

Improved Mechanisms Commanditaire Vennootschap (CV) Become A Legal Entity Limited Liability Company (PT)

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Abstract. Principal difference between a limited partnership or known as CV (Commanditaire Vennootschap) with limited liability company (PT) contained in the legal status, because the CV is a partnership that is not incorporated and responsibilities of the board ally itself to a private property. While the Limited Liability Company (PT) is a legal entity liability company and limited responsibilities. The purpose of this study is to investigate and find out the mechanism of change Guild (CV) Become a Legal Entity Limited Liability Company (PT). To investigate and determine Responsibilities of complementary Allies Against Limited Liability Company (PT) established. The method used is normative, descriptive analysis, data collection is done by using primary data and secondary data in the form of primary legal materials, secondary and tertiary as the main data. After the secondary and primary data collected, then conducted a qualitative analysis. Based on the analysis concluded that the mechanism of the change in form of a CV to PT generally refers to the provisions regulating the CV and the provisions governing PT. Responsibility in complementary ally if the legal actions referred to in Article 12 and Article 13 of the Company Law, then the shift right and duty of the complementary allies into the company and legal actions undertaken by the complementary binding partner company.

Keywords: Business Entity; Limited Partnership; Limited Liability Company

1. Introduction

Guild is a form of business entity that is simplest to achieve a mutual benefit. This is due to the establishment of alliances are not required their authentic act or attestation from agencies authorities.⁴ But most of the founders of CV often use authentic act to establish and run the his efforts. This is due to CV has different characteristics with other alliance companies. The most striking difference of CV lies in the limited partnership and allied ally complementary which is where the allies Complementary authorities as allies while taking care of a limited partner authorized as an ally that puts money or objects into the fellowship as income (*inbrenng*) and the right to benefit from the alliance⁵. So that all forms of the authority of the allies that already agreed the

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⁴ *Kitab Undang-undang Hukum Dagang Staatsblad 1847-23 Pasal 22 KUHD*

⁵ Ridwan Khairandy 2013 *Pokok-Pokok Hukum Dagang Indonesia* Pustaka Pelajar Jakarta p. 26

not could altered and immediately.

Allied commanditair prohibited maintains despite the power of attorney. He should only supervise the maintenance if so provided in the Articles of communion. If this provision is violated, Article 21 KUHD⁶ sanction where complementary allies to take personal responsibility for the whole. In the only ally complementary CV (Board of Directors) may be entered into a relationship to a third party. While the legal status of an ally can be likened to a limited partnership that lend or invest in a company and expected outcome of the investment was the result of capital gains loaned or invested it.

The risks could involve treasure personal of ally the complementary resulting CV once established with their deed Authentic remained not a legal entity. This matter due to provisions of the Commercial code does not require establishment CV obtain authorization body law from the competent authority. All CV authority remain the authority of the ally complementary, not the authority of the company / partnership. So that this prosecute ally improve the status of a legal entity that could protect private property.

The attempt to make changes to the CV into PT⁷ certainly has problems. This matter caused CV has stood up first and acts laws could Agreement in the form of Credit, Guarantee, as well as financial transactions others with third party. In addition, another problems became constraints in changes CV into PT also there is a legal basis Very limited and hingga now no no legal basis specific could change CV to PT. Purposes on the basis of specific laws have also caused the uncertainty associated with the procedures and mechanisms that can be used to make changes to the CV to PT. To that end, the authors wanted to examine more deeply how the process of establishment of PT derived from CV can be done by ensuring legal certainty as high. so that with legal certainty, then after PT stands apart from run legal procedures right can take transfer deeds law that has been done by CV is the responsibility of PT is not responsible complementary personal allies.

Based on this background, the writer interested to do more research to be formulated in the form of research with the title Improved Mechanisms Enterprises Guild (CV) Become A Legal Entity Limited Liability Company (PT) "Improved mechanisms Enterprises Guild (CV) Become a Legal Entity Limited Liability Company (PT) ".

Research methods

This is a descriptive study, meaning researchers sought to determine and describe the factual information and data in a systematic manner and accurately about the increase of CV enterprise becomes a legal entity PT. Is an analysis for researchers will conduct an analysis of the various aspects of the law, both in terms of legislation and in terms of its implementation, in order to find out how the regulatory entity of CV into a legal entity PT.

⁶ Article 21 Commercial Code which states: "*Owned limited partnership which violate the provisions of the first paragraph or the second paragraph of Article else jointly and severally liable for the entirety of all the company's debts and engagements*". (KUHD 18.)".

⁷ Irma Devina *Peningkatan Bentuk Perusahaan Dari CV Menjadi PT* <https://irmadevita.com/2011/peningkatan-bentuk-perusahaan-dari-cv-menjadi-pt/> accessed on 11.10.2018

2. Results and Discussion

2.1 Mechanisms Change Alliance Commanditaire Vennootschap (CV) Being Law Firm Limited Liability Company (PT)

CV business entity status changes to be incorporated PT is a legal fact. Legal facts are events, deeds / actions, or circumstances that are causing, changes, changes to or termination of a right. In short the legal facts are the facts that give rise to legal consequences.⁸ Article 1618 of the Civil Code it is said that each participant must put something in communion. It is meant here is "income" (*inbreng*). The definition of "income" (*inbreng*) can be tangible goods, money or power, both power bodily or mental energy (mind). The results of their income was not only profit, but may also "benefit", Article 1618 of the Civil Code it is said that each participant must put something in communion. It is meant here is "income" (*inbreng*). The definition of "income" (*inbreng*) can be tangible goods, money or power, both bodily and labor force psyche (mind). The results of their income was not only profit, but may also "expediency".

Procedures for transferring assets from CV to PT must be in accordance with the provisions of the legislation in force in the PT field. The first step transfer of these assets are to hold a General Meeting of Shareholders (AGM) to seek approval from the limited company in the transfer of assets from CV to PT as it is known in the PT, the AGM is the organ of the company who have the authority not granted to directors or commissioners within limits specified in the Act PT No. 40 of 2007 and / or articles of association of PT.⁹

As the name implies GMS are terms which the shareholders to discuss anything related to the PT. GMS is one of the organs of the company in addition to the directors and commissioners. When in Act No. 1 of 1995, the AGM is the organ of the company which holds the highest authority in the company and holds all powers not given to the directors or commissioners.

The provisions concerning the General Meeting as the highest authority in a limited liability company has been eliminated in Law No. 40 Of 2007 position GMS as one organ of the company is the same the organ of the company is equal the difference between the three organs of the company is a matter of the division of authority under the Act 40 of 2007, GMS has authority that is not owned by directors and / or trustees. In other words, the AGM has the authority that has been granted to Directors or the Board of Directors or Board of Commissioners within the limits specified in Law No. 40 Of 2007 on PT, and / or statutes. This is in accordance with Article 75 paragraph (1) of Law No. 40 of 2007. Article 75 paragraph (2) of Law No. 40 of 2007 reads, "In the forum of the AGM, shareholders are entitled to obtain information relating to the

⁸Herlien Budiono 2009 *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan* PT. Citra Aditya Bakti Bandung p. 3

⁹Binoto Nadapdap 2012 *Hukum Perseroan Terbatas* Permata Aksara Jakarta p. 111

company's Board of Directors and / or BOC, as far as the agenda item and does not conflict with the interests of the company ".

Principal difference between a limited partnership or known as CV (Commanditaire Vennootschap) with limited liability company (PT) contained in the legal status, because the CV is a partnership that is not incorporated and responsibilities of the board ally itself to a private property. While the Limited Liability Company (PT) is a legal entity liability company and limited responsibilities. Changes mechanism CV to Limited Liability Company (PT) is done through Public Notary without having to dissolve the CV first. Changes CV to Limited Liability Company (PT) means it will change the status of the company that originally is not incorporated into a legal entity. For that there are things that need to be considered and adjusted in order to obtain legal status as stipulated in Law No. 40 Of 2007 regarding Limited Liability Company (Company Law). The things that need to be adjusted based on the provisions of Law No. 40 of 2007 on Limited Liability Company are as follows¹⁰:

- Resolving prior engagements that have taken place between officials CV with third parties.
- Adjusting Statutes CV. This is done because the Statutes CV no provisions on Authorized, Issued and Paid Up Capital. As for a Limited Liability Company shall comply with the provisions of the Authorized Capital Company Limited, which is a minimum of Rp. 50,000,000 (Pursuant to Article 32 paragraph (1) of the Company Law), and 25% of the authorized capital must be issued and fully paid (Pursuant to Article 33 paragraph (1) of the Company Law). Thus, the Statutes CV should be adapted to these conditions.
- Make deed (notary deed) containing the Articles of Association and other information relating to the establishment of limited liability companies (According to Article 7 paragraph (1) jo. Article 8 (1) of the Company Law).
- The founders jointly apply for attestation of legal entities through the administrative system of information technology services of legal entities electronically to the Ministry of Justice (Pursuant to Article 1 paragraph 16 jo. Article 9 paragraph (1) of the Company Law).
- After ratification, the Minister will register Company Limited (Pursuant to Article 29 paragraph (1) of the Company Law).
- The announcement in the Official Gazette of Republic of Indonesia by the Minister (Pursuant to Article 30 paragraph (1) of the Company Law).

And changes can be made through the following ways ¹¹:

- The whole allies must agree on the desire and conduct meetings with or without the presence of a notary will then produce a decision that changes in the form of news events.

¹⁰ Notaris Sidoarjo *Perubahan CV Menjadi PT* http://notaris-sidoarjo.blogspot.com/2012/11/perubahan-cv-menjadi-pt_26.html accessed on 11.10.2018

¹¹ *Ibid.*

- The entire movable or immovable assets of a limited partnership (CV) should be assessed (assessment in the amount of rupiah) should be performed by an independent auditor.
- Of total assets and determined how much a part of each and whether wholly or partly be in *inbrenng* (inserted) into a Limited Liability Company as a capital to be subscribed by each founder of the Limited Liability Company (PT).
- Coming to the Notary to make the Deed of Establishment of a Limited Liability Company (PT) with already determine the name, position, goals and objectives, shareholders, board of management and capital Limited Liability Company (PT).
- After the process of establishing a Limited Liability Company (PT) course have to change the entire administration and finances are available, having been switched status of business entities to be incorporated.

2.2. Responsible from Commanditaire Vennootschap (CV) To Limited Liability Company (PT) The Established

Responsibility, in legal terms means the attachment on the legal consequences of which are of any act, neglect or carelessness; in plain language means responsible for one's actions or words, a consequence of the action.¹²

The presence of two types of allies within the Guild Commanditaire, are complementary and allied ally limited partnership resulted in the presence of two types of responsibility as well, namely the unlimited liability (unlimited liability) and limited liability (limited liability). The responsibility is not limited or private (personal liability) means that the creditor can sue not only the obligation of asset communion fellowship but also of the personal assets of the partners.¹³

The provisions of Article 20 KUHD for strict liability limited partnership allies who only liable for capital deposited or will be deposited into the Guild Commanditaire, with the proviso that a limited partner does not participate in the management of the Guild Commanditaire and his whereabouts are unknown by third parties,

Article 20 KUHD explicitly bans a limited partner of the Guild maintains Commanditaire, although based on a power of attorney but it does not mean that a limited partner has no role at all enter into the management of the Guild Commanditaire.¹⁴ Allies may oversee the maintenance of the limited partnership, on condition designated as such in the deed. Monitoring carried out by allies of the limited partnership must be internal, meaning the surveillance measures should not create the impression as if it is a limited partner is also board Guild Commanditaire.

Allied complementary or working ally an ally of the alliance board, while the allies are not working or do not take care of a limited partner alliance. Both allies work and allies do not work each providing its revenues, in the form of money, goods or labor

¹² Yetty Komalasari Dewi. 2011 *Pemikiran Baru Tentang Commanditaire Vennootschap (CV) Studi Perbandingan KUHD dan WvK Serta Pengadilan Indonesia dan Belanda*. Badan Penerbit Fakultas Hukum Universitas Indonesia Jakarta p. 182

¹³ *Ibid.*

¹⁴ M. Yaya Harahap 2011 *Hukum Perseroan Terbatas* Sinar Grafika Jakarta p. 18.

(physical or mind) on the basis of co-financing, which means that the profit and loss to be shared between the allies work and ally limited partnership, although responsibility ally limited partnership is limited to the capital which can to be included. Soekardono call it an ally complementary work, while labor ally called a limited partner.¹⁵

According to Article 17 KUHD when complementary ally there is more than one person should be emphasized among them, if among them there are forbidden to act out. Although it has been confirmed among the complementary allies about who among them are forbidden to act out, but it does not reduce the responsibility of each of the allies complementary to personal responsibility and overall to treasurebear personal responsibility. In this case because not all allies in CV act out. So the silent accomplice or often called a sleeping partner or a member of an association vennoot stille passive and does not make contact with the third party.¹⁶ This is due to passive ally or allies commanditair only has a function as moneylenders (geldschieter) or giving money, that is, those who entrust their money. In this case CV allows the collection of more capital from the firm alliance systems.

Allied officials are often referred to as complementaries an active member with responsibilities to the private property. Commanditair allies should not interfere with the task of complementary ally or allies Board. However, related to their relationships with third parties, any ally limited partnership which undertook the deed arrangement CV and ally limited partnership that by allowing the use of its name in the management of CV it will bear the legal consequences, which are considered voluntary binding themselves to all the action of management, therefore, allies the limited partnership share responsibility in solidarity or overall responsibility for the debt Guild Commanditaire¹⁷,

Agreements or legal act performed by the allies in CV complementary binding allies so that the engagement between the allies that arises is complementary with third parties in accordance with the provisions of Article 17 KUHD. Therefore legal act performed by an active ally of the PT established is the responsibility entirely to personal property.

Agreements or legal acts when committed by an ally Commanditaire, the legal act is the responsibility himself entirely to personal property, jointly and severally with allies Commanditaire ally complementary and accountability is not confined to the money taken off CV as Article 21 KUHD.

On legal acts that done by the ally The where relevant with possession stock and remittance, then Article 12 paragraph (1) of the Company Law give amenities that a legal act is not into joint liability on allies and taken over by PT with some options, namely:

- when the deed The law declared by deed not authentic, such deed attached to budgets founding PT (Article 12, paragraph (2) Company Law); and
- When The legal acts expressed by an authentic deed, then the number, date and name and the seat of the Notary who makes the authentic act mentioned in

¹⁵ H.M.N. Purwosutjipto 2010 *Pengertian Pokok Hukum Dagang Indonesia dan Bentuk-Bentuk Perusahaan* Djambatan Jakarta p.74-75.

¹⁶I.G. Rai Widjaya 2007 *Hukum Perusahaan* cet. 7 Kesaint Blanc ,Bekasi p. 52

¹⁷M. Yahya Harahap op.cit. p. 19

founding budget PT (Article 12 paragraph (3) Company Law). where actions law made allies Complementary (in this case candidate founder) who associated with shareholding, and not included in the base budget of the establishment of a limited liability company, then will cause inflict right and obligations and does not bind the company as the provisions of Article 12 paragraph (4) the Company Law. Complementary Allies so that accountability in private until the property entirely.

When a legal act performed ally complementary (in this case as a potential founder of the company) is a legal act performed for the benefit of the company before it was established, although not included in the articles of association of the establishment of the company remains to be stated in writing for the next step should be the first GMS times as elucidation of Article 13 paragraph (1) of the company law no later than 60 (sixty) days after the company obtain legal status, the AGM was attended by all the shareholders with voting rights and decision was unanimously approved. It is merely to bind the company, giving rise to the transfer of rights and obligations of all legal actions undertaken by allies complementary to the company. Therefore if it is not such provisions are met then the prospective founders or former ally Complementary will be responsibility personally for any consequences arising out of the The legal act performed.

In essence any legal act performed by prospective founders or Complementary ally in condition PT not yet as a legitimate entity law, then it becomes the responsibility personal responsibility people acts law because they did not inflict right and obligation and does not bind the company, as affirmed in Article 3 (2) letter a Company Law.

3. Closing

3.1. Conclusion

- Mechanisms in the shape change of the CV to PT generally refers to the provisions regulating the CV and the provisions governing PT. Prior to an increase or change in form of a CV to PT, must be carried out settlement in the form of asset calculation CV furthermore on the establishment of PT, CV wealth is transferred into the initial capital of PT. With the improvement of the status carried the CV law in question be dispersed, are not required to make the Deed of Dissolution CV.
- Responsibility in ally active in CV which changes the shape of the CV into PT associated with the act law that has been done before by a Third Party, if active ally who perform legal acts as referred to in Article 12 and Article 13 of the Company Law and has been comply with the provisions in the articles, then a shift of the rights and obligations of those active allies in the company and legal act performed by the active ally bind the company. But if the provisions of Article 12 and Article 13 of the Company Law are not met, then the active ally liable to personal property, and liable to personal property, jointly and severally together allies in Commanditaire Guild.

3.2. Suggestion

- Limited Liability Company Act least include the enhancement mechanisms CV status to PT. To ensure legal certainty on the establishment of PT continuing business activities CV, through the Legal Entity Administration System (SABH) necessary repairs in order to facilitate the use SABH rules in the implementation of procedures and mechanisms for improving the status of CV to PT.
- To prevent the possibility of legal actions initiated before the establishment of the company was not included in the articles of association or will not be approved by the AGM, the employers should conduct a preliminary agreement with the prospective founder and candidate and potential shareholders. This agreement contains at least an agreement that can then be compromised and can be guaranteed in the discussion of the basic budget or time the AGMS.

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