



Responsibilities of Complementary Allies in The *Commanditaire Vennootschap* (CV) Business Entity

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ABSTRACT

The focus of this research is the Responsibility of Complementary Allies in the *Commanditaire Vennootschap* (CV) Business Entity. The Purpose of this research is to determine the responsibilities of complementary allies if the *Commanditaire Vennootschap* (CV) goes bankrupt, and to find out the responsibilities of complementary allies in the agreement made if the *Commanditaire Vennootschap* (CV) fails. This study uses a normative juridical research method using a statutory approach and a conceptual approach using primary and secondary legal materials related to the research focus, then it is analyzed qualitatively descriptively. The result of this research is that if the CV is declared bankrupt, all of CV's assets are collateral for the settlement of CV's debt. Personal assets of complementary partners can be accounted for to pay off all debts of the CV. If the CV is in default, the one who must be responsible is complementary allies. This responsibility is in the form of compensation to creditors as a consequence of default by CV to private assets of limited partnership because the CV is not a legal entity that has separate characteristics of its assets from its management.

Keywords: *Commanditaire Vennootschap* (CV); Complementary Allies; Responsibility

INTRODUCTION

In the era of globalization as it is today, economic development has accelerated, encouraging developing countries such as Indonesia to continue to improve their nation's economy in order to face the global economy. Plus the fact that the Asian Economy Community (AEC) has begun in 2015. AEC is a form of



ASEAN economic integration in the sense of a free trade system between Asean Countries. The free trade impact of the Asian Economic Community (AEC) is an opportunity for Indonesia to improve its economy, certainly accompanied by improvements in various sectors of the economy.

Economic and trade developments in Indonesia should be balanced by the role of the government through strengthening regulation and policy output that benefits the country's economy, especially for entrepreneurs in Indonesia. In addition, economic development and trade also pose some problems for entrepreneurs. Capital limitation is one of the problems often faced by entrepreneurs in carrying out their business activities. Therefore, to solve the problem, it is not uncommon for some entrepreneurs to join into one into a business entity so that the continuity of their business activities can run properly because of the availability of sufficient capital.

In Indonesia there are several forms of business organizations that we often find, Most of these forms of business entities are relics of the past, namely the Dutch government. Some of them have been replaced with Indonesian designations, but some still use their real names. Names that are still being used and have not been changed for use such as Civil Federation (Maatschap), Firm abbreviated fa, and Commanditer Fellowship (Commanditaire Vennootschap) hereby referred to as CV, Name already in Indonesia-kan such as Limited Liability Company or PT which actually comes from the term NV or “Naamloze Vennootschap”.¹

Among these forms of business entities, some are in the form of Legal Entities (*Rechtsperson*) and some are not legal entities. CV is one of the business entities that is not a legal entity, nevertheless the existence of this business entity does not diminish its rights and obligations as a company recognized by the government and the business world in particular. This can be seen from the many entrepreneurs,

¹ I.G. Rai Widjaya, 2005, *Hukum Perusahaan*, Mega Poin, Division of Kesain Blanc, Bekasi, p.1



especially Small and Medium Enterprises (SMEs) who use CV business entities as a foundation to be able to conduct business activities in Indonesia.

The limited partnership (CV) is a form of business entity that is most widely used by Small and Medium Entrepreneurs (SMEs) as a form of identity for business entity organizations in Indonesia². The legal arrangements regarding CV refer to the provisions of establishment, registration and announcement of the firm as regulated in the KUHD, namely by making a deed of establishment or based on a notary deed, registered at the Registrar's Office of the competent District Court and announced in an official newspaper. And in practice the procedure ends at registration at the Registrar's Office at the District Court.³

On the CV there are one or more people as allies of the commanditer. Comatose allies only hand over money, goods or energy to CV as income and they do not intervene in management and mastery in the alliance⁴. In Article 19 of the Trade Law hereby called the Criminal Code it is mentioned that CV is a company to run a company formed between two persons or several companies that are solely responsible and responsible for all on one party, and one or more as a release of money on the other⁵. So, on the CV there are one or more comatose allies. Komanditer allies only hand over money, goods or energy as income on a CV. Comma allies who only lend capital to CVs, do not intervene in management and mastery in CV⁶.

Complementary allies have the right to act for and on behalf of all allies and are liable to third parties jointly and severally up to personal property, while limited

² Zainal Aikin, 2016, *Pengantar Hukum Perusahaan*, Prenadamedia, Jakarta, p. 41

³ Johannes Martoyo, *Pendaftaran Persekutuan Komanditer Pasca berlakunya peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 17 tahun 2018*, Volume 4 No. 2, Oktober 2020, p. 486

⁴ Musa Lasakar, 2019, *Keabsahan Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 17 Tahun 2018 Tentang Pendaftaran Persekutuan Komanditer, Persekutuan Firma, Persekutuan Perdata*, Jurnal Media Hukum dan Peradilan, Vol. 5. No. 2. p.194

⁵ Munir Fuady, 2008, *Pengantar Hukum Bisnis: Menata Bisnis Modern di Era global*. PT Citra Aditya Bakti, Bandung, p. 44.

⁶ Yahya Harahap, 2011, *Hukum Perseroan Terbatas*, Sinar Grafika, Jakarta, p. 17



partners or also known as passive allies are allies who put capital either in the form of money or goods into the company (inbrenng) and is entitled to the company's profits but in terms of liability to a third party, limited partnership is only liable until the assets are entered into the company only⁷.

From the above explanation can be seen, on the CV consists of 2 (two) kinds of allies, namely:

1. Complementary Allies or active allies (Administrators), are allies who run the company and have the right to enter into agreements with third parties. That is, all corporate policies are run by active allies. Active allies often referred to as power companies or management companies or active allies are allies who are solely responsible for the course of the company including responsible for the debt of receivables (personal property) Article 18 of the Trade Law.
2. Commanditer allies or passive allies (No Work), are allies that only include capital in the alliance. If a company suffers a loss, they are only liable for the amount of capital included and so if they make a profit, their money is limited depending on the capital they provide. Komanditer's Allied status can be likened to a company that invests in a company, which only expects the profit from the inbrenng to be included, and does not interfere in the management, planning, or business activities of the company. This ally is often referred to as the silent company (Article 21 of the Trade Law).

In carrying out all activities of its business activities, it is not uncommon for CV to experience problems, namely regarding the lack of capital or funding needed to carry out CV business activities. This lack of funding can occur because CV wants to enlarge its business or because CV has insufficient capital due to CV

⁷ Ida Bagus Abhimantara, *Kedudukan Persekutuan Komanditer (Commaditaire Vennotshap) Sebagai Corporate Guarantee*, Notaire (Journal of Notarial law), Volume 2. No.3, Oktober 2019, hlm. 360



experiencing losses⁸. Other than that, CV which in this case is run by complementary allies will of course conduct legal relations (agreements) with third parties. In Indonesia, a legal relationship can only be done by the subject of the law, where the subject of the law is a supporter of the rights and obligations of the so-called person. People according to the concept of the law consist of human beings and legal entities. Man is the subject of law according to biological concepts, as a symptom of nature as a creature of God's creation equipped with reason, feeling and will. Legal entities are the subject of law according to the concept of juridical, as a symptom of societal life, as a body of human creation based on the law, having rights and obligations as human beings⁹.

CV is a business entity that does not include legal entities, because even though CV already meets the material requirements of a legal entity, but the ratification of the Government has not been fulfilled as a condition of formilnya, therefore CV should not be able to make legal relations (agreements) as can be done by legal entities. However, the reality that occurs in the community in carrying out its business activities, CV always do the agreement that of course the agreement has legal consequences that is with the rights and obligations.

Based on the background of the above problems, the author intends to conduct scientific research under the title "**Responsibilities Of Complementary Allies In The *Commanditaire Vennootschap* (CV) Business Entity**", with the formula of the problem of how complementary allies are responsible when *Commanditaire Vennootschap* (CV) goes bankrupt, and how is the responsibility of complementary allies in the agreement made when *Commanditaire Vennootschap* (CV) disqualies the promise.

⁸ Riky Rustam, Rizky Miraningsih, *Perlindungan Hukum Ahli Waris dan Kreditur Persekutuan Komanditer Ketika Meninggalnya Sekutu Komplementer*, Jurnal Hukum Ius Quia Iustum Faculty of Law. Volume 26. No. 3. September 2019. hlm. 610

⁹ Abdulkadir Muhammad, 2010, *Hukum Perdata Indonesia*. PT. Citra Aditya Bakti, Bandung. p. 23



RESEARCH METHODS

The research method used in this writing is a method of research of normative juridical law that is to focus on the application of norms or positive legal rules related to the Commanditaire Vennootschap (CV) Enterprise. The approach used is a legal approach and conceptual approach that refers to the primary legal materials namely the Civil Code, the Trade Law Book (KuHD), and Law No. 37 of 2004 on Bankruptcy and The Delay of Debt Payment Obligations. Secondary legal materials come from books, expert opinion, legal journals. The legal material is then analyzed descriptively qualitatively by understanding and analyzing legal materials systematically and then drawn conclusions

RESULTS AND DISCUSSION

A. Complementary allied responsibilities when CV goes bankrupt

CV is not governed specifically by law, either in the Civil Code or the KuHD, but the arrangement refers to the provisions of Maatschap in the Civil Code and the Federation of Firms, including Articles 19, 20, 21, 30 paragraphs (2) and 32 of the Code. Maatschap's provisions are enforced of course as long as they do not conflict with the specific provisions of the Civil War. Based on the provisions of the Civil Code and The Criminal Code only complementary allies can take action, not only to conduct management of the course of CV but also to conduct legal deeds/relationships on behalf of CV with third parties and take full responsibility for the alliance. While communion allies have only internal relations with complementary allies, it is not permissible to take legal action on behalf of alliances with third parties. This is because the position of the commanditer ally is only responsible for the alliance amounting to the amount of income and is obliged to pay off the income (capital) as promised to be included in the alliance.

CV is a business entity that in its activities is directly related to the business world, of course requires capital to maintain the continuity of its



business activities. Therefore, CVs represented by complementary Allies who have the task of managing CVs can make agreements to obtain capital loans. In practice CV as a business entity that conducts business activities, of course loaded with various problems, such as the circumstances in which CV has a lot of debt and can no longer afford to pay those debts so that CV is declared bankrupt by the Commercial court.

Bankruptcy is a situation in which the debtor is unable to make payments on debts from his creditors. Meanwhile, Bankruptcy is a common confiscation of all bankrupt debtor's wealth whose management and ordering is carried out by the Curator under the supervision of the Supervisory Judge. Based on article 2 of Law No. 37 of 2004 on Bankruptcy and Delay of Debt Payment Obligation, (referred to as the Bankruptcy Law), the right to apply for a CV for bankruptcy is the CV itself or the application of one or more CV creditors. The application was submitted to the Commercial court through the clerk. Then there will be a court day, then CV can be said to be bankrupt if there has been a bankruptcy ruling from the Commercial court.

In substance, the Bankruptcy Law aims to better protect the interests of creditors in an effort to obtain payment of receivables with the principles of fairness, transparency and effectiveness¹⁰. If a company goes bankrupt, it means that the company has suffered a loss and general confiscation applies, losing authority in managing assets¹¹. Other than that, The judicial impact of the Commercial court's bankruptcy ruling on the debtor's property is a general confiscation, loss of authority in the management of the property.

¹⁰ Catur Irianto, *Penerapan Asas Kelangsungan Usaha Dalam Penyelesaian Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)*, Jurnal Hukum dan Peradilan, Volume. 3 No. 3, Nopember 2014. p. 401

¹¹ Kadek Rima Anggen Suari, I Nengah Suantra, *Tanggung Jawab Sekutu Terhadap Commanditaire Vennootschap (CV) yang mengalami Pailit*, Jurnal Kertha Semaya, Vol. 3. No. 3, Mei 2015, p. 4



When bankruptcy strikes a company, the company is taken over by a curator in accordance with the provisions in the Bankruptcy Law, and the owner is no longer entitled to his assets temporarily¹². In other words, the debtor for the sake of the law loses his right to care (*daden van behooren*) and commits an act of ownership (*daden van beschikking*) against his property which is included in the bankruptcy. The general confiscation of the debtor's property is intended to stop any debtor's actions against the bankrupt property as well as to stop the traffic of transactions against the bankrupt assets by the debtor which is likely to harm his creditors, especially the concioned creditors. With the public confiscation, the bankrupt property in the status is stopped from all transactions and other legal actions until the bankrupt property is managed by the curator.

As it is known, in the CV that the responsibility of complementary allies is absolute, meaning not only the amount of income (*inbreng*) of capital but down to personal wealth. If the complementary ally is more than one, then the responsibility becomes absolute and the responsibility of the *renteng*. Absolute means a complementary ally is obliged to take responsibility for his communion to his personal property, while the responsibility means that responsibility involves another complementary ally, who may not know what other complementary allies have done. Therefore any aggrieved party, including the federation itself, and creditors may file a lawsuit against the administrator or owner of the federation, for its errors and or omissions, to be liable for any losses suffered.

CV assets are collateral for debt repayment to federal creditors. Any complementary allied action that results in the loss of federal property, will lead the complementary ally to the obligation to be personally responsible for its shortcomings. In the event that CV property is insufficient for the repayment of

¹² Sri Rosa, Sunarmi, Tri Murti, *Penyelesaian Permasalahan Hak Buruh dalam Kepailitan PT. J and J Garment Indonesia Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Transparency, Volume 2. No.1 (2019), p. 2



its debts, the personal property of complementary allies can be accounted for to pay off the company's debts. On the contrary, the property of the comatose allies cannot be contested.

B. Complementary allies' responsibilities in agreements made when CVs disingenrate

CV is a form of Business Entity that is most widely used by Small and Medium Enterprises (SMEs) as a form of identity of the organization of Business Entities in Indonesia. A CV is an alliance in which one or more allies entrust money or goods to one or more people who run a company that is in the lead¹³

Meanwhile, based on Article 19 of the Criminal Code, CV is an alliance established by one or more persons who are solely responsible to the first party (complementary ally), and one or more as a money release (comditer ally) on the other. Allied komanditer, can be likened to someone who lends or invests in a company, which is expected from the investment it is the result of the profit from the capital that has been invested¹⁴. The komanditer allies were in no way involved in interfering with the management and management of the communion communion.

CV managers have personal responsibility for all allies on the CV. Article 19 of the KuHD governs that the parties responsible and dealing with outside affairs are active allies or complementary allies. But the allies are also responsible for going outside, if the commanditer ally violates article 20 of the KuHD. The authority of the komanditer allies is only focused on the internal affairs of the CV alliance (article 20 of the KuHD). Komanditer allies are also responsible to working allies related to capital supply (article 19 of the KuHD). The rights and obligations of complementary allies are as follows:

- a. Must manage CV;

¹³ Jamal Wihoho, 2007, *Pengantar Hukum Bisnis*, Sebelas Maret University Press, Surakarta, p. 45

¹⁴ Yahya Harahap, *Op.Cit*, p.17



- b. Must be solely responsible for CV's obligations to third parties;
- c. The right to put money or other wealth into CV; and
- d. Entitled to profit sharing.

Based on the above description, it can be seen that one of the complementary Allied obligations is to take care of the CV including performing an alliance or agreement for the benefit of CV. The agreement that has been done by CV is not always going well as planned, it does not even close the possibility of things that are beyond the control of the CV resulting in CV not being able to carry out what has been promised before or in other words CV doing in disingen there is a promise

According to **Togi Pangaribuan**¹⁵, the incident of not fulfilling the obligations based on the agreement that applies as law is known as broken promise or default. However, **Wirjono Projodikoro** as quoted by **I Wayan Gede Pradnyana Widiantra** and **I Nengah Suantra**¹⁶, in default there are three forms or criteria, namely: "The authorities do not implement at all; The authorities are late in carrying out their obligations; and Performing obligations but not properly or as well as possible. Meanwhile, according to **Salim HS**¹⁷, The promise is not fulfilling or failing to carry out the obligations as specified in the agreement made between creditors and debtors. The promise can occur intentionally or unintentionally by the debtor. Based on the provisions of article 1234 of the Civil War, achievements are divided into 3 kinds, namely:

1. to submit something (article 1237 of the Civil Code);
2. to do something or do something (section 1239 of the Civil Code); and

¹⁵ Togi Pangaribuan, *Permasalahan Penerapan Klausula Pembatasan Pertanggungjawaban dalam Perjanjian Terkait Hak Menuntut Ganti Kerugian Akibat Wanprestasi*, Jurnal Hukum & Pembangunan, Volume 49. No. 2 (2019), hlm. 444

¹⁶ I wayan Gede Pradnyana Widiantra dan I Nengah Suantra, *Akibat Hukum Debitur Wanprestasi Dalam Perjanjian Kredit dengan Jaminan Cessie Pada PT. Bank Mandiri (Persero) Tbk. Commercial Banking Center Cabang Denpasar*, Jurnal Kertha Semaya, Volume 1. No. 5, Juli 2013, hlm. 3

¹⁷ Salim HS, 2008, *Pengantar Hukum Perdata Tertulis (BW)*, Jakarta, p. 180



3. not to do or not to do anything (article 1239 of the Civil Code).

CV can be said to be in disingencing the promise if it has tied itself to an agreement but does not carry out any achievements at all; or Execute but not on time (late); or Perform but not as promised; or perform what according to the agreement should not be done. If the CV is indicated to be in disapproved as previously issued, then the creditor may file a "Sommatie" i.e. a written warning from the creditor to the debtor formally through the District Court or "*Ingebreke Stelling*" which is a warning to creditors to debtors not through the District Court containing a creditor's reprimand so that CV immediately performs performance; The basis of the strike; The slowest date to meet the achievement.

However, if CV still does not heed the aborted done by creditors then the creditors can sue or file a lawsuit. There are three possible forms of lawsuit that may be filed by those who feel harmed as a result of the appointment, namely :

1. By "*parate executie*"

Where creditors make their own claims directly to the CV without going through the courts. In this case the parties concerned act "*eigenrichting*" (being judges themselves together). In practice, "*parate executie*" applies to light alliances and small economic value.

2. By "*arbitrage*" or refereeing;

Creditors feel aggrieved by the promise of CV, so between the creditors and CV agreed to resolve their dispute with the arbitrator. If the arbitrator has decided the dispute, then neither the creditor nor CV must obey any award, even if the award is favorable or detrimental to either party.

3. By "*rieete executie*"

"*rieete executie*" is a way of resolving disputes between creditors and CVs through judges in court. Usually in disputes of major problems and high economic value or between creditors and CVs there is no consensus on



dispute resolution by means of "*parate executie*", then the settlement of the case is pursued by "*rileele execute*" in front of the judge in court.

The legal consequences of a CV that has broken a promise are penalties or sanctions in the form of:

- a) Pay losses suffered by creditors (indemnification);
- b) Cancellation of the agreement;
- c) Risk switching. Objects promised by the object of the agreement from the time of the fulfilled obligation become the responsibility of the debtor;
- d) Pay the costs of the case, if it reaches litigation in front of the judge.

CV is obliged to pay compensation, after being declared negligent he still does not meet that achievement, and Indemnification consists of costs (costs), damages, and interest

According to **Abdul Kadir Muhammad** as quoted by **Merry Tjoana**¹⁸ (a) costs are costs, such as print costs, stamp duty, advertising costs; (b) Loss due to damages, loss of creditors' goods due to debtor negligence (damages); (c) Interest or expected profit (interest). Because the debtor is negligent, the creditor loses the debt he expects. Based on article 18 of the Criminal Code, which shall be responsible for the fulfillment of the promise made by CV both intentional and unenclained is a complementary ally, then the compensation mentioned earlier is the responsibility of the complementary ally who is obliged to pay up to his personal property, because CV property is not separate from the property of its manager because CV is a business entity that is not in the form of legal entity.

CONCLUSION

¹⁸ Merry Tjoanda, *Wujud Ganti Rugi Menurut Kitab Undang-Undang Hukum Perdata*, Jurnal Sesi. Vol. 16 No. 4 October-December 2010, p. 45



1. In the event that the CV has been declared bankrupt by the Commercial court then the CV property is a general confiscation to pay off all CV debts to creditors, but if the CV property is insufficient for the repayment of its debts, then the personal property of complementary allies can be accounted for to pay off all CV debts.
2. If CV binds itself through an agreement, then CV does not make a promise then the one who must be responsible is a complementary ally as mentioned in Article 18 of the Code. The responsibility is mentioned in the form of awarding compensation to creditors as a consequence of the non-promise made by CV to the personal property of the commanditer ally because the CV is not a legal entity that has the characteristics of its property separate from its managers.

SUGGESTION

1. For the Government, it is possible for the government to pay more attention by making special regulations about the company Komanditer Federal Business (CV), because this business entity is one of the business entities that is very widely used by the People of Indonesia in carrying out its business activities, but the regulation is only regulated in general in the Book of Trade Law (KUHD)
2. For the community, it should be more thorough in carrying out the alliance with the CV so that there is no unwanted thing such as the ungrateful promise made by the CV and in the end can harm the society itself.

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