

The Legal Position of Limited Partnership in Indonesia through the Perspective of the Philosophy of Utilitarianism

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ABSTRACT

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A limited partnership (CV) is one of the most popular business entities for the public in building businesses through Micro, Small and Medium Enterprises (MSMEs) as a driver of the national economy. Regulations regarding CVs are regulated in the Commercial Code (KUHD), and Civil Code (KUHPerdata) as well as technical guidelines for registration and dissolution of CVs through Government Regulation No. 17/2018. The existence of CV, which is important in national economic development, causes the need to understand the concept of CV law and the legal position of CV based on the principles of utilitarianism philosophy. This research uses a normative juridical method with a statutory approach and conceptual approach, and legal materials are analyzed using the deductive method. The result of this study is that the legal concept of CV lies in the authority of the allies contained in Article 19 to Article 21 of the KUHD, if there are things that have not been regulated, the provisions of the Civil Code apply, and the legal position of CV based on the principle of utilitarianism, namely the allies in managing the partnership must fulfill their rights and obligations as applicable regulations, so that the business is managed will provide benefits and benefits not only for the allies, but also can increase the source of state revenue which has benefited national economic growth.

KEYWORDS:

Legal Position, Limited Liability Partnership, Utilitarian Principle

I. INTRODUCTION

The impact of national economic development increases the needs of people's lives, so business is one of the efforts to fulfill the economy, this can be seen from the many people's interest in running a company through Micro, Small and Medium Enterprises (called MSMEs). Through the establishment of a company, the community contributes as a driver of national economic growth because it has great potential for increasing state revenues. Robert mentioned that 3 (three) forms of companies consist of individual companies (sole proprietorship), partnership companies (partnership) and corporate companies (company or corporation) (Abhimantara, 2019). Individual companies consist of Trade Enterprises, Partnership companies consist of Civil Partnerships (*maatschap*), commander partnerships

(*commanditaire venootschap*) (from now on referred to as CV) and firm partnerships, while company companies are limited liability companies. The forms of business entities generally consist of Trading Enterprises, Civil Partnerships, Firms, CVs, and PTs (Kurniawan, 2014). A company has a broader meaning than a business entity, because a company is an activity of carrying out trading activities, while a business entity is one of the elements owned by the company as an institution or entity that carries out business activities. Activities carried out by a company on a regular, lawful basis, with the aim of making a financial profit. Therefore, a company and a business entity are the same. Activities carried out by a company on a regular, lawful basis with the aim of obtaining financial gain.

CV is one of the most preferred business entities by entrepreneurs due to its ease and practicality in running a business. According to Article 19 of the Kitab Undang-Undang Hukum Dagang (from now on referred to as KUHD), a limited liability partnership (CV) is a partnership by running a business entity established by one or more joint venturers with full liability on one side and the other side as a reliever, consisting of a limited liability partner (passive partner) and a complementary partner (active partner). Based on the provisions of KUHD, CV is regulated by the firm

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arrangement in Articles 16 to 35 of KUHD, which only consists of 3 (three) main articles 19 KUHD, Article 20 KUHD, and Article 21 KUHD. The organizational structure of a CV consists of complementary allies and committal allies, in contrast to a firm. A firm is established to conduct business under one common name, and each of its allies is jointly and severally liable for all transactions undertaken by the partnership. Article 20 of the KUHD states that the structure of a CV is that a commoditer ally is only liable for the amount of input (inbreng) put into the partnership, unless there is a provision that violates the partnership, and a complementary ally is only liable for all assets up to the personal property.

The position of CV is very important and strategic in efforts to form the structure of the national economy. However, because the legal concept of CV is limited to the KUHD, the concept of partnership still refers to the Civil Code (referred to as KUHPerdarta), especially the concept of agreement, as stipulated in Article 1320 of the KUHPerdarta on the legal requirements of an agreement and Article 1618 of the KUHPerdarta on Partnership. Other regulations regarding CVs are found in the provisions for the implementation of CV registration, namely Minister of Law and Human Rights Regulation Number 17 of 2018 concerning Registration of Commodity Partnerships, Firm Partnerships, and Civil Partnerships (from now on referred to as Permenkumham Number 17 of 2018), which is a technical regulation regarding the process of registering and dissolving CVs through the Business Entity Administration System (from now on referred to as SABU). CV is more attractive to business actors in choosing the form of the company because it has flexible and practical convenience in terms of the company's organizational structure, but the downside of CV lies in the unequal responsibility of each ally, because complementary allies carry out all management and management of the company, while the committal allies are limited to the amount of inbreng included in the company's assets. Therefore, it would be interesting to study the legal position of CVs in Indonesia from the perspective of utilitarianism philosophy.

II. LEGAL ISSUES

Based on this description, the problem formulations to be studied are:

1. How is the legal concept of a Commodity Partnership in Indonesia?
2. Has the legal position of the Limited Liability Partnership in Indonesia guaranteed legal expediency based on the principle of utilitarianism?

III. LITERATUR REVIEW

History of The Emergence of A Limited Liability Partnership As A Business Entity

Legal provisions in the Roman era were guided by the *Corpus Iuris Civilis*, which was during the reign of Emperor Justinus in the 16th century (Gordley, 1991). At that time, the partnership was referred to as a Roman Partnership, which is an agreement made between two or more parties who work together in running a company called *societas*, because it contains an agreement to include money, goods or labor in the company (The Jersey Law Commission, 2008). The form of partnership agreement then consists of (The Jersey Law Commission, 2008):

- a. *Societas omnium bonorum*, which is a partnership in which the assets of the allies are personal and the assets of the partnership are the joint assets of the allies.
- b. *Societas omnium bonorum bonorum quae ex quaestu veniunt*, which is a partnership with assets limited only by the proceeds of the partnership.
- c. *Societas alicui negotiatonis*, which is an alliance with profit sharing based on the results of other businesses, not only from the results of the alliance.
- d. *Societas unius rei*, which is a partnership with only one business activity.

The term Commodity Partnership or "*commandite*" comes from the Latin word "*commendare*" which means to store, lend, and entrust, then the word "*commenda*" is applied to all company activities whose capital is entrusted to individuals (Wadley, 1897). *Commenda* was initially utilized as an alternative to credit which was later developed into a fellowship company in the shipping business (Erik et al., 2005). The term "*Commenda*" then spread in Italy as early as 1166 and France in 1253, utilized by members of the nobility who invested in commercial enterprises for profit (Wadley, 1897). *Commenda* can be regarded as a credit or loan, as the capital provider voluntarily lends funds for the continuation of the partnership's operations, with the condition that the capital provider can own the partnership's profits as a form of repayment of the initial capital.

According to the *Commercial Code* of 1807 (French Commercial Code), a limited partnership is formed under the articles of partnership entered into between one or more allies with joint or several liability (Wadley, 1897). The capital of a partnership can be in the form of shares or securities, labor, or cash. A partnership has one or more persons who contribute capital to the business activities (Wadley, 1897). A firm formed with a limited partnership may conduct business in the name of one or more allies, but the name of the limited partner must not be included (Wadley, 1897). Commodity allies must share in losses limited to the funds they have put in and are prohibited from performing business management acts, the breach of which may make the allies liable for all debts incurred by the partnership.

The *French Napoleonic Code de Commerce* of 1807 regulates the form of companies namely *Societe en nom collectif*, *Societe en commandite*, and *societe anonyme et*

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inconnue (Taylor, 1964). The company form is described as follows:

- a. *Societe en nom collectif*, which is a partnership under the joint name of the allies, has unlimited liability jointly and severally for all debts incurred by the partnership.
- b. *Societe en commandite*, which is an alliance established with a partnership agreement that has allies as providers of inputs (money, labor, or goods) have limited liability to the number of inputs that have been entered for the alliance, has no rights in the management of the alliance, and has no obligations to agreements with third parties, commonly called Limited Partnership or CV.
- c. *Societe anonyme et inconnue*, is a partnership established based on a combination of the names of the allies or the name of one of the allies that is run by a share distribution agreement, commonly called a Limited Liability Partnership.

"*Commenda*" is the initial event of the formation of a limited liability partnership, where a person hands over cash or certain assets to a trader (*commendatarius*) as per the agreement. The division of profits between the commenda giver (also called commendator) and the commendatarius usually depends on the wishes of the parties involved in the agreement, with the condition that the commendator is not liable for business losses above the capital provided. Continental European countries use the concept of "*partnership en commandite*", while Anglo-American countries use the concept of "limited partnership" (Henning, 2007).

Since the commenda is voluntary, the risk borne by the commendator on the company's debt is limited to the funds provided to the partnership. The profits of the partnership, which are shared between the allies in accordance with the agreement with the commendatarius, are the source of repayment of the debt.

In 1838, the Netherlands codified the *Wetboek van Koophandel* (Wvk) and *Burgerlijk Wetboek* (BW) in accordance with the *Code de Napoleon*. This included the Code de Commerce (commercial law) and the Code de Civil (civil law). The Dutch East Indies government applied the *Indonesische Staatsregeling* (IS) as the basis for treaties when Indonesia was colonized, Article 131 of the IS contains provisions such as:

1. Commercial law, civil law, criminal law, civil procedure law and criminal procedure law must be codified.
2. People from European countries follow Dutch legislation.

3. People from indigenous Indonesian countries and foreign eastern countries can use the legislation of European countries if they wish.
4. People from native Indonesian and eastern foreign countries are subject to the same regulations as people from European countries.
5. Customary law applies if native Indonesian law has not been regulated by law.

In 1945 after Indonesia's independence from Dutch colonialism, there was still a legal vacuum regarding the laws and regulations that would be applied to the country, so based on the principle of concordation, Dutch regulations were still used as in Article II of the Transitional Rules of the 1945 Constitution (one thousand nine hundred and forty-five) which states that all regulations and state bodies are still valid as long as no new regulations have been made according to law. *Burgelijk Wetboek* (BW) is then translated into the Civil Code (KUHPerdata), and *Wetboek van Koophandel* (WvK) is translated into the Commercial Code (KUHD) as in Article 1 KUHD and Article 15 KUHD. The influence of legal provisions in business originating from the KUHD and the Civil Code can be seen from the provisions of the KUHD, which state that the regulations that have been contained and matters that have not been regulated in the KUHD apply to the provisions of the Civil Code. This is because basically all matters regulated in the KUHD are carried out with the consent of the parties, as stipulated in Book III of the Civil Code on agreements, engagements and contracts.

The Concept of Trying

Molengraff states that a company is an action that is carried out continuously by acting to get income by entering into a trade agreement (Purwosucipto, 2003). Article 1 number 1 of Law Number 8 of 1997 concerning Company Documents determines that a company is a form of business that carries out activities permanently and continuously for profit carried out by individuals, legal entities and unincorporated business entities domiciled in Indonesia. A company is an economic activity by forming a business entity with a legal status with the aim of making a profit. Economic activities are carried out continuously, permanently, and legally, and aim to make a profit based on the results of trade, then the results of the trade are recorded in the books called the balance sheet.

A business entity is an economic juridical unit to run a permanent and continuous business established with the aim of making a profit (Asyhadie, 2014). A business entity is a juridical and economic form of a company with a fixed name and form that runs a regular and continuous business to make a profit. Dominick Salvatore states that a business entity is an organization that coordinates resources with the aim of producing traded goods or services (Kosasih & Dewi, 2022). A business entity is an activity carried out by economic actors in the field of trade or industry that affects economic

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development by providing goods or services to the community. A company has a broader definition than a business entity. A company is a business activity that is carried out regularly, and permanently, and the results of its profit and loss are recorded in the balance sheet, while a business entity is a company status that is legally registered juridically and is economical in producing traded goods or services, the purpose between the two is the same, namely to make a profit.

Company forms consist of private companies and state companies (Cindawati, 2014). A private company is a company where private individuals own the entire capital; examples include national private companies, foreign private companies, and private companies working together in joint ventures. Private companies can take the form of individuals, partnerships, incorporated business entities, or unincorporated business entities. State-owned companies are companies whose capital is partially or wholly owned by the state. SOEs are usually incorporated as PT, such as Company Companies, Service Companies, and Public Companies. This leads to the need to have a regular corporate organization and have different wealth between its founders and shareholders than the state's wealth.

The forms of business entities generally consist of Trading Enterprises, Civil Partnerships, Firms, CVs, and PTs (Kurniawan, 2014). Companies have a broader meaning than business entities, companies carry out trading activities, while business entities are one of the elements owned by companies as institutions or entities that carry out business activities. Therefore, companies and business entities are one unit in connection with the activities carried out by the company on a regular, legally authorized basis, with the aim of obtaining financial benefits.

Company Law Concept

Business entities that have legal entities mean that in business activities, there is a separation of assets or wealth between the founders of the company and the assets that are the result of business activities. This means that the founder of the company is responsible for limited assets owned; in the event of a loss, personal assets are not included in the company's assets. Some business entities that are incorporated are PT, Foundations, and Cooperative which are regulated by separate regulations. The PT Law regulates PT, foundations are regulated by Law Number 16 of 2001 as amended by Law Number 28 of 2004 concerning Foundations (from now on referred to as the Foundation Law), while cooperatives are regulated by Law Number 25 of 1992 as amended by Law Number 17 of 2012 concerning Cooperatives (from now on referred to as the Cooperatives Law). A legal entity is a business activity that has an organization by registering its business in the government system so that its business activities can be considered legally valid. The characteristic of a legal entity is the separation of assets in its

implementation to protect the company's assets and protect the founder's assets. Through a legal entity, the founder can carry out legal actions in accordance with the provisions of laws and regulations and the articles of association of the company as a guide for business entities to operate their activities and as a requirement for business entities to have legality.

An unincorporated business entity is a business activity that does not have a separation of assets or wealth between the company's assets and the founder's assets. This means that the founder of the company does not have a limitation of liability in bearing assets, so if there is a loss, the founder's assets can be included as company assets. Some unincorporated business entities are Usaha Dagang (UD), Persekutuan Perdata, Firma, and CV. Regulations on UD, Civil Partnership, Firm, and CV are still based on KUHD and KUHPdata, so they are not considered legal entities. This is due to the fact that unincorporated business entities are run based on the relationships and civil legal actions carried out by each allied member or individual.

The difference between an incorporated business entity and an unincorporated business entity lies in the responsibility of the founder, an incorporated business entity is fully responsible for all assets, while an unincorporated business entity is limited to the share capital owned in the company (Sembiring, 2008). Therefore, the differences between incorporated business entities and unincorporated business entities can be identified as follows:

1. An incorporated business entity has a separation of assets between the company's assets and the personal assets of the company's founders, while an unincorporated business entity does not have a separation of assets, so the assets owned include personal assets and company assets.
2. The responsibility of an incorporated business entity is a legal subject so it has rights and obligations, while each founder bears the responsibility of an unincorporated business entity.
3. The founder's liability is limited to the company's assets if the incorporated business entity suffers a loss, while if the unincorporated business entity suffers a loss, the founder's liability is borne by the company's assets and personal assets.

IV. METHODS

The type of research used is normative juridical, with a statutory approach, historical approach, and philosophical conceptual approach. The legal materials used are primary legal materials, secondary legal materials and non-legal materials, which are collected by the literature study method and analyzed by deductive analysis method.

V. DISCUSSION

1. Legal Concept of A Limited Partnership

A CV can be said to be a firm partnership, but it is more complete with the presence of commoditer allies and complementary allies. The difference between a complementary ally and a committal ally lies in the responsibilities of running the company. Complementary allies are active allies who take care of business activities and enter into agreements with third parties, while committal allies are only responsible for the capital listed in the CV. Complementary allies are allies who take care of business activities and enter into legal actions with third parties, so there is no separation of assets between company assets and personal assets. Complementary allies and limited partners are still responsible for profits and losses because each ally has provided inputs (money, goods, or labor) for joint operational costs.

CV regulations are grouped within the provisions of a firm regulated through Article 19 to Article 21 of the KUHD from Article 16 to Article 35 of the KUHD. CV provisions are limited, so the establishment of a CV is equated with the establishment of a firm, namely in Article 22 of the KUHD which must be stated in the form of an authentic deed, but if it is stated in the form of a deed under hand, it will not affect legal relations with third parties. The difference between a firm and a CV can be seen from the presence of committal allies or passive allies in a CV, because in a firm there are only complementary allies who manage the running of the company and have legal relations with third parties. A firm is emphasized as a business activity that uses a joint name, while the establishment of a CV business activity is related to the type of business. So, CV is a form of a firm that has specificity in its management, so in its establishment it also needs to be guided by the regulation of the establishment of a firm. Based on Article 1618 and Article 1320 of the Civil Code, an alliance is established with the consent of the parties who bind themselves to each other, so that it is the basis for the implementation of an alliance carried out on the basis of an agreement, whether a civil partnership, a firm, or a CV.

According to Adil, CV development provides a classification of CV types, namely pure CV, CV with shares and mixed CV (Adil, 2016). Dicky Rahmansyah mentions that the types of CVs consist of pure CVs, mixed CVs, CVs with shares, silent CVs, and overt CVs (Rahmansyah, 2016). A pure CV is intended with complementary allies taking care of the company's operations while the others are committal allies, a mixed CV is intended for companies that need additional capital, a CV with shares is a CV that issues shares specifically for complementary allies and committal allies with more than one share, but the paid-up capital cannot be withdrawn, while a silent CV is a CV whose identity is unknown to the company.

The establishment of a CV is guided by the Civil Code and KUHD, which can be done by a deed under the hand or

an authentic deed before an authorized public official. Before establishing a CV, several things must be prepared, namely (Indra et al., 2020):

1. Preparation of the CV name to be used.
2. Preparation of the CV's domicile.
3. Appointing complementary allies and limited partners.
4. Explanation of the purpose and objectives of the CV business activities that will be stated in the deed of establishment.

Prior to Permenkumham No. 17 Year 2018, the CV registration process was conducted in accordance with the provisions of Law No. 3 Year 1982 and KUHD. The founder of the CV must register the original deed of establishment of the CV with the Registrar of the authorized District Court (domicile of the CV) and announce the deed in the State Gazette of the Republic of Indonesia. The CV establishment announcement contains information about the business activities used in the CV, such as the identity of the CV founders, which is shown in the KTP, the appointment of complementary allies and commanders, the name according to the agreement of the founders, and the start date and validity of the CV. Several other elements contained in the CV establishment announcement as in Article 26 of the KUHD are (Mulhadi, 2010):

1. Information on the type of CV (general or special).
2. The identity of the ally who signs the agreement on behalf of the CV.
3. The date of registration of the deed of establishment of the CV at the local District Court.
4. CV cash specifically for third parties (responsibility of allies for CV assets and personal assets).
5. Clauses relating to third parties.
6. Expulsion of an ally from his/her authority to act on behalf of the CV.

The documents that need to be prepared in establishing a CV are the identity of the management, Certificate of Company Domicile (SKDP) from the village, CV Deed of Establishment (made before a Notary), Taxpayer Identification Number (NPWP), validation of the CV Deed of Establishment at the local District Court, as well as taking care of the Company Registration Certificate (TDP) at the Industry and Trade Office (called Disperindag) and the Trade Business License (SIUP) at the relevant Office according to the CV's business activities. The TDP application process is carried out by bringing document requirements such as TDP application letter, CV management identity, CV management NPWP and CV NPWP, photocopy of land certificate and CV establishment deed, Domicile Certificate, CV director appointment letter and CV organizational structure, and company balance sheet.

The process of obtaining a SIUP must fill out a SIUP application letter, preparing the identity of the CV

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management, a Statement of CV domicile location, a photocopy of the CV Establishment Deed and ratification of the CV Establishment Deed by the District Court (Nasution & Kurniawan, 2019). Based on Appendix II of the Regulation of the Minister of Trade of the Republic of Indonesia No. 36/M-DAG/PER/9/2007 on the Issuance of Trade Business License, it is stated that for the application of SIUP replacement due to loss, it is necessary to obtain a Certificate of Loss from the local police, fill in the SIUP application letter, and the identity of the CV management, while if the replacement of SIUP is due to damage, it is necessary to submit evidence of the original SIUP that was damaged, fill in the SIUP application letter and the identity of the CV management. After taking care of all CV establishment documents, SIUP and Company Registration Certificate (TDP) have validity for 5 (five) years so every 5 (five) years, CV must re-register its business activities.

The provisions regarding the amendment of CV's articles of association according to KUHD are not clearly stated, but Article 31 of KUHD regulates the amendment of agreements between CV and third parties which must be made in an authentic deed with the consequence of null and void. The dissolution of a CV must have certain conditions and reasons, such as due to an agreement to dissolve before the term expires, resignation or termination of CV allies, and extending the term of the CV that has expired according to the agreement. An authentic deed must make amendments to the articles of association and dissolution of a CV and must be announced in an official newspaper through the local District Court. After the CV is declared dissolved, the CV management then conducts the arrangement of CV assets, if it is deemed that the CV assets cannot fulfill the debt repayment on behalf of the CV, the CV management can make the CV assets in accordance with the portion of each ally's share, after the distribution and arrangement of CV assets is completed, the letters, documents, or books that previously belonged to the CV change hands to other people based on the authorization of the District Court or voting with the most results.

The influence of technological and information developments is currently the government's goal in slowly reorganizing regulations, especially for the business world and businesses, all activities are carried out digitally as a form of efficiency, so Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (hereinafter referred to as PP Number 24 of 2018) with the Online Single Submission system, namely a service system for registering business entity licenses online effectively, efficiently, practically, quickly, and easily used for the community. Then the Minister of Law and Human Rights Regulation Number 17 of 2018 concerning Registration of Commodity Partnerships, Firm Partnerships, and Civil Partnerships (hereinafter referred to as Permenkumham Number 17 of 2018) is an implementation of

regulatory arrangements that begin to use all aspects of activities online, the existence of Permenkumham Number 17 of 2018 as an implementer of PP Number 24 of 2018, determines the regulation of partnership registration (CV, Firm, civil partnership), so that since the issuance of Permenkumham Number 17 of 2018, there are technical changes in the registration of CV establishment, namely:

1. CV registration, CV registration is now done electronically to the MOLHR through SABU (Business Entity Administration System), previously done through the District Court (Indriati, 2019).
2. According to Article 5 of Permenkumham No. 17/2018, a CV name reservation process is required as part of the CV registration procedure.
3. According to Article 9 and Article 10 paragraph (2) of Permenkumham Number 17 Year 2018, the maximum period of registration of establishment is 60 (sixty) days after the CV deed is signed, previously CV registration did not have a certain period.

Through Permenkumham Number 17 Year 2018, investment development is gradually increasing because everything is done practically, quickly, efficiently and easily understood digitally. Permenkumham Number 17 Year 2018 makes registering a CV establishment more practical than registering through KUHD because the cost is cheaper, the process is faster, and easier. CV establishment and amendments to the articles of association can be registered online by submitting proof of the original deed made before a notary. The allies must prepare their CV with the chosen name and chosen business activities in a particular field in accordance with the Klasifikasi Baku Lapangan Usaha (KBLI) including preparing the identity of the allies with the names of the responsible management and allied commanders.

Based on Article 5 and Article 6 of Permenkumham Number 17 Year 2018, CV founders must submit a CV name reservation through SABU with the terms and categories of CV names, namely written in Latin letters, not yet used by other CVs, not contrary to public order, CV names cannot be similar to the names of government or state institutions and CV names do not consist of numbers or series of letters that do not form a word with the name submission format containing the payment number of the CV name usage approval from the perception bank and the CV name ordered, which is subject to fees in accordance with the provisions of the Non-Tax State Revenue (PNBP) regulations. All requirements for CV name reservation apply to both newly created CV founders and CVs that have been created prior to Permenkumham No. 17/2018. CVs that have been registered at the District Court must register the CV registration within 1 (one) year from Permenkumham Number 17 Year 2018.

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Thus, based on Article 8, Article 10, and Article 23 of Permenkumham No. 17 Year 2018 the similarity of names between CVs that have just ordered a name after the enactment of Permenkumham No. 17 Year 2018 and CVs that re-register the name of the CV because they apply for the establishment of a CV based on the KUHD has a consequence that the name application will be rejected by the Minister, so that CVs that have been established before the enactment of Permenkumham No. 17 Year 2018 must change the name of the new CV, then register the CV as in accordance with the provisions of Permenkumham No. 17 Year 2018, then register the CV as in the provisions of Permenkumham Number 17 of 2018.

Article 7 and Article 9 of Permenkumham Number 17/2018 state that the results of the approval of CV name reservation by the Minister are carried out electronically by containing the CV name reservation number, CV name to be used, CV name reservation date, expiration date and payment code, this only applies to 1 (one) CV name only with a maximum period of 60 (sixty) days). CV founders can register the establishment of a CV through SABU by filling out the registration form at a maximum of 60 (sixty) days after the CV deed of establishment is signed, by uploading supporting documents such as a statement of the completeness of the CV registration file, a statement of the truth of information related to the beneficial owner of the CV from the corporation, and the CV deed of establishment. Furthermore, arrange a Certificate of Company Domicile (SKDP) along with the identity of the CV founders in the form of photos of the management, KTP, and Family Card (KK), Taxpayer Identification Number (NPWP) of CV management and Taxpayer Identification Number (NPWP) of CV, Building Construction Permit (IMB), Land and Building Tax results (photocopy) (Mulhadi, 2010). Article 14 of Permenkumham No. 17/2018 states that the application for CV establishment registration that has been accepted will be issued a CV Registered Certificate (SKT) by the Minister which is then signed and affixed with a Notary's seal of office. The obligation to reserve the name of the CV in the registration of CV establishment as Permenkumham Number 17 of 2018 with the existence of a Notary deed, then the relevant Notary who registers through SABU so that a Business Identification Number (called NIB) appears with registration through the Online Single Submission system (called OSS).

Regarding the provision of amendments to the articles of association of a CV and dissolution of a CV, it is also done electronically through SABU. Article 15 of Permenkumham Number 17 Year 2018 stipulates that the application for amendment of the articles of association of a CV shall be submitted within a maximum of 30 (thirty) days from the date of the deed of amendment of the articles of association of the CV containing the identity of the management of the CV, the business activities of the CV, the rights and obligations of the allies of the CV, and the term of the CV. Furthermore,

according to Article 16 and Article 17 of Permenkumham Number 17 Year 2018, it is stipulated that the application for amendment of the articles of association of a CV is made by filling out the amendment format attached with supporting documents such as the applicant's statement regarding the amendment of the articles of association of the CV and a statement of the truth of the information of the beneficial owner of the CV, and applies *mutatis mutandis* as the application for registration of CV establishment. Article 19 Permenkumham Number 17 Year 2018 regarding the provisions on the issuance of CV Registered Certificate (SKT) on the amendment of CV's articles of association also applies *mutatis mutandis* as the issuance of SKT on the application for CV establishment registration. Article 20 Permenkumham Number 17 Year 2018 stipulates that CV dissolution is also registered through SABU and requires supporting documents such as CV dissolution deed, court decision, or other documents containing a statement of CV dissolution with the reasons for CV dissolution, namely:

1. The term of the agreement expires.
2. The goods used for the CV are destroyed or have been achieved.
3. The will of the partners of the CV.
4. Other reasons in accordance with laws and regulations.

Based on this, the legal concept of CV is contained in the KUHD, namely in Article 19 to Article 21 of the KUHD, regarding the definition of a limited liability partnership and the rights and obligations of the allies in running the partnership. Other provisions regarding CVs that have not been regulated other than in Articles 18 to 21 of the KUHD are still equal to the provisions of a firm, namely from Article 16 to Article 35 of the KUHD, such as CV registration, CV dissolution and CV assets administration (liquidation). However, if there are matters that have not been regulated in the KUHD, then the provisions of the agreement as in the Civil Code apply, especially Article 1618 of the Civil Code and Article 1320 of the Civil Code, because CV is basically an agreement between 2 (two) or more parties in managing the company. In addition, the increasing digital development makes it easier for people to manage CVs, so Permenkumham Number 17 of 2018 was issued as a technical guide for registering and dissolving CVs online through OSS for the sake of effectiveness and convenience in integrating company management that is known and guaranteed certainty by the state.

2. Legal Position of a Commodity Partnership Based on the Principle of Utilitarianism

A business entity can be established with certain forms such as CV, PT, Firm, Civil Partnership or UD as long as it is oriented to fulfill the interests of the parties. Factors in establishing a business entity are capital, operations, responsibility for business debts, and business founders

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(Manulang, 1991). Partnerships in the Indonesian Civil Code and the Dutch Civil Code adhere to aggregate theory (Dewi, 2016). A partnership is intended as an association of several individuals who run the same business, with the nature of civil law, and the partnership is not a separate entity from the allies (allies are co-owners of the partnership, so they are responsible for other allies and the partnership).

CV is a firm partnership that has additional allies (commoditer allies) so it is called a Commoditer Partnership, while a firm is equated with a civil partnership because each ally is individually responsible, so it can be seen that firms and CVs are civil partnerships with the same legal validity, namely the KUHD and Civil Code. The elements of a business entity can be categorized as a legal entity, namely because there is separate wealth between the company's wealth and personal wealth, there is a common interest in running a business, there is management in the company, and the government authorizes it. CV is an unincorporated business entity because it does not fulfill the formal elements of legalization of the business entity into a legal entity by the government, and the assets are not separated between the company's assets and personal assets. The unique characteristic of a CV is that the limited partners are only liable for the money deposited in the partnership as they contribute as capital providers without managing the company, although the management of the company is done jointly and severally.

CV is one of the business entities that continues to grow, and the number has increased significantly in its efforts to support the needs of the community. The establishment of CVs is in great demand in the community because the requirements needed to establish a CV are relatively easy, CVs do not require a minimum capital to run their business, so having a CV establishment deed fee is easier. Regarding the taxation system, because CV is an unincorporated business entity, CV tax comes from profits obtained based on year-end profits with a one-time imposition of corporate tax costs, while the profits owned by CV founders are not taxed (Kosasih & Dewi, 2022). CV decision-making is relatively fast because it does not need to go through the process of meeting in a special organ such as the General Meeting of Shareholders (hereinafter referred to as GMS) as in PT, the founders can deliberate consensus or can directly execute important matters relating to the company, such as changes to the articles of association.

The term utilitarianism philosophy comes from Latin, namely "utilis" which means benefit. This school of law emphasizes usefulness or benefits, pioneered by Jeremy Bentham (1748-1789) and John Stuart Mill (1806-1873), According to the view of the utilitarian school, the law can be said to be fair if it has brought happiness, because the good and bad of something is seen based on how much happiness is obtained. The utilitarian principle applies that the actions or deeds carried out aim to obtain the greatest possible

happiness and reduce suffering (Ali, 2010). This is based on social philosophy, namely that every human being desires happiness, and one of the instruments is obtained through law.

Utilitarianism emerged from Thomas Hobbes' criticism of Aristotle in the school of natural law that a contract in forming a state occurs by natural right (Rahmatullah, 2021). Aristotle mentioned that there are people who are destined to lead and some are destined to serve, Hobbes considers that leading or being led does not come from human nature but is created based on knowledge and expertise. Hobbes mentions that law and political order cannot be done based on nature, but because it is perfected through human effort in learning knowledge so that it can rebuild society to be more just for society because it is formed based on human effort and creation, this is the origin of utilitarianism.

The utilitarian school of philosophy was identified in the late eighteenth century with 3 (three) early figures, namely William Paley (1785), Jeremy Bentham, and William Godwin (1793) (Efendi & Susanti, 2021). William Paley, a minister of the Church of England, argued that expediency is a way of determining the will of God, based on the principle that God wants humans to act well to increase happiness (Schuldz, 2017). William Godwin was a social and political radical who had an extreme viewpoint on utilitarianism that morality is impartial with no place for special attachment to the closest person, stating that if trapped in a burning building with the Archbishop and the chambermaid to be saved the Archbishop because his life is more valuable and valuable for human benefit and happiness than saving the chambermaid, even though the maid is his own mother. Jeremy Bentham was the son of a lawyer who was expected to open a law practice, Bentham argued that science must be observed through the senses and physical objects with empirical principles on human actions (Schuldz, 2017). At that time, legal products were made and compiled by judges, not government parliaments, so Bentham offered a legal goal with the utilitarian principle with the legal goal of greatest happiness (the greatest happiness principle). This means that the compiler of laws and regulations uses science and its authority to design and compile laws in order to maximize human happiness.

Jeremy Bentham through his work entitled Introduction to the Principles of Morals and Legislation revealed that the concept of happiness is the foundation of constructing regulatory values called act-utilitarianism (Saepullah, 2020). Bentham states that nature provides a place for humans to feel power, pleasure, and distress, so that humans can have ideas in their goal of increasing happiness and reducing distress, it can be interpreted that the law is tasked with preventing evil as a sense of distress and caring for or increasing happiness with goodness that is useful for humans. Bentham's opinion rests on individual happiness, so

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the law in question must fulfill individual happiness, although indeed the interests of society are also still considered, so in achieving the goal of individual happiness there needs to be a limit. Bentham provides 7 (seven) dimensions related to pleasure and pain, namely related to the intensity of the experience, the duration of pleasure or pain, certainty in the future, the proximity of time, the opportunity to feel, its purity, and its breadth, namely the number of people who feel (Pranowo, 2020).

Legislation must achieve the goal of happiness through (Efendi & Susanti, 2021):

- a. *To provide subsistence*
- b. *To provide abundance*
- c. *To provide security*
- d. *To attain equality*

According to Bentham, regulation is the law if it aims to achieve abundance, protection of status and ownership, and minimization of crime or injustice, with means that create happiness for the community. The weakness of Bentham's opinion can be seen from the intensity in 7 (seven) dimensions that are not necessarily all measurable, and the comparison of happiness and distress for each individual is different. This will cause the ruler to underestimate the individualization of policies and the application of the law, Bentham cannot explain the balance between individual interests and community interests (Septiansyah & Ghalib, 2019). In addition, weaknesses can be known from the interpretation of how to measure happiness, namely how much happiness is obtained based on what humans want, or obtained from things that humans like, or based on things that will satisfy humans.

John Stuart Mill is a socio-political figure whose father is still a close relative of Bentham, making Mill since childhood has been utilitarianism (Suseno, 1997). However, at the age of 21, Mill experienced a nervous breakdown that caused a mental crisis, this then triggered Mill to develop a different concept of utilitarianism from Bentham through his work entitled Utilitarianism. John Stuart Mill then responded to Bentham's view by assuming that utilitarianism is not intended for individual happiness, but rather the greatest possible happiness, because individual happiness is included in the accumulation of the greatest possible happiness (Rahmatullah, 2021). Mill reconstructs Bentham's opinion regarding the definition of utilitarianism, which in Bentham's weak points triggers people's assumptions as a cult of reason, besides Mill also considers that the happiness referred to in the principle of utilitarianism is real happiness and temporary happiness according to what humans want, and Mill criticizes the view of utilitarianism as a cult that aims to prioritize individual interests, Mill elaborates on actions in an effort to fulfill individual happiness in Bentham's opinion with the interests of the crowd, where the public interest is more important than individual interests as a form of sacrifice in order to realize greater happiness.

John Stuart Mill measures legal expediency qualitatively as a measure of happiness by assessing happiness and unhappiness. Happiness is obtained from oneself as a measure of social inequality, which then creates happiness for many people. Some points that can be known from John Stuart Mill's opinion are (Saepullah, 2020):

1. The concept of expediency is when good actions aim to support justice, and bad actions aim to support evil.
2. There are 2 (two) principles of happiness, namely ultimate happiness and temporary happiness, one can freely choose happiness.
3. Hedonistic actions are the role of each individual carried out for their interests and the interests of many people so as to cause benefits.
4. A person's seriousness in achieving happiness and awareness of the importance of the value of happiness that a person desires has a standardization of happiness for each.

The principle of utilitarianism or legal expediency for John Stuart Mill is an act that encourages happiness and is wrong if it produces unhappiness. Happiness that is measured qualitatively is based on the human ability to find happiness on their own, so that the pleasure obtained is a sense of pleasure that is of high quality and valuable to each individual. Based on this, the principles of utilitarianism can be identified as follows:

- a. An objective basis for judging a behavior based on benefit or happiness, so that before determining certain actions, it is necessary to analyze which actions provide happiness and which actions provide distress.
- b. Judgment of morally good or bad actions can be known from which things provide the most benefits.
- c. An action is morally right and correct when it has caused benefits to individuals and society.

Mill argues that happiness is indeed a goal to be achieved for every human being, morally humans tend to prevent themselves from things that can harm or make themselves sick, so every action is aimed at paying attention to happiness. The weakness of Mill's theory can be seen from the assessment of legal expediency achieved by the human will to want happiness that can be realized by reciprocating other actions. A moral rule can be carried out as long as the resulting happiness is considered as good as breaking the law. Happiness is measured qualitatively, because the assessment of the form of happiness and benefits for each individual cannot be measured fairly, then each individual is responsible for his choice to achieve the goal of legal benefits, namely happiness for many people.

Bentham and Mill's opinions have in common that in terms of morality, happiness is the main goal that must be achieved as much as possible. Furthermore, in terms of

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methods in determining morality, both assume that morality aims for the good and benefit of humans, so that the parameters of a norm can be judged good or not based on the principle of benefit whether it provides happiness, and related morality originating from God is based on the experience of gaining happiness. The difference between Bentham and Mill lies in the development of the assumption that Bentham is oriented towards individual happiness, while Mill is oriented towards happiness on a large scale. This is because the political and social conditions experienced by both are different, Bentham uses the Principle of Utility while Mill uses the Greatest Happiness Principle.

The advantages of utilitarianism can be recognized based on the existence of a simple concept of value through morality and focuses on emphasizing results as a consequence of motives, this contributes to analyzing legal policy. The principles of utilitarianism are a moral substance that aims to increase human happiness and minimize evil or pain. The weakness of utilitarianism can be recognized based on how happiness is measured. Utilitarianism provides a theory about the good and bad of an act including its consequences, but forgets the principle of morality as justice, namely how to measure happiness more quantitatively than just as an objective, including the comparison of the size of happiness of each individual is different. This means that the utilitarianism principle is only oriented towards consequences or results rather than motivation or achieving goals with distributive measurements because there is no justice or equality, this will provide a less comprehensive decision.

Its relevance regarding the legal position of CV is that the utilitarianism principle provides an objective and rational side. This means that the improvement of MSMEs through the establishment of many CVs prioritizes the public interest rather than individual interests. Business actors provide opportunities for other business actors so that the business sector not only provides benefits to fulfill individual interests, but also provides benefits to the development of the national economy. Company management aims to provide profit, although business dynamics do not rule out the possibility of experiencing losses, but profits and losses are not solely seen in financial aspects, but moral aspects such as fulfilling the rights and obligations of allies in the management of the partnership, including fulfilling consumer rights.

The principle of utilitarianism holds that the law must be designed to protect the public interest and social welfare, meaning that the law must ensure that CV business entities operate in compliance with rules and regulations that benefit society as a whole. Regulatory provisions in Indonesia, especially CV provisions, currently still apply the provisions of the KUHD, Civil Code and Permenkumham Number 17 of 2018, as long as the laws and regulations reflect philosophical and fundamental values, they have fulfilled the purpose of law, namely legal expediency as argued by John Stuart Mill in the benchmark for assessing the achievement of legal

expediency objectively is to see certain policies or regulations can bring useful benefits to society or otherwise bring harm to society (Prasetyo, 2015). The measure of legal expediency is assessed based on how good or bad the consequences resulting from the implementation of the legal policy are, it is considered good and brings benefits if the legal policy provides the greatest possible happiness, meaning that it is hoped that a limited partnership as one of the business entities driving MSMEs and national economic development can provide benefits to other business actors so that business actors will comply with the provisions of laws and regulations if they feel the benefits of these regulations in the form of legal certainty and legal justice in carrying out their business activities.

The legal position of CVs based on the principle of utilitarianism can be interpreted as aiming to prioritize actions or policies that will produce the greatest happiness or welfare for all parties involved, especially complementary allies who are fully responsible for all management of the company, and committee allies who are only responsible in accordance with their investment. The main interest for the complementary allies is to ensure business continuity and maximize the company's profits, while for the limited partners it is to minimize legal and financial risks with other allies and third parties. The parties should consider the legal position of a CV by maximizing the happiness or welfare of all parties in this legal entity. Legal decisions taken by the owners of the complementary allies should consider the impact on the committal allies and vice versa. For example, if a complementary ally wishes to take greater business risks in order to maximize profits, it must be ensured that doing so does not significantly disadvantage the complementary ally or threaten the continuity of the business. Thus, the CV should be organized in such a way that all parties involved can feel fairly treated and benefit as much as possible. This principle also emphasizes the need for transparency and good communication between all partners in a CV to achieve a common goal that results in the best consequences for all parties.

VI. CONCLUSION

1. The legal concept of a Commodity Partnership is contained in Article 19 to Article 21 of the KUHD regarding the definition of CV as well as the rights and obligations of complementary allies and commodity partners in carrying out company operations. Regulations regarding CVs are contained in the KUHD, if there are matters that have not been regulated in the KUHD, basically the provisions of the Civil Code will apply as Article 1320 concerning the legal requirements of an agreement, because CV is a business entity established with the agreement of the parties who bind themselves to each other which is realized in an agreement.

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2. The legal position of CV based on the principle of utilitarianism can be known based on the fulfillment of the rights and obligations of complementary allies and committal allies based on the applicable regulatory provisions that must be obeyed, namely the KUHD and the Civil Code, so that the continuity of the business will provide benefits not only for the allies, also increase the profit of the partnership, including also providing benefits to the development of the national economy.

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