



Responsibility and Management of Company Assets in the Event of Fraud (Case Study of the Supreme Court's Decision Number 3007 K / Pdt. / 2014)

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Abstract

Limited partnership is a form of company not a legal entity. There are two allies in limited partnership who have different responsibilities, namely complementary allies or active allies are responsible for personal property and act in running the CV, management and enter into agreements or legal relationships with third parties. Allied partners or passive allies are only responsible for the amount of capital that has been deposited into the CV. The allies' agreement to establish a limited partnership was set forth in the deed of a limited partnership. In a limited partnership does not rule out the existence of default actions committed by allies against other allies that are not in accordance with the agreement on the contents of the deeds of limited partnership. As in the Decision of the Supreme Court Number 3007 K / Pdt. / 2014, for this research, it examines and discusses, firstly how to manage the wealth of limited partnership and legal consequences for allies who commit acts of default, and secondly how the responsibility of the Director of CV in the act of default agreement deed of establishment of limited partnership. This research is a normative legal research with the type of analysis descriptive research, the analysis is carried out based on the description and facts obtained. The data used are secondary data that is data obtained through library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research and discussion determine that the management of the wealth of limited partnership is carried out by the complementary allies as the Director of CV and the legal consequences arising from the act of default is the issuance of Supreme Court decision No. 3007 K / Pdt. / 2014 which rejects all the reasons for appeal from the Defendant as Director. The Decision of the Pekanbaru High Court which annulled the decision of the Batam District Court was not wrong to apply the law because the decision and judgment were considered to be true, stating that it was legal according to the deed of the Comanditer Company CV. Prima, sentenced the defendant to submit financial statements, sentenced the defendant to pay 40 (forty) percent of the profit and capital portion of Rp 40,000,000.00 (forty million rupiah) to the Plaintiff.

Keywords: Commanditaire Vennootschap (CV); Responsibility; Management of Wealth

I. Background of Research

The economy in Indonesia is growing rapidly, ranging from small, medium to large-scale sectors, all business activities contribute to the economic progress in Indonesia. In conducting business, both individuals and in the form of partnerships, whether incorporated or not, and one form of business entity that is widely used in Indonesia is Comanditaire Vennotschap (hereinafter abbreviated "CV"), is the form of business entity most widely used by entrepreneurs Small and Medium Enterprises (SMEs) as a form of business entity organizational identity in Indonesia. Because the process of establishing a CV is not as complicated as other business entities such as Limited Liability Companies (PT).

CV is a business entity that is not a legal entity, however the existence of this business entity does not reduce its rights and obligations as a business entity that is recognized by the government and the business community in particular. The legal basis of a CV in the Commercial Law Code (hereinafter abbreviated as KUHD) is not specifically regulated as a firm alliance and civil alliance (maatschap), but some legal experts argue that CVs are regulated in Articles 19, 20, 21 and 32 of the KUHD.¹

Guild Commanditaire consists of two (2) kinds of partner, namely:

- a. A Complementary partner, which is an active partner who is a board administrator. In addition he is a limited partner who also contributed capital income.
- b. A Commanditer or silent partner, a passive partner who does not take part in managing the partnership, whose status is only as a capital provider or lender. Because the limited partner did not participate in managing the limited partnership, he did not take part in acting out.²

Complementary partner that run the company have the right to take various actions related to the company's operations, such as entering into agreements or cooperative relationships with third parties as well as various other actions to advance the company. In this case, an Complementary partner can run the company in full. Complementary partner also have responsibility for losses incurred by the company until it reaches its personal property, which does not apply to passive partner.

One function of commanditer partner is to oversee the running of the company and also serves to increase the capital of the CV. Although the responsibilities of limited allies are limited to capital, these limited allies are entitled to benefit from the given capital. So that the position of a commanditer partner can be said to be important in a CV, especially if you have more than one passive company. The responsibility of limited partners or commanditer partner for losses or debts the company has to third parties is limited to the capital it puts in the company and commanditer partner are not personally responsible for all as is the complementary partner or active partner.

The basic idea of forming a CV that is an agreement between each partner to include capital in a limited partnership so that the agreement between the parties in establishing a CV as stated in the deed of establishment of a CV is the operational basis of the CV. The parties can set themselves what is promised in their company. Conditions that must be obeyed is the general conditions for the agreement mentioned in Article 1320 of the Civil Code, namely:

¹ I.G.Rai Widjaya, Corporate Law (Law and Implementing Regulations of the Act in the Field of Business), Kesain Blanc, Bekasi, 2005, p.1.

² M. Yahya Harahap, Limited Liability Company Law, Sinar Grafika, Jakarta, 2011, p.17

- a. Agree those who commit themselves.
- b. The ability to make an engagement.
- c. A certain thing.
- d. For the lawful.

Beside of that, forming a CV must also meet the requirements that are not prohibited by the Act, is not contrary to morality and public order, and must be a common interest being pursued is profit.³

In a certain business activity, it cannot be separated from a problem, as it is the focus of the study in this study, namely the decision of the Supreme Court Number 3007 K / Pdt. / 2014. The case is an inter-internal case in a business entity namely CV Prima which was established through Deed No. 14 dated 3 November 1994 which was made before Soehendro Gautama, Notary in Batam. Regarding operational CV Prima regulated in Article 5 of CV Prima's Deed, namely Defendant (Hoi Fat) as an administrator or Complementary partner (Director) of CV Prima is fully responsible for the business activities of the partnership and its consequences, while the Plaintiff (Kinning) is agreed to be a limited partner or Passive Allies who bear no more than the amount of capital in the company.

The Plaintiff (Kinning) as a limited allied several times demanded his right to obtain income statement information and profit sharing from CV Prima to the Defendant (Hoi Fat) but was always rejected by the Defendant, with the reason for the company's business development going forward. Even in the addition and sale of assets CV. Prima and made a cooperation agreement with a third party there was no report at all from the Defendant to the Plaintiff about it.

The rejection caused a conflict of interests of the parties of CV Prima, because the obligations were not fulfilled and resulted in legal consequences in the management of CV Prima's wealth and there were legal sanctions. The actions of the defendant which indirectly violated the Plaintiff's right to a portion of the profits are acts of default or breach of promise based on Article 9 of the Deed of the Comanditer CV. Prima Number 14 dated November 3, 1994 which reads "profits received and or losses suffered by the company are divided according to the balance of capital entered by each party in the company, with the advantage that the commanditer partner does not bear more losses than the number of its share in the company.

Based on the existence of the case, the writer is interested in conducting research with the title **"Responsibility and Management of the Wealth of Partnership Fellowship in Acts of Default (Case Study of the Supreme Court's Decision Number 3007 K / Pdt. / 2014)"**.

II. Research Method

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.⁴ To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.⁵ The techniques to collect the data are:

³ Ibid., P. 22.

⁴ Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5

⁵ Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research⁶.

III. Result of Research and Discussion

In the case of CV. Prima where this case occurred between the Plaintiff (Kinning) with the Defendant (Hoi Fat), who was originally intended to establish a limited partnership, because based on the agreement of the Defendant and the Plaintiff, the Deed of Company CV.Prima Number 14 dated November 3, 1994 made before Soehendro Gautama, Notary in Batam. The plaintiff and the defendant agreed to first deposit an initial capital of Rp 100,000,000 (one hundred million rupiahs) as outlined in Article 4 of the Deed of the CV.Prima Number 14 dated November 3, 1994, each Defendant (Hoi Fat) in the amount of Rp. 60,000,000.00 (sixty million rupiah) and the Plaintiff (Kinning) in the amount of Rp. 40,000,000.00 (forty million rupiah)

During the first 3 (three) years, the limited partnership of CV.Prima suffered losses from 1994 to 1998, but in the fourth year, the limited partnership began to make a profit. For this advantage, the Plaintiff asked the Defendant as Director of CV. Prima about how the reports and profit sharing from CV.Prima. However, the Defendant always refused because the profit did not need to be shared first and should be added as a partnership capital with the aim that CV Prima would develop more.

The additional capital was purchased by the shophouse as an additional Office CV. Prima located in Bumi Indah Complex No. 20 Batam and 3 (three) units of shophouses in Complex Penuin Center Batam leased to PT. ANN, lastly changed this shophouse as a place for a massage business but the Defendant never gave a report along with the distribution of profits with the Plaintiff. The defendant even bought 3 (three) other shop houses in Lubuk Baja District, Batam City, which were eventually sold to another party (Lovina Hotel), but there was no report at all from the defendant to the plaintiff about this matter.

In the middle of 2011, the plaintiff asked the defendant to resign as Complementary partner and will be replaced by the Defendant's son (Hoi Fat). Regarding this matter, the defendant did not make an issue out of it, because the substitute was his own son. However the Plaintiff (Kinning) still asked for financial accountability as long as the company CV Prima was established to the defendant. Because during the establishment of the company as described above, the Plaintiff has never received financial statements and income statements from the Defendant, including the distribution of profits from the company's business as the plaintiff should have received according to the deed of establishment. However, the Plaintiff's request was still rejected by the Plaintiff, until the Plaintiff finally filed a lawsuit to the Batam District Court.

⁶ Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2006, Page 32

The Plaintiff (Kinning) reported that the Defendant (Hoi Fat) had made a default or broken a promise for his obligations as a limited partnership, because the Plaintiff (Kinning) as limited partnership never got financial reports or profit sharing from CV.Prima. According to the theory of legal liability states that a person is legally responsible for a particular act or that someone bears legal responsibility for a sanction in the case of an act contrary to the law. The use of this theory answers how the responsibility of partner in the act of default or breaking promises to the deed of establishment of the limited partnership.

The defendant's responsibility as Director of CV Prima for making a fraud based on the Batam District Court Decision stating that the Defendant (Hoi Fat) was proven to have broken the promise / fraud, namely, punishing the Defendant for submitting an income report from 1999 to 2012 to the Plaintiff (Kinning), punish the Defendant to pay 40 (forty) percent of CV Prima's profit share from a capital of Rp. 40,000,000.00 (forty million rupiah) submitted by the plaintiff to CV. Prima, and punish the defendant to pay court fees amounting Rp150.000,00 (one hundred fifty thousand rupiah). after that the defendant filed an appeal to the Pekanbaru high court, whose decision overturned the Batam District Court's decision. then at the cassation level in the Supreme Court, the judge decided to punish the defendant in carrying out the decision at the first level

Basically, in running a CV must be in accordance with the deed of establishment, carry out the rights and obligations of each party, especially for the Complementer parties that is running the CV business activities, because otherwise there will be legal consequences and sanctions that must be accepted if making a fraud.

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