Group.
- Sentosa Sembiring. (2004). *Hukum Dagang*. Cetakan ke-2. Bandung: PT. Citra Aditya Bakti.
- Soekardono.(1991). *Hukum Dagang Indonesia*. Jilid 1 Bagian Kedua. Jakarta: Rajawali Pers.
- Soerjono Soekanto, Sri Mamudji. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Cet. 11. Jakarta: PT Raja Grafindo Persada.

Legislation:

- Minister of Law and Human Rights Regulation No. 17 of 2018.
- Indonesian Commercial Code.

World Wide Web:

- Sri Rumada Sihite.(2019).”Analisis Yuridis Atas Implementasi Pendaftaran Persekutuan

Komanditer (Commanditaire Vennotschap) Secara Online Menurut Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 17 Tahun 2018 Tentang Pendaftaran Persekutuan Komanditer, Persekutuan Firma, dan Persekutuan Perdata (Studi di Kota Medan)”. *Jurnal USU* [Accessed August 18, 2019].