

.Research Article

The Implication of Granting Right to Build for Commanditaire Vennootschap (CV) based on Circular Letter of the Ministry of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 2/SE-HT.02.01/VI/2019 Concerning the Granting Right To Build for Commanditaire Vennootscap .

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Abstract:

The study aimed to determine the implication and position of granting Right To Build status to the Commanditaire Vennootschap based on Circular Letter 2/SE-HT.02.01/VI/2019 concerning the Granting Right To Build for Commanditaire Vennootschap (CV). In the implementation, circular letter has not been able to provide certainty and clear legal auspices regarding the CV that can apply for Right To Build (HGB). This study used a normative juridical research method, namely library research by collecting primary, secondary and tertiary legal materials such as books, legal scientific papers, other literature materials that explained the study to be discussed. Based on the result of the study, the position of the circular letter in the hierarchy of law and regulation, as well as the norms in it, the granting Right To Build for a CV was contrary to existing rules. Circular letter referred to the Basic Agrarian Law (UUPA) and Government Law (PP) No. 40/1996 is as the basis for granting the Right To Build for CV contrary to the law itself. CV cannot be compared to a legal entity. According to the author, the circular letter did not guarantee legal certainty because of the registration of the Right To Build for CV by mentioning on behalf of all allies in the CV personally (individuals), while the completeness documents in the name of CV. The implications of the circular letter can cause confusion and various potential risks. The CV cannot fulfill the elements as a legal entity, and the position of the circular letter was not in the hierarchy of statutory regulations because it was only limited to a technical guideline for a general regulation. If active and passive allies from a CV wanted to apply for land rights, it would be safer if an upgrade is made from a CV to a Limited Liability Company (PT). Additionally, it provided an opportunity for allies to be free from responsibility to personal property. Related to the discussion of CV, it is better to have further study on the discussion of the Bill that regulates CV business entities in order to have a clear legal shade.

Keywords: Commanditaire Vennootschap (CV), Right To Build, Legal Entity.

Introduction:

by nature, humans cannot live alone, they must live together in an organized society to achieve a common goal. in order to achieve this goal, there must be no conflict of interests so that there must be a norm that regulates it. there are several kinds of norms/rules governing the interests of the

community, one of them is the rule of law. the rule of law is given in order to regulate all the interests of humans, both those who are regulated and are not yet regulated by other norms. law governing the interests of the community must have clear objectives, namely legal certainty and legal justice.

the law must be based on a legal system that has been created and established, and the law must be the commander of the interests and demands that develop during society. therefore, the purpose of the rule of law is to make the order of life in society, nation and state become orderly, safe, peaceful, prosperous and socially just. according to hmn. poerwostjipto, law can be defined as:

"law is the whole norm by the state authorities or community authorities who are authorized to determine the law and it is declared or considered as a binding regulation for some or all members of the community, to establish an order desired by that authority." therefore, it can be concluded that the government as the authorities of the state issues a rule of law in the form of a law that binds all members of the community. the rules must be aligned and not create conflict with other legal rules. as stated in the circular letter of the ministry of agrarian affairs and spatial planning no. 2/se- ht.02.01/vi/2019 concerning the granting right to build to the commanditaire vennotschap (cv). in this circular letter, it is intended that the commanditaire vennotschap (cv) can submit applications for right to build in indonesia. the issuance of a circular letter is expected to increase investment and encourage economic growth in indonesia. however, if reviewed, the circular letter contradicts with the law of the republic of Indonesia number 5 of 1960 concerning the basic regulations on agrarian principles (hereinafter referred to as uupa) of 1960 and government law (pp) number 40 of 1996 concerning the rights of cultivation, rights to build, and land use rights, (hereinafter referred to as pp no. 40/1996). commanditaire vennotschap (cv) is a business entity, not a legal entity. it is not attached to the characteristics of legal entities (rechtspersoon, legal person). the position cannot be treated as a legal entity, therefore, cv should not be able to become a holder of rights to build. is it true that the government has issued this circular letter because the substance of the circular letter has caused a breakthrough in which the cv can have the right to build. according to article 36 of the basic regulations on agrarian principles (uppa), those who can have the right to build are indonesian citizens and legal entities established under indonesian law and domiciled in indonesia. according to article 19 pp no. 40/1996, the citizens who can be the holder of the right to build is an indonesian citizen and legal entity established under indonesian law and domiciled in indonesia. theoretically, cv

is a business entity and not a legal entity, so it cannot have land use rights. although the elements or material requirements to become a legal entity have been met by the cv, however, because there is no element of recognition or endorsement from the government, the cv cannot be recognized as a legal entity company. if a cv can have land use rights, does it mean that the cv has begun to be recognized as an entity equal to a legal entity (rechtspersoon) and person (persoon). based on the content, the circular letter of the ministry of agrarian affairs and spatial planning no. 2/se- ht.02.01/vi/2019 concerning the granting right to build for the commanditaire vennotschap (cv), (hereinafter referred to as the circular letter of ministry/atr) is issued in order to provide easy land services. the government through the ministry of agrarian affairs and spatial planning/atr national land agency has a policy that cv business entities can apply for land rights in the form of right to build (hereinafter referred to as hgb). the submission is made by both limited and complementary allies or through their proxies that act for and on behalf of and approve all limited and complementary allies. the registration of hgb must be accompanied by legal documents on the establishment of a cv which has been approved by the government. according to article 18 of the commercial law, (hereinafter referred to as kuhd), cv or also called limited allies is an ally or partnership formed by lending money, established between a person or between several allies who are jointly and jointly responsible for the whole and one or more persons as lenders of money, whereas according to article 1 of the regulation of the minister of law and human rights of the republic of Indonesia number 17 year 2018 concerning the registration of commanditaire vennotschap, firm alliance, and civil alliance, (hereinafter referred to as the regulation of the minister of law and human rights no. 17/2018), commanditaire vennotschap is a partnership established by one or more limited allies with one or more complementary allies to carry out business continuously. according to mulyoto, cv is a business entity/company that is not a legal entity and does not have the authority to own certain parcels of land with any status of rights (ownership land rights, rights to build, rights of cultivation, even the land use rights is not justified owned by the company/business entity which is not a legal entity either ud/up, firm, maatschap). therefore, because the cv is not a legal entity, the cv does not

have the legal standing to be the owner of a certain plot of land with any status of rights, whether ownership land rights

rights to build, rights of cultivation, even the land use rights.

in the circular letter of ministry/atr, the recording of hgb registration for cv is carried out on behalf of all limited and complementary allies in the cv, or one of the limited and complementary members with the agreement of all members of the limited and complementary allies. it will be in the hgb certificate. it is noted that the owner of the hgb is a limited ally and/or a complementary ally or each of the allies with the approval of the limited and complementary allies. however, the new rules in the circular letter do not heed the various legal issues that will arise if a commanditaire vennootschap (cv) can submit an hgb application. if the hgb is in the name of limited members and/or complementary members or each of these members with the agreement of the limited and complementary members, what about the transfer of rights if one of the allies dies or resigns. if you die whether the owner of the hgb is passed down by an heir or not. if the hgb is in the name of limited members and/or complementary members or each of these members with the agreement of the limited and complementary members, this certificate is considered joint ownership (more than one name is recorded in the certificate).rights to build, rights of cultivation, even the land use rights.

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several kinds of potential risks will also arise when allies whose names are registered in the certificate leave the management of cv. the problems also arise when coming to taxation obligations in filing for hgb. what about the legal responsibility, to what extent limited and complementary allies are responsible for the land rights owned by cv. therefore, it needs to be examined the actual position of the cv. the study was conducted to determine the position of the cv as a business entity that could have land use rights, as well as the implications of the circular letter stating that the cv could have an hgb.

Research Methods:

this study used a normative juridical approach. normative juridical research is research focused on examining the application of rules or norms in positive law. the type of data used was secondary data which was obtained from library materials through library studies. literature study is the study of written information about the law that comes from various sources and is widely publicized and needed in normative legal research, namely writing based on data used as research objects, such as laws and regulations, library books, articles, newspapers, as well as bulletins about all the problems that correspond to the object of research.

Results And Discussion:

The Status Of Cv As A Business Entity That Can Have Land Rights:

non-legal company such as cv is a private company that is established and owned by several entrepreneurs in cooperation. this form of company is a partnership company that can run its business in the economic field. a partnership company can have the legal form of a firm (fa) and a commanditaire vennootschap (cv) regulated in the kuhd. the company does not have a legal body, legal subjects are allies who become its management, not its corporation because it is not a legal entity so it cannot be a legal subject. because it is not a legal entity, the people acting as legal subjects are the people and not the association, so what is demanded by the third party is the management or its allies. in the company's assets not incorporated, there is a

mixture of personal property if there is a loss of liability to the personal property of active allies (complementary) in other words, personal liability for the whole, because there is a mix of personal property of its allies, if the company goes bankrupt, then personal property is also confiscated. commanditaire vennootschap (cv) is a firm that has one or more limited partnerships or allies. a limited ally is an ally that only surrenders money, goods or labor as income to the partnership, and does not interfere in the management or control of the partnership. he only gets the benefits from the income. his responsibility is limited to the amount of his income. in the cv, there are two kinds of members, namely members who must be responsible for the running of the alliance (referred to as active allies/complementary allies) and members who are obliged to include capital in the alliance (called passive allies/complementary allies), in which each of these members has their own rights and responsibilities that differ from one another, while for active allies/complementary allies have the function to take care of the running of the company, and represent the company both inside and outside the court, while passive allies/complementary allies should include capital in within the company, and the person concerned does not have the right to participate in running the company daily, except to supervise and examine the fellowship books and supervise the work of active allies. in the framework of a passive allies/complementary allies supervising the company, what is needed is a passive ally, an active ally must fulfill it.

the circular letter of ministry of agrarian affairs and spatial planning no. 2/se-ht.02.01/vi/2019 concerning the granting rights to build to the commanditaire vennootschap, intended that the cv can apply for the granting rights to build in indonesia. based on a circular letter, the submission of an application is carried out by limited and complementary allies or through their proxies that act for and on behalf of and approve all limited and complementary allies. in a circular letter of ministry/atr, the recording of hgb registration for a cv is carried out on behalf of all limited and complementary allies in the cv, or one of the limited and complementary members with the members, it can be concluded that the recording of hgb registration for the cv by mentioning above the

names of all allies members in the cv personally (individuals), while the completeness documents are in the name of the cv. cv should not have land rights, if the government finally made a breakthrough with the cv can have hgb through its allies, then the consequence is a lot of conflicting norms and ambiguities in its implementation.

the issuance of the circular letter which confuses due to conflict with the rules governing law, one of them is in the kuhd which states that cv is a form of company that is not a legal entity regulated in the first book, the third title, the second part in article 16-35 of the kuhd. if drawn back into theoretical science, there

is a theory called "modern views on legal personality", a theory of legal entity formation based on the merging of realist and philosophical theory, which on one hand recognizes the social reality that is behind the personality of the law itself, and on the other hand, treats legal entities in numbers on aspects of fiction. it can be concluded that the purpose of the above theory is that legal entities are created by legal subjects which in this case are real so that they receive recognition of legal personality through the reality of the social itself. there is also the opinion of the company's legal experts who state that an entity can be said to be a legal entity if the existence of assets with a specific purpose separate from the personal wealth of the participants or founders of legal entities. otherwise, if you look back at the company in the form of commanditaire vennootschap (cv), cv is a business entity that is not a legal entity because according to kuhd, all cv devi both active allies (complementary) and passive allies (limited partnership) can be held accountable for losses suffered by cv. especially for passive allies (limited partnership) may be liable if proven guilty as stipulated in article 21 kuhd which in this case is called joint responsibility. in this case, why cv is said to be a business entity that is not a legal entity because it refers to unlimited cv assets. cv is a business entity, not a legal entity, so based on circular letters, regulations or policies issued by the government should not confuse.

government regulations or policies must have a legal objective that serves to provide certainty to the community because certainty is a major aspect. legal certainty is about where the law originated, certainty over the origin or source of the law becomes important because law is a formal

institution. according to hans kelsen, in developing the sequence of laws and regulations in indonesia, it is explained that the laws and regulations are tiered and multi-layered so that the regulations below must not conflict with the laws and regulations above them. the types and hierarchy of laws and regulations as contained in article 7 paragraph (1) of law number 12 of 2011

concerning the formation of regulations as follows:

- a. the 1945 constitution of the republic of indonesia (abbreviated as uud ri 1945);
- b. decree of the people's consultative assembly;
- c. laws/government regulations in lieu of laws;
- d. government regulations;
- e. presidential regulations;
- f. local regulations.

in article 7 paragraph (20) of law number 12 of 2011 concerning the formation of regulations, it is confirmed that the legal force of laws and regulations is in accordance with the hierarchy as referred to in article 7 paragraph (1). in law number 12 of 2011 concerning the formation of regulations, circular letter is not found as part of the legislation. according to m. solly lubis, state regulations (staatsregelings) are written regulations issued by official agencies, both in terms of institutions and in terms of certain officials. the intended regulation includes laws/regulations, government regulations in lieu of laws, government regulations, presidential regulations, ministerial regulations, local regulations, instructions, circular letters, announcements, decrees, and others.

g. circular letter is not included in the scope of statutory regulations (written regulations that contain generally binding legal norms and are formed or established by state institutions or authorized officials). the reason is that the circular letter is addressed to the internal government itself.

h. based on the definition and hierarchy of laws and regulations, the position of the circular letter is the main subject of this study. the circular letter of ministry of

agrarian affairs and spatial planning is a product of policy regulations (regelung) but does not include regulation, not administrative decisions (beschikking) which are administrative in nature, but a policy regulation (beleidsregel/policy rules) or false statutory regulations (pseudo wetgeving). beleidregel and pseudo wetgeving are legal products that are materially binding in general but are not a statutory regulation because there is no

authority to form them as statutory regulation according to prof. maria farida soeprapto, circular letter should only merely explain or contain a technical guide to a general rule. it is rare to find a circular letter containing new norms which is ultimately confusing, especially if the circular letter is more obeyed by the officials below it than complying with the provisions contained in the order of the laws and regulations. in number 5 point b, circular letter stipulates that the applicant is a limited partnership or complementary allies in the cv, but they act not for and on behalf of the cv, but for and on behalf of all allies in the cv. the title of the circular letter is the granting of hgb for the cv, but the content is the granting of the hgb for the person/ individual participants in the cv

2.2. The Implication Of Granting Rights To Build For Commanditaire Venootschap (Cv):

although circular letter is generally only intended for internal government, it does not mean that circular letter does not influence the people, because sometimes circular letter is used by the government as a basis for implementing policies that deal directly with the people. government is a policymaker for a guideline for the implementation of services to provide hgb to the commanditaire venootschap (cv). in the implementation, it creates confusion due to differences in norms, so that it creates a logical implication or consequence if the circular letter is still implemented by the government. what is originally circulated is made as a practical solution so that cvs can have land rights assets so that it becomes a breakthrough, instead of creating legal uncertainty. because there is joint ownership, and the recording of the name of the cv's allies in the cv's hgb certificate, it can be qualified as binding joint ownership. every action on the land must be done jointly. because there is joint ownership, when there are allies that leave or enter the management of the cv, do they always have to make a deed of change as a basis for change by the land office, and the allies who leave are obliged to get compensation from other allies, and need to increase capital for new allies entering into management. then, if there are a limited partnership/complementary allies who dies, whether the hgb object is a legacy inheritance from the deceased.

this logical consequence arises because the circular letter does not stand on basic norms. the basic

norm is that a cv should not be able to own land rights even through its allies. concerning the hgb subject, in article 36 paragraph (2) of the basic agrarian law regulates that if a person or legal entity as an hgb subject no longer meets the requirements as a legal subject, then within 1 year must release or transfer it to another party. this is reaffirmed in article 20 pp no. 40 of 1996 states that:

- a. the holders of rights to build who no longer meet the requirements referred to in article 19, within one year must release or transfer the rights to the land to other parties who meet the requirements.
- b. if within the period referred to in paragraph 1, their rights are not relinquished or transferred, the right is revoked due to law.

if the hgb subject no longer qualifies as a citizen and legal entity, even in this case the cv is not included as a legal entity, then it is obliged to release or transfer the hgb. the position of a partnership as a legal entity is determined by legislation, custom or jurisprudence.

Closing

Conclusion:

a.this study can be concluded that cv cannot fulfill the elements as a legal entity. a draft policy such as a circular letter should be prepared more thoroughly or be issued a kind of implementing provisions to support the government's wishes so that the cv can have land rights through its allies because there is still a lot of potential risk of joint ownership.

b.additionally, the position of the circular letter is not in the hierarchy of statutory regulations because it is only limited to a technical guideline for a general regulation. circular letter issued by the government is one form of policy rules that is the product of state administrative acts aimed at "naar bebren gebracht schriftelijk beleid" showing out a written policy but without the accompanying authority to make regulations from the state administrative agency or official that creates the policy rules.

Suggestion:

government issues a circular letter aimed at the public, especially business actors or cv allies who want to apply for land rights in the form of the right to build. according to the author, if an ally of a cv wants to apply for a right to build, it will be safer if

agreement of all the limited and complementary previously it is upgraded from a cv to a limited liability company (pt), because of basically those who can have rights to the legal entity's land. the increased cv to a limited liability company (pt) provides an opportunity for allies to be free from responsibility to personal property. related to the discussion of cv, it is better to have further study on the discussion of the draft law that regulates cv business entities in order to have a clear legal shade. a more mature draft rule/law will support the government's goal of increasing investment in indonesia.

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