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Validity of Agreement by Limited Liability Companies that Have Not Registered in the Business Entity Administration System Based on Law Ministry of Regulation Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships in terms of Legal Certainty Aspects

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Abstract

This study was conducted to analyze the legal consequences of agreements made by CVs that have not been registered in SABU, legal certainty regarding adjustments to existing CVs prior to the enactment of Law Ministry Regulation Number 17 of 2018, as well as legal protection for parties who have already bound themselves in an agreement made with a CV that in fact has not been registered in the SABU. This research is a normative legal research. In this research, it uses a statutory and conceptual approach. The data obtained are primary data and secondary data, the two data are combined and analyzed qualitatively in order to obtain a solution to the problem. The results of the research are poured into a discussion that is arranged systematically and then described descriptively. Based on the results of the study, the legal consequence of an agreement made by a CV that has not been registered in SABU is that the agreement made has no validity/legality as long as the CV has not registered using SABU. Regulatory legal certainty regarding adjustments to existing CVs prior to the enactment of Law Ministry Regulation Number 17 of 2018 is that all CVs that have been previously registered based on the provisions of laws and regulations as contained in the KUHD have no legal certainty and legal standing as a business entity. as long as it has not re-registered with the Ministry of Law and Human Rights in accordance with Law Ministry Regulation No. 17 of 2018. As legal protection for parties who have already entered into an agreement made with a CV which in fact has not been registered in the SABU, it is the legal responsibility of the partners to the parties related to the deed of establishment and the deed of amendment to CV's articles of association after the enactment of Law Ministry Regulation No. 17/2018 provides legalization to provide legal certainty for parties who have binding, namely a Certificate Registered in SABU issued by the Directorate General of General Legal Administration, where one of the purposes of registration carried out in SABU is so that the Business Entity can be protected by law in Indonesia.

Keywords: CV, Registered, Administration System

1. Introduction

Commanditaire vennootschap or CV, which is commonly referred to as a limited liability company, is a company founded by one or several persons who are responsible for all or are responsible in solidarity, with one or more people as moneylenders (*geldschieter*). Furthermore, referring to Article 19 of the KUHD, Widjaya stated that a CV is a partnership consisting of one or more ordinary partners and one or more limited partners, who are personally responsible for all debts of the partnership. The silent partner only contributes capital for the partnership, and is responsible only for the amount of his contribution.

The establishment or formation of a Limited Liability Company or Comanditaire Vennootschap which is often abbreviated as CV has been regulated in the KUHD. Based on Article 22 of the KUHD, the Limited Partnership or Comanditaire Vennootschap, hereinafter referred to as CV, is established using a notarial deed. Then Article 23 of the KUHD states that essentially the Notary deed is then registered with the local District Court where the CV is located. Thus it can be concluded that the process of establishing a CV is not only limited to the making of a Notary deed regarding the establishment of a CV, but furthermore the deed of establishment must be registered with the Court.

Over time, the government issued Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services which in Article 15 paragraph (2) and paragraph (3) it is stated that in essence the deed of establishment of CV, amendment of CV's articles of association, and dissolution of CV. must be registered with the government agency that carries out government affairs in the field of law (Minister of Law and Human Rights) and the arrangements will be set forth in the regulations made by the government agency. With this provision, the Minister of Law and Human Rights issued Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships which in Article 3 in conjunction with Article 10 paragraph (1) of the Ministerial Regulation states that in essence the establishment of a CV must be registered with the Business Entity Administration System. The KUHD stipulates that it is enough for a CV to be registered with the District Court, while the Ministerial Regulation stipulates that CV registration is carried out in the Business Entity Administration System. In practice, CV registration is carried out by a Notary who is authorized by the applicant to be registered with the Business Entity Administration System.

The problem that then arises is regarding the existence of a CV that already existed before the enactment of the Ministerial Regulation. Of course, the CV that existed before the enactment of the Ministerial Regulation only knew and registered with the District Court. However, the provisions of Chapter VII Article 23 paragraph (2) of the Ministerial Regulation provide tolerance for the previous CV that already exists to make adjustments by registering the company to the Business Entity Administration System (SABU) with a note that it must be registered within 1 year from the enactment of the Ministerial Regulation. the. This provision is quite confusing because actually if a regulation is said to be mandatory, then there should be sanctions if the provision is not carried out but in fact there is no provision regarding sanctions if the CV registration to the Business Entity Administration System is not carried out so that there is a possibility that until now there is still CV that has not registered its company to the Business Entity Administration System and may continue to run its business activities by entering into various agreements with other parties.

This paper discusses and analyzes legal issues, namely regarding the legal consequences of agreements made by CVs that have not been registered in the Business Entity Administration System, legal certainty regarding adjustments to existing CVs before the enactment of Regulation of the Minister of Law and Human Rights Number 17 2018 concerning Registration of Limited Partnerships, Firm Partnerships and Civil Partnerships, as well as legal protection for parties who have already bound themselves in agreements made with CVs which in fact have not been registered in the Business Entity Administration System. Seeing that there are no similar articles that discuss the registration of CVs that have not been registered in SABU and CVs that already existed before the enactment of the Minister of Law and Human Rights Regulation Number 17 of 2018, it is hoped that this can add information and knowledge in the field of notary, especially related to registration. CV and in particular are expected to be a guide for Notaries and people who want to establish a CV.

2. Research Methods

The research specifications used to discuss this issue are normative juridical, namely research based on laws and regulations related to the Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships. The approach in this research is the statutory approach and the conceptual approach. According to Peter Mahmud Marzuki, the statutory approach is carried out by reviewing all laws and regulations related to the legal issues being handled. While the conceptual approach (conceptual approach) departs from the views, doctrines that develop in the science of law.

3. Result and Discussion

3.1. Legal Consequences of an Agreement Made by a CV Not Registered in the Business Entity Administration System (SABU)

Legal consequences are consequences caused by law, on an act committed by a legal subject. Legal consequences are a result of actions taken, to obtain a result expected by legal actors. The intended consequences are those regulated by law, while the actions taken are legal actions, namely actions that are in accordance with applicable law. From the explanation above, the legal consequence of an agreement made by a CV that has not been registered in the Business Entity Administration System (SABU) is that the agreement made does not have validity/legality as long as the Limited Partnership (CV) has not submitted a recording of the deed of establishment and the deed of budget amendment. electronic basis to the Ministry of Law and Human Rights by using the Business Entity Administration System (SABU).

Then the company agreement that is obligatory on a contractual basis (*de contractuele basis*), as stipulated in Article 1320 of the Civil Code, and has legal consequences in accordance with the principles set out in Article 1338 of the Civil Code. If based on the explanation of the contents in these articles, it can be said that without a deed of establishment of a CV, the business actor can run his business based on an agreement made by the business actor with a third party. Where the agreement made by the parties has legal force as law, so that the parties concerned can make it in the form of a company agreement according to the wishes of each party as long as it does not conflict with the law, decency, and public order.

Article 22 of the KUHD explains that "every firm company must be established with an authentic deed, but the absence of such a deed is not stated to be detrimental to third parties". Then Article 14 paragraph (1) of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships stipulates that the minister issues a registered certificate if the CV registration application has been received.

The registered certificate is proof that the CV is legally established and fulfills the company's legal principles, namely the principle of publicity so that the public can easily access and know the location of the company so that it can support the compliance of the obligations of the founders of the company to the public or third parties related to the company. the. So other legal consequences if the establishment of a CV is not registered with SABU, then the CV is declared not legally standing and does not meet the principle of publicity, which means that the CV can be said to be a public company that runs its business in general and the period of time is not limited and the articles of association are not binding on the parties. partner, which means that the line of business carried out by the CV is not specifically determined and the person authorized to represent the CV is not specifically determined so each partner has the right to represent the CV and if one of the partners enters into an engagement with a third party that is contrary to the articles of association, the responsibility is still carried out jointly and severally by the partners, not only the responsibility of the individual who commits a mistake that is contrary to the articles of association.

As well as related to the legality of the establishment of a CV or the legality of a CV that if it does not have a registered certificate in accordance with article 14 paragraph (1) then the CV can be considered a general company whose shareholders have the same responsibility jointly and severally up to their personal assets to other parties.

third and each company can represent the firm to do the signing. This is the same as the consequences regulated in Article 29 of the KUHD regarding not registering and announcing a CV at the district court clerk.

If the registration of the CV's deed of establishment is not registered through SABU, then the business actor who runs a business in the form of a CV cannot make adjustments to his company's permits, and the CV also cannot cooperate with third parties, so that this causes the CV to have no identity. and also has no public legality.

Legal risks for third parties if the CV's deed of establishment has not been registered, then the legal consequences that arise are as described in Article 29 of the KUHD. As for the legal risk for third parties (in this case including financial institutions (banks) against CVs that have not been or are not registered, then this is related to the unclear collection of debts to debtors. In CVs that have been registered, collections are only made to active partners/ While for CVs that have not been or are not registered in SABU, the legal status of the CV becomes like an ordinary civil partnership, this causes that debt collection can be done to every partner, both active and passive, has the same responsibility in the CV.

This is in accordance with Article 1643 of the Civil Code, which explains as follows:

The limited liability companies can be sued by the debtors with whom they have acted, each for an equal amount and share, even though the share of one company in the company is less than the share of the other company; except if at the time the debt is made, it is expressly determined that the obligations of the companies to pay the debt are in proportion to the size of their respective shares in the company.

So with the promulgation of Law Ministry Regulation No. 17/2018, automatically every business actor who has a business entity in the form of a CV, firm, and civil partnership must be registered in the Business Entity Administration System (SABU). In practice, a financial institution (bank) that will provide credit to a debtor in the form of a CV should already be able to know about the status of the business entity in the form of a CV, whether there is a deed of establishment and the changes have been registered in the SABU.

3.2. Legal Certainty Regulations Regarding Adjustments to Existing CVs Prior to Enactment of Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships and Civil Partnerships

For limited partnerships that existed prior to the enactment of Law Ministry Regulation Number 17 of 2017 their existence was still recognized with the provision that within one year the limited partnerships were required to register their business entities in the Business Entity Administration System, but in this provision it is not clearly stated what legal consequences will be obtained by the Agency. Businesses that do not register within that time period. Based on Article 23 paragraph (1) Law Ministry Regulation No. 17/2018 for CVs that have been established before the enactment of the regulation are required to register registration within 1 (one) year after it is enforced. And based on Article 23 paragraph (2) Law Ministry Regulation No. 17/2018 that the registration of the registration is allowed by using a name that has been used legally by a CV that has been registered in SABU. Therefore, if within a period of 1 (one) year a CV, Firm and Civil Partnership that has been established does not register and register its CV, Firm and Civil Partnership in the SABU, it can be considered that there will be consequences in the future that the name of the CV, Firm and Partnership The Civil Code has been used by CV, Firms and other Civil Guilds. Then as determined in Article 4 of the Minister of Law and Human Rights No. 17/2018 that the application for registration of the CV, Firm and Civil Partnership begins with the submission of the name of the CV, Firm and Civil Partnership to the Minister.

It is appropriate if the establishment of a CV is carried out with an authentic deed, because it provides legal certainty for each of the partners concerned, as well as for third parties to be able to know the rights and obligations of the partners who established the CV. Then after the deed of establishment of the company is completed, then as a form of legality of a company, the company must be registered with the Business Entity Administration System (SABU) to obtain a certificate issued by the Directorate of General Legal Administration. Enforcement of the online registration system through SABU based on the Regulation of the Minister of Law and Human Rights

of the Republic of Indonesia Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships promulgated since August 1, 2018.

Currently, whatever is done to the CV deed, whether in the form of a deed of establishment, a deed of amendment to the articles of association and a deed of dissolution of CV, all of them must be reported to the Minister of Law and Human Rights, so that a statement is issued by the Minister online through SABU. So that all track records of CV legal actions can be registered and tracked. This aims to be able to realize the orderly administration of CV data so as to provide legal certainty for business actors and third parties as well of course.

If you pay attention to the regulations governing the registration of CV's deed of establishment, it provides more clarity than the previous one, because the Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships and Civil Partnerships requires checking and ordering names in advance, so that it can be ascertained that this avoids the similarity of business names run by business actors, and the name can indicate the identity of the CV that was established. In addition, the current regulations governing the registration of CV's deed of establishment provide more legal certainty than in the past. This is because all CV registration links are synchronized between the online system of the Directorate General of General Legal Administration under the auspices of the Ministry of Law and Human Rights, and the online single submission system under the Investment Coordinating Board (BKPM).

So, for partnerships, whether limited partnerships (CV), firm partnerships, or civil partnerships, that already existed and were established before the entry into force of electronic registration (online) through the Business Entity Administration System or SABU, it is regulated in the transitional regulation of the Minister of Law and Human Rights Regulation Number 17 of 2018, namely that: At the time this Ministerial Regulation comes into force, Limited Partnerships (CVs), Firms and Civil Partnerships that have been registered with the District Court based on the laws and regulations, within 1 year after the enactment of this Ministerial Regulation are required to register the registration is in accordance with the provisions of this Ministerial Regulation. Registration of registration as intended is allowed to use names that have been used legally by CVs, Firms, and Civil Partnerships that have been registered.

Therefore, if within a period of 1 (one) year a CV, Firm and Civil Partnership that has been established does not register and register its CV, Firm and Civil Partnership in the SABU, it can be considered that there will be consequences in the future that the name of the CV, Firm and Partnership The Civil Code has been used by CV, Firms and other Civil Guilds. The provisions of this registration record are intended to record registration for CVs, Firms, and Civil Partnerships that have been registered in the District Court. The purpose of recording registration is the recording of registrations that have been carried out at the time of establishment, namely at the Registrar's Office of the local District Court. As has been the case so far, it is based on Article 23 of the KUHD that the registration of the establishment of a Partnership of Firms and Limited Partnership is carried out at the Registrar's Office of the District Court.

3.3. Legal Protection for Parties Who Have Already Bind themselves in Agreements Made with CVs that in fact have not been registered in the Business Entity Administration System (SABU)

As regulated in the Civil Code as well as in the KUHD, especially for Firm Partnerships and Limited Partnerships, that the establishment of a Partnership is required to be made with an authentic deed in this case a notary and registered at the Registrar's Office of the local District Court (Articles 22 and 23 of the KUHD). This provision is not followed by sanctions if a partnership is not established with an authentic deed. Even in the next provision it is stated that the absence of an authentic deed may not be presented to the detriment of a third party. This provision is intended to provide legal protection to third parties, that parties who engage in business activities with third parties using the form or name of a firm partnership or limited partnership cannot escape their responsibilities as partners, even if there is no deed. So the absence of a deed of establishment of the Firm or Limited Partnership cannot be used by partners/members to prove that the firm does not exist, with a view to liberating its responsibilities to third parties.

After the deed of establishment is drawn up, the deed of establishment must be registered at the Registrar's Office of the District Court, in the jurisdiction where the Firm Partnership or Limited Partnership is domiciled (Article 23 of the KUHD). The obligation to register contains a sanction, that as long as the registration and announcement have not been made, third parties may regard the firm partnership as a general partnership. The provisions regarding the sanction of not registering a Firm Partnership or Limited Partnership in Article 29 of the KUHD, so that the deed of establishment of the Firm Partnership or Limited Partnership must be made in writing, namely by deed, because if it is not written, of course it cannot be registered and announced. Then in its development the government issued Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships, which stipulates that registration for the establishment of Limited Partnership, Firm Partnership and Civil Partnership business entities is carried out electronically or online. through the Business Entity Administration System (SABU) at the Ministry of Law and Human Rights.

The birth of Law Ministry Regulation No. 17/2018 has set aside the provisions of Article 23 of the KUHD, so that the registration process for the CV establishment deed does not need to be registered again with the District Court in accordance with the legal domicile of the CV where it was established. The application of online CV registration through SABU is expected to provide convenience for business actors, and can avoid the practice of illegal fees and can help the government to tidy up data and supervise every business entity in Indonesia.

However, if it is seen and understood that Law Ministry Regulation No. 17/2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships has many weaknesses, one of which is the absence of regulations governing the legal consequences that occur if a business entity is not a legal entity in the form of a CV that was established before Law Ministry Regulation No. 17/2018 has not been enacted or has not registered its business online through SABU. However, after 2 (two) years the enactment of Law Ministry Regulation No. 17/2018, the Minister still provides opportunities for business actors who have businesses in the form of CVs that have been established long before Law Ministry Regulation No. 17/2018 was promulgated, to be able to register and register the deed of establishment online through SABU.

Due to the absence of strict legal sanctions related to the registration of the establishment of CV, Firms and Civil Partnerships in the SABU system, it has actually proven that Law Ministry Regulation No. 17/2018 cannot enforce legal certainty in society. As protection for parties who have already entered into an agreement made with a CV which in fact has not been registered in the Business Administration System (SABU), it is the legal responsibility of the partners to third parties related to the deed of establishment and the deed of amendment to the CV's articles of association after its promulgation. Law Ministry Regulation No. 17/2018 that the form of legalization to provide legal certainty for third parties is a Registered Certificate and a Change Registration Certificate from SABU issued by the Directorate General of General Legal Administration.

As stated by Satjipto Rahardjo regarding the concept of legal responsibility, that legal responsibility is closely related to the concept of rights and obligations, meaning that he is responsible for a sanction if his actions are contrary to the applicable regulations. If it is related to the responsibility of the partner in a company in the form of a CV, then they have responsibility for the legality of their business, both in terms of business registration, business licensing, and so on, to be used as evidence that provides legal certainty for third parties who are collaborating. with the company. In current practice, if CV partners want to cooperate with third parties, then the SKT of CV's deed of establishment and SKPP on CV's deed of amendment to the articles of association are one of the administrative requirements. However, there are several private institutions that still allow the SKT or SKPP from SABU to follow to be completed. However, if a CV partner wants to make a permit adjustment, then the One Stop Integrated Licensing party requires that SKT or SKPP must exist and become an absolute requirement for making or adjusting permits through OSS, because the system in OSS is data retrieval, meaning that everything is inputted by the OSS. notary through SABU, then the inputted data will automatically be recorded in the OSS system.

Then in addition to that for business actors, the application of Law Ministry Regulation Number 17 of 2018 is also useful because in addition to being able to be done online and transparently, and furthermore there are several

other benefits related to the purpose of registration carried out in the Business Entity Administration System (SABU), which is wrong. one is that the registration of a Business Entity is carried out so that the Business Entity can be protected by law in Indonesia. The form of legal protection for a Business Entity is not only related to protection in conducting business activities, but also the protection of its allies.

4. Conclusions

The legal consequence of an agreement made by a CV that has not been registered in the Business Entity Administration System (SABU) is that the agreement made does not have validity/legality as long as the Limited Partnership (CV) has not submitted an electronic filing for the registration of the deed of establishment and the deed of amendment to the articles of association to the Ministry. Law and Human Rights using the Business Entity Administration System (SABU).

Legal certainty regarding the adjustment of an existing CV prior to the enactment of Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships and Civil Partnerships, must be re-registered by registering at the Ministry of Law and Human Rights, one year since the regulation was promulgated or effective as of August 1, 2018 and the company must adjust the line of business it runs with the line of business listed in the Indonesian Standard Classification of Business Fields (KBLI) 2017, by changing its articles of association and registering electronic registration (online) through the Business Entity Administration System (SABU) of the Ministry of Law and Human Rights at the Directorate General of General Legal Administration to issue a Certificate of Registration. All CVs that have been previously registered under the provisions of the laws and regulations as contained in the KUHD have no legal certainty and legal status as a business entity as long as they have not re-registered with the Ministry of Law and Human Rights in accordance with Permenkumham regulation No. 17 of 2018.

As legal protection for parties who have already entered into an agreement made with a CV which in fact has not been registered in the Business Administration System (SABU), then it becomes the legal responsibility of the partners to third parties related to the deed of establishment and the deed of amendment to the CV's articles of association after the promulgation of Permenkumham No. 17/2018 that the form of legalization to provide legal certainty for third parties is a Registered Certificate and a Change Registration Certificate from SABU issued by the Directorate General of General Legal Administration, in addition to registration carried out in the Business Entity Administration System (SABU), one of the objectives is so that the Business Entity can be protected by law in Indonesia. The form of legal protection for a Business Entity is not only related to protection in conducting business activities, but also the protection of its allies.

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