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The authority of active partners and passive partners in the company type of *commanditaire vennootschap*.

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ABSTRACT : This study aims to review the literature on the authority of active and passive partners and the advantages and disadvantages of the authorities of active and passive partnersof a CV. CV, in its structure, recognizes two types of partners, complementary partners and limited partners. The authority of complementary partners is active in managing and running the company and entering into legal relations with outside parties. In contrast to limited partners who are not authorized to run the company but only should have an obligation to provide capital income to the company. The obligation of a limited partnership to surrender money, goods, or labor as income in the partnership. They are not to take part in the partnership management, while the complementary partner provides income to the company and is obliged to become a manager of the company.

KEYWORDS;*Indonesia, Commanditaire Vennootschap, complementary partners, limited partners, Authority, Responsible*

I. INTRODUCTION

Commanditaire Vennootschap or abbreviated as CV includes business entities that are not legal entities, such as Limited Liability Companies or abbreviated as PT. Although a CV business entity is recognized by the government and the business community in particular, it does not mean that their rights and obligations as a company are reduced. The facts show that many entrepreneurs, especially Small and Medium Enterprises, have used CV to carry out business activities in Indonesia. Conceptually, a CV is a partnership consisting of one or more regular partners and one or more passive partners who are personally responsible for all partnership debts and are only responsible for the amount of their contribution. The presence of a passive/silent partner is a crucial feature of CV.

CVs are usually established by deed and must be registered. However, this partnership is not a legal entity (the same as a firm), so it does not have its wealth. In the matter of managing an alliance, CV or limited partnership are prohibited from making arrangements even with a power of attorney. They may only supervise the management if it is determined as such in the Articles of Association. If this provision is violated, Article 21 of the KUHD provides sanctions whereby complementary partners are personally responsible for the whole.

In CV, only complementary partners may establish relationships with third parties. Therefore, only complementary partners are responsible for third parties.

CV is a form of partnership business entity founded by one or more people who entrust money or goods to one or more people who run the company and act as a leader to achieve common goals with different levels of involvement among its members.

Companies have an essential role in the Indonesian state as a supporter of national economic development organized based on economic democracy to maintain balance.

Progress and unity in the national economy to create social welfare. The increase in national development and economic development resulted in the development of the business world and companies. The more businesses built into a company, the more developed the country's economy will be. A company is any business entity that continuously carries out activities in the economic sector and is permanent and openly aimed at generating profits as evidenced by records (bookkeeping) (Muhammad, A.,2010).

A CV should not only be established by one person, therefore, regarding the determination of who is a passive partner and active partner, seen from the roles and responsibilities carried by each partner determined from the beginning of the establishment of CV, and not determined by the amount of capital of the partners.

Given the importance of the above highlights, the authors discuss the active and passive partner authority in this business entity more deeply.

We formulate the above problems as follows.
a) What is the actual authority of active and passive partners in a CV?
b) What are the advantages and disadvantages of an active and passive partner authority in a CV?

II. LITERATURE REVIEW

Authorities of active partners and passive partners in a CV

The establishment of CV as a business entity aims for businesses to have an official and legal platform to facilitate the movement of the business entity itself. For example, in the procurement of goods, we need a place for cooperation. Also, it is usually hinted that if a government agency collaborates with a government agency or in other matters, there is a need to establish a business entity. For example, procurement of goods in offices or government agencies with a value of up to IDR 200 million must use a CV or PT with a small classification.

CV is a form of company, not a legal entity. In Article 19 of the Indonesian Commercial Code (KUHD), it is stated that CV is a company to run a company which is formed between one or several partners who are responsible for and are responsible for all of them on one party, and one or more people as moneylender on the other side. In this case, it appears that the limited partnership form of business is a form combination of a limited liability company (PT) and a firm company. In other words, a CV has the characteristics of a limited liability company and a firm at the same time (Fuady, M., 2011).

According to Sembiring, S. (2001), there are two kinds of partners: complementary partners and limited partners. Complementary partners are active partners known as board partners or custodians who run the company and enter into legal relations with third parties. Limited partners are passive partners who are not authorized to run the company but only should have an obligation to provide capital inflows to the company.

Furthermore, Mulhadi, H. P. (2017) noted that the basis of the legal relationship between CV partners is basically a cooperative relationship to seek and share profits. This explanation is stated in the provisions of article 1618 of the Civil Code, which stipulates that a partnership is an agreement between two or more people who bind themselves to enter something into the partnership, intending to share the benefits obtained from it.

Article 1646 paragraph (4) of the Civil Code states that the partnership will end if one of the partners dies or is placed under interdiction or is declared bankrupt. Nevertheless, partners can agree that if an ally resigns, dies, or goes bankrupt, the alliance does not dissolve but continues or is continued by other partners.

The liability of limited partners is limited to the amount of capital they are depositing. Limited partners are responsible to complementary partners by submitting many revenues, following Article 19 of the KUHD. This case is because limited partners cannot perform management actions as written in Article 20 of the KUHD.

This view has received special attention from legal experts about the term "Geldschieters" to the notion of "Commanditaire," which gives an understanding that the limited partnership is identical to each person who lends money (gelduittener). Therefore they will become a collector (schuldeiser) even though the definition of limited partnership in a CV is not a collector for the money that has been released. As a company participant, a limited partnership has the right and the obligation to receive profits and the remaining distribution of assets if the company is liquidated.

Besides, they bear the risk if the company loses according to the amount of capital they put in. Conversely, they are also not allowed to withdraw the capital they have given up during the company still running / ongoing (Muhammad, A. K., 2002).

Complementary partners, as active partners who run CV, can make money loans to third parties to develop their business. While running a business, a company sometimes does not achieve its goals in looking for profits as expected, resulting in losses. As a result, the company was unable to return its debts.

According to Purwosutjipto (2005), there are three types of CV business forms, such as.

1) A tacit limited partnership is a limited partnership that has not publicly declared itself to a third party as a limited partnership. The partnership acting outside of the company, this partnership still claims to be a firm's partnership but acts within the company.

2) An openly limited partnership is a partnership that openly declares itself as a limited partnership to a third party.

3) Share limited partnership is an open limited partnership whose capital consists of shares. This form of partnership is not regulated in the KUHD.

The source of CV capital in running its business can be assessed from an internal and external point of view of the CV itself. Internal sources of capital come from capital inflows (inbreng) of the management and external sources of capital, for example, through loans from banking institutions and non-banking institutions with certain guarantees. If the loan is not refundable at maturity and is collectible, the CV can be submitted for bankruptcy to the commercial court, either by the creditor or by the debtor.

In its structure, CV is known that two types of partners play a decisive role in being referred to as CV, namely, complementary partners who actively manage and run the company and enter into legal relations with outsiders. Meanwhile, the limited partnership is not authorized to run the company but should have an obligation to provide capital income.

In the literature, many have mentioned the different duties/obligations of limited partners and complementary partners. Limited partners only surrender money, goods, or labor as income in the partnership and do not participate in the management of the partnership. At the same time, complementary partners providing income are also required to become company managers and have the authority to represent the partnership (vertegen woordinging bevoegdheid) with third parties.
Limited partners only play a role internally in the alliance, while complimentary partners and acting internally also act as external with third parties. If limited partners take part in running the management, the responsibilities of the partners are similar to those of complementary partners, fully responsible for personal assets (article 21 KUHD).
If CV faces a loss, the limited partners will also bear the burden of the loss, but there is no need to pay losses until they exceed their income limit. In contrast to the responsibilities of complementary partners, the burden of reaching their assets can be used as collateral to pay off partnership debts (Articles 1131 and 1132 of the Civil Code).
Limited partners and complementary partners need to discuss it again in a member/board meeting so that partners who only include labor and thoughts receive a fair assessment. However, overall it is clear that it is not permissible to determine the distribution of profits and losses to third parties (Article 1634 paragraph (1) of the Civil Code). On the other hand, it is permissible to impose losses on only one of the partners (Article 1635 paragraph (1) of the Civil Code), but it is prohibited to give benefits only to one of the partners (Article 1635 paragraph (2) Civil Registry). This consequence contradicts the basic principle of allying, prioritizing common interests. It is also prohibited to determine losses or gains on third parties (Article 1634 of the Civil Code).

The advantages and disadvantages of active and passive partners authority of a CV.
A CV is a partnership consisting of one or more regular partners and one or more silent partners who are personally responsible for all partnership debts and are responsible only for the amount of their contribution.
The limited partnership or Commanditaire Vennootschap (CV) is based on its development in the following form.
1) Pure Limited Partnership. This form is the first limited partnership. There is only one complementary or active ally in this alliance, while the others are limited partners.
2) Mixed Limited Partnership. This form generally comes from the firm form when the firm requires additional capital. Firm partners become complementary partners while other or additional partners become limited partners.
3) Comprehensive Limited Partnership. This type of limited partnership issues shares that cannot be traded, and complementary partners and limited partners take one or more shares. The purpose of the issuance of these shares is to avoid the occurrence of fixed capital invested because in a limited partnership. It is not easy to withdraw the paid-up capital.
Given the number of partners responsible for the responsibility, as in the case of Complementary partners, CVs are divided into two types; first, CVs whose complementary partners consist of one person. CV with an ally who is in charge has an authority to apply inward only and does not have external authority (externewerking), even though the CV is acting openly. Second, CVs whose complementary partners consist of several individuals.
The lack of authority of active partners and passive partners in CV is that some members/partners have complete responsibility. Because there are active partners and passive partners, the survival of CV is uncertain because many depend on active partners who act as leaders of the alliance. It is challenging to return on their investment (especially for allied leaders).
The authority and complex oversight of the limited liability of limited partners will reduce their enthusiasm for advancing the company when compared to partners in the firm partnership. If the company loses, then all the partners are jointly responsible.
As for the advantages themselves, from the authority of active partners and active partners in a CV, the capital collected is more outstanding. The process of establishing it is more straightforward, either or greater management capacity, the need for capital can be more fulfilled, management can be diversified, and as a place to invest, limited partnership tends to be better, because, for silent partners, it will be easier to invest and redeem their capital.

II. CONCLUSION

It is a form of joint venture agreement between people who are willing to lead, manage the company, and have complete responsibility for their wealth, with people who provide loans, and are unwilling to lead the company, and have limited responsibility for the wealth that is included in the company.
In other words, Commanditaire Vennootschap (CV) is a company formed by two or more people. Therefore in CV, there are two kinds of members, namely: active partners and passive partners. Active partners manage their business and are fully responsible for the company's debt, while passive partners are members who only deposit their capital and do not participate in managing the company, are only responsible for the paid and owning capital.

The status of a limited partnership can be equated with a person who deposits capital in a company and only waits for the results of the profits from the inbreng that is entered and does not interfere in the management, control, or business activities of the company. These partners are often referred to as silent partners.

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