

PERSONAL RESPONSIBILITY OF HUSBAND AND WIFE IN THE ESTABLISHMENT OF *commanditaire vennootschap* (CV) WITH CAPITAL ASSETS IN MARRIAGE

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Abstract: *Commanditaire Vennootschap (CV) is an association to run a company formed by one person or several partners who are directly responsible and wholly liable for the debts of the company. In its development, CVs also was founded by husband and wife. There is no specific provision to establish a CV for husband and wife. Because anyone can become an ally in an alliance, but for CV established by husband and wife some things are of concern.*

Key Words: *Commanditaire Vennootschap, Marriage Agreement, Active Company, Passive Company.*

1. INTRODUCTION:

Broadly speaking, this Limited Partnership requires two people with two different assets, so if it is only founded by one asset, then it is not a Limited Partnership, but an individual company. Individual company is a business entity owned by only one person, one entrepreneur becomes the owner of the business entity and runs it himself. In this individual company, only one person is an entrepreneur, and thus the business capital is only owned by one person and if there is cooperation within the company, it is only limited to helping the individual company.[1] In the establishment of a Limited Partnership (CV) it is made with an authentic deed, namely a deed of establishment made by a notary, so the role of the notary in this case is very important because the authentic deed contains information whose contents have certainty as the truth and become valid evidence between the parties. Based on Article 15 paragraph 2 letter e of Law Number 30 of 2007 Concerning the Position of Notary (hereinafter referred to as UUJN) the notary has the authority to conduct counseling regarding the deeds he has made, thus the notary can provide counseling regarding regulations regarding CV, what is the husband's personal responsibility wife if the CV was established by husband and wife and anything that needs to be prepared by the husband and wife in order to overcome problems in the future.

2. THEORITICAL FRAMEWORK:

a. Agreement Theory

According to Subekti, an agreement is also called an agreement because the two parties agree to do something, it can be said that the two words (agreement and agreement) have the same meaning.[2]

b. Theory of Responsibility

According to Hans Kelsen, a person is legally responsible for a certain action or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act.[3]

c. Legal Effectiveness Theory

The theory of legal effectiveness according to Soerjono Soekanto that effective is the extent to which a group can achieve its goals.[4]

3. LITERATURE REVIEW:

CV is a company founded by one or several people who are responsible, responsible as a whole or in solidarity with one or more people as money lenders(*money collector*) and set in Commercial Law Law Book (KUHD).[5]

Marriage in Indonesia is regulated in Law Number 1 of 1974. The definition of marriage is mentioned in Article 1 that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Supreme God.

4. METHOD:

The method used in this research is an empirical juridical approach, which is an approach based on field research methods, namely examining the legal provisions that apply and what happens in people's lives.[6]

5. DISCUSSION:

With the decision of the Constitutional Court, a husband and wife who before or at the time the marriage took place did not make a marriage agreement, wish to make a marriage agreement, as long as their marriage no longer has to ask for a court order for the purpose of making a marriage agreement, as has happened several times. Those who wish to make a marriage agreement can make it in writing and then legalized by a marriage registrar or notary to make the marriage agreement deed.

6. ANALYSIS:

A. Position of Husband and Wife in the Establishment of CV with Capital from Joint Assets in Marriage After the Decision of the Constitutional Court Number 69/PPU-XII/2015

In Law Number 1 of 1974 concerning Marriage, the making of a marriage agreement is regulated in Article 29 paragraph (1) which reads: "At the time or before the marriage takes place, both parties, by mutual agreement, can enter into a written agreement which is ratified by a marriage registration employee or notary. after which the contents also apply to third parties as long as a third party is involved. However, currently Article 29 of the Marriage Law has been amended after the Constitutional Court's decision No: 69/PUUXIII/2015. The contents of the decision are: "At the time, before it is held or while in the marriage bond the two parties on mutual agreement can submit a written agreement in the form of a notary deed which is legalized by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved". However, the Marriage Law provides an opportunity for those who wish to enter into a marriage agreement or often called a pre-nuptial agreement with the provisions in Chapter V Article 29 which consists of four paragraphs. From a legal perspective, the position of husband and wife in marriage is the same. Both the husband and the wife can propose to make a marriage agreement whose contents have been mutually agreed upon and refer to the Marriage Law.

B. Personal Responsibility of Husband and Wife in Establishing CV with Capital from Joint Assets in Marriage

If the husband and wife act as complementary partners and limited partners in a CV, then the husband and wife do not meet the requirements for establishing a CV because they are counted as 1 (one) legal subject.

C. The role of a notary in the establishment of a CV by husband and wife with capital from joint property in marriage

The notary has a bigger role in the CV so that in its registration the Notary has the authority to convey how to establish a CV based on applicable regulations so that in the process the parties can fulfill the requirements, then the notary can also assist the company technically in submitting an electronic name order in SABU, after Obtaining this approval makes the deed of establishment of the CV, then registers it and prints a certificate of registration of the CV as validation by the Ministry of Law and Human Rights.

7. CONCLUSION :

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) In limited partnerships there are several provisions or conditions in its establishment, namely fulfilling the provisions of Article 1320 of the Civil Code, being founded by two or more people, entering something into the

partnership *orinput*, there are active partners who are responsible up to themselves and there are passive partners as money-making partners who are responsible only for the amount of paid-up capital but there are things that need to be considered when the establishment is carried out by husband and wife.

- 2) Based on article 35 of the Marriage Law that joint property is property acquired during the marriage bond as a result of joint efforts of husband and wife or one of them.
- 3) In the case of establishing a limited partnership, it is required to be established with an authentic deed drawn up by an authorized official as stated in Article 22 of the Criminal Code.

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