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Comparison of Regulations for Dissolution of Limited Partnerships in Indonesia and in America

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Abstract
and dissolution mechanisms in the Indonesian limited partnership and the American limited partnership. The research used a normative legal method to examine inconsistencies between written norms and their application in court decisions. The findings showed that the Indonesian limited partnership imposed strict restrictions on limited partners, who were not permitted to engage in management activities, while the American limited partnership allowed limited partners certain managerial control through safe activities. The study also found that dissolution of the Indonesian limited partnership was not specifically regulated, causing reliance on general civil provisions, unlike the United States, which provided detailed rules for dissolution caused by breach of a partnership agreement. These results demonstrated significant differences in legal protection and dissolution mechanisms within both legal systems.

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1. INTRODUCTION

In general, a *partnership* can be formed with two main objectives, namely to carry out commercial activities or as a forum for professionals to work together [1]. Structure of *partnership* itself includes Firma and Limited Partnership [2]. The fundamental difference between the two lies in the type of partners involved. In a firm, all partners are active partners who contribute capital and are involved in managing the business. Meanwhile, in a limited partnership, there are two types of partners: active (complementary) partners who carry out management, and passive (limited) partners who only invest capital without the authority to manage the company [3] [article 19]. Because the maatschap is not a legal entity, the partners' responsibilities are joint and several, including their personal assets [3] [article 18]. Specifically for passive partners in a CV, their responsibilities are limited to the amount of capital contributed [3] [article 20 paragraph 2]. The regulations regarding limited partnerships in the Commercial Code are among the provisions regarding firms, namely articles 16–35 of the Commercial Code, so that the regulations regarding Limited *Partnership* (CV) are only covered in three articles: articles 19–21 of the Commercial Code.

Limited Partnership or Limited Liability *Partnership* (CV) is seen as a special form of firm [4]. It is called special because of the existence of limited partners who only act as providers of funds without involvement in management activities. In contrast to CV, the limited partnership system *Limited Partnership* (LP) in the United States has undergone modernization to support business development, where passive partners are given room to have certain managerial control through what is known as safe *harbor activities*. These rights and powers may be granted as long as they are stated in the partnership agreement in

accordance with the provisions of the Delaware Code, Title 6, S.17-303(e): "*this rights and power may be created only by certificate of limited partnership, a partnership agreement or any other agreement or in writing, or other sections of this chapter*". One of the rights of a passive associate is to attend, call, or participate in association meetings [5] [Tit. 6, S. 17-303 (b)(4)].

This difference in regulations makes the position of a passive partner in an LP much stronger than in a CV, where passive partners in Indonesia are not allowed to know or control the company's activities, including its financial condition. Consequently, cases arise where active partners can act to the detriment of passive partners, as seen in Decision No. 687/Pdt.G/2019/PN.Jkt.Pst, which confirms the occurrence of default due to improper profit distribution. On the other hand, Indonesia does not yet have explicit provisions regarding the dissolution of CVs in the Commercial Code. According to Soedikno, this gap can be overcome through Legal Discovery with an analogy approach (*argument by analogy*) [6]. By referring to the basic special *law derogating from the general law*In Article 1 of the Commercial Code, the dissolution of a CV can be implemented through the provisions of Article 1846 of the Civil Code. Although Minister of Law and Human Rights Regulation No. 17 of 2018 has regulated the registration and dissolution mechanisms, the substantive reasons for dissolution, including dissolution through a court decision, are still not adequately regulated.

In contrast, the dissolution of LPs in America has been formulated more systematically through two paths: *non-judicial dissolution* and *judicial dissolution* [5] [Title 6 Chapter 17, S.17-801 – S.17-802]. In the judicial dissolution process, dissolution can be requested if there is a violation of the partnership agreement. In Decision C.A No. 2018-0840-SG, the court emphasized that dissolution extraordinary *equitable remedy* which can only be imposed if necessary and not done carelessly. By seeing the comprehensive rules regarding the dissolution of LP in Delaware Code Title 6 Chapter 17, the author is encouraged to further examine how the implementation of partner responsibilities in CV in Indonesia, through Decision No. 687/Pdt.G/2019/PN.Jkt.Pst and how the mechanism of dissolution of a partnership in LP in Delaware is based on Decision C.A No. 2018-0840-SG.

The Indonesian legal system was formed through the influence of the Dutch colonialists who introduced Western law through IS (*Instruction Book*), AB (*General Terms and Conditions*/ General Provisions), RR (*Policy Regulations*), BW (*Civil Code*/ Civil Code), and WvK (*Commercial Code*/KUHDagang) thus placing Indonesia in the tradition of civil *law* [7]. This system emphasizes codification, unification, and the dominance of law as the main source of law, derived from ancient Roman law [7]. In Indonesia, sources of law are divided into material and formal sources of law, as explained by Kansil [8]. As a result of the history of colonialism, Indonesia has a plurality of laws, but remains based on the structure *civil law* which makes statutory regulations the main reference in private and commercial relations.

Different from Indonesia, the United States adheres to a system of common *law*, namely law that is formed based on precedent through the principle you *have decided to stand*, where previous decisions bind subsequent decisions [9]. The legal sources consist of primary sources such as the Constitution, laws, regulations and court decisions, as well as secondary sources such as treatises and *restatements* [10]. Tradition *common law of* America was also influenced by the pre-revolutionary English system, which remains the reference in many areas of law[9][11]. Delaware is an important example because it retains the Court *of Chancery*, a court *equity with* highly respected and relied upon corporate jurisprudence in the resolution of business disputes [9][11].

Draft *Limited Partnership* (CV) is rooted in practice, namely the relationship between financiers and merchants that allowed investment without liability beyond capital [12]. Its development was later influenced by Roman law and medieval European practices, as noted by Yetty Komalasari [13][14]. A similar model was developed in France through a limited partnership and then adopted by the Dutch through the Commercial *Code*, then entered Indonesia through the principle of concordance and was codified in the Commercial Code [13][4]. In CV, complementary partners with unlimited liability and limited partners with limited liability are recognized, as long as they do not carry out management actions [15][13]. The forms of CV consist of secret CV, open CV, and CV with shares [16].

The dissolution of a CV is regulated in accordance with the provisions of civil partnerships in the Civil Code and the provisions of the Commercial Code regarding its legal consequences [4]. A CV can be dissolved due to the end of the term, the destruction of the business object, the wishes of the partners, or other reasons such as death, guardianship, or bankruptcy [17]. After being declared dissolved through an authentic deed, the dissolution must be registered through the Business Entity Administration System according to Permenkumham No. 17 of 2018.75 The liquidation process is then carried out by a liquidator, whose duties include inventorying assets, collecting receivables, paying debts, distributing profits, and representing the CV in and outside the court until the entire process is completed [4].

2. RESEARCH METHODS

This research was conducted using a normative legal approach. This approach aims to explore scientific truths regarding the discrepancy between ideal conditions that should occur (*that should*) and the reality that occurs in the field (*that be*). In other words, normative legal research highlights the gap between the provisions written in laws and regulations and the legal practices that exist in society. Therefore, the focus of study in normative research includes legal principles, values that form legal rules, concrete legal norms, and the entire applicable legal system [18]. In this study, the author examines legal events by referring to the norms in each country through an analysis of Decision No. 687/Pdt.G/PN.Jkt.Pst and Decision C.A No. 2018-0840-SG.

This legal research is also descriptive in nature, aiming to describe in detail and accurately a particular situation, human behavior, or phenomenon. The descriptive approach is used to clarify hypotheses, confirm or strengthen existing theories, or serve as a basis for formulating new theories. By presenting comprehensive data, descriptive research helps provide a complete picture of the legal conditions prevailing in a region. Therefore, the author used descriptive research to more clearly understand how regulations regarding partner liability and the dissolution mechanism through the courts are applied to CVs in Indonesia and LPs in the United States.

3. RESEARCH RESULTS AND DISCUSSION

Development *Limited Partnership* (LP) in the United States began with the birth Uniform *Partnership Act* (UPA) 1914 and the Uniform *Limited Partnership Act* (ULPA) 1916, which still adheres aggregate theory as criticized by Judson A. Crane [19]. Investors then demanded limited liability protection, such as the model in *sponsorship* deep *French Commercial Code* [19], until New York ratified the Un*limited Partnership in* 1822. Major revisions through RULPA 1976 and RULPA 1985 provided space for limited partners to participate in certain actions without losing limited status, for example, through provisions of safe *harbor activities* [20]. Delaware adopted the ULPA in 1973 and gradually expanded protections for limited partners through the Delaware Act of 1982 and 1988, particularly regarding the definition of "*control*" and limited partner liability [21]. Some important

provisions include restrictions on who can sue limited partners, confirmation of the list of safe *harbors*, to the ability of limited partners to play a role in certain activities without being considered a general *partner*. These reforms provide greater legal certainty in prison practices in the state.

The concept of partnership in American LP is based on Entity *Theory,* which states that a partnership is a separate legal entity and can own assets and take legal action in its own name. In the LP structure, there general partner who bears full responsibility and carries out business management, as well as a limited partner who bears the risk limited to the capital invested unless they carry out actions that are considered as control, as emphasized in Delaware Code tit. 6 s. 17-303(e) [5]. LP dissolution can occur for several reasons, such as the end of the agreement period, a vote of the partners, the withdrawal of a general partner, the absence of a limited partner, the fulfillment of certain clauses partnership *agreement*, or through a decision of the Court *of Chancery when* it is proven that their breach *of the partnership agreement* [5].

A case comparison shows that in Decision No. 687/Pdt.G/2019/PN.Jkt.Pst., the complementary partner of CV Bintang Timur was proven to have committed a breach of contract by not distributing profits, falsifying documents, and embezzling funds, thus harming the limited partners who had deposited large capital. Meanwhile, in Decision C.A. No. 2018-0840-SG in Delaware, *general partner HCRE*, namely Mr. White, was found to have breached fiduciary duties and operational covenants after the North Carolina government revoked the HCRE facility's license and appointed a receiver in Vermont due to various serious violations. Due to HCRE's inability to operate in accordance with the agreement's purpose, the *Court of Chancery granted* the request to dissolve the LP.

A Limited Partnership (CV) is a form of business in which one partner contributes capital in the form of money or goods to the partnership to generate profits. This type of business is well known in countries with civil law systems, as its history is rooted in developments in Italy, influenced by Roman law, dating back to the 10th century. Meanwhile, in common law countries like the United States, a similar form of partnership began to develop in 18th-century New York under the name Limited *Partnership* (LP). In practice, both CVs in Indonesia and LPs in America have the same basic structure, namely the existence of two types of partners: *general partners* cor complementary partners who act as managers, and *limited partner*or or limited partners who have a limited role.

Despite their fundamental similarities, there are conceptual differences underlying the two. CVs in Indonesia use Aggregate *Theory*, namely the view that partners are considered as individuals working together and having collective rights and obligations. In contrast, LPs in America are based on the Entity Theory, which views partnerships as independent entities. This difference in theory affects the legal actions of each form of partnership. In terms of regulation, CVs in Indonesia are briefly regulated in Articles 19 to 21 of the Commercial Code, while LPs in America have much more comprehensive and detailed regulations through the Delaware Code. *Commercial and Trade*, Title 6, Chapter 17.

In the Indonesian case, Decision No. 687/Pdt.G/2019/PN.Jkt.Pst. showed that the limited partner in CV Bintang Timur was proven to have committed a breach of contract by not distributing profits as agreed, falsifying documents, and committing embezzlement, thereby harming the limited partner who had contributed a large amount of capital. Conversely, in Decision C.A. No. 2018-0840-SG in Delaware, *general partner HCRE*, namely Mr. White, was found to have breached his fiduciary duties and the terms of the agreement due to the failure of HCRE's facilities to meet operational standards, including the revocation of their licenses by North Carolina authorities and the appointment of a receiver in Vermont. Because these breaches rendered the business unable to operate in

accordance with the purposes of the LPA, *Court of Chancery finally* granted the request to dissolve the LP.

3.1. Analysis of Partner Liability Arrangements in CVs in Indonesia and LPs in America

Although the rules and concepts regarding the status of partners in limited partnerships in Indonesia and the United States differ significantly, the two countries still share a number of similarities. One of these relates to the form of liability in limited partnerships, namely that the complementary partner or general partner bears full responsibility for all obligations made with third parties. If losses occur and the CV is the debtor, the personal assets of the complementary partner can be used to cover these losses. In Indonesia, this principle of joint and several liability is stated in Article 18 of the Commercial Code, which states that each partner in a firm is jointly and severally liable for all obligations of the company [3] [Article 18].

Similar provisions are also found in the Limited Partnership (LP) system in the United States, specifically in Section 15-306(a) in conjunction with Section 17-403(d)(4) of the Delaware Code, Title 6. These provisions refer to the Delaware Revised Uniform Partnership Act, which essentially states that general partners have unlimited liability. Consequently, if the LP suffers losses, the personal assets of the general partners can still be seized to cover the partnership's obligations [5].

Another similarity is also apparent in the aspect of dissolution of limited partnerships in both jurisdictions. Both Indonesia and the United States allow for dissolution of partnerships due to the expiration of an agreed term or due to the wishes of the partners. In Indonesia, Article 1646 of the Civil Code stipulates that a limited partnership may be dissolved due to the expiration of the agreed term or at the request of one or more partners. Article 1646, in conjunction with Article 1647 of the Civil Code, also emphasizes that if the term in the deed of establishment has not yet expired, a partner cannot request dissolution. CVs that do not stipulate a specific term may be dissolved at the will of the partners after notification made in good faith (Article 1646 in conjunction with 1649 of the Civil Code). In addition, the destruction of the business object or the completion of the partnership's main activities can also be grounds for dissolution, as stated in Article 1646 in conjunction with 1648 of the Civil Code [17].

The provisions for dissolution of a partnership in the United States present a similar pattern. Under Sections 17-801(1) through 17-801(3) of the Delaware Code, Title 6, a partnership may be dissolved upon the expiration of the term specified in the agreement. If the agreement does not contain a specific time limit, the partnership may continue. Dissolution may also occur upon a decision by the partners through a voting mechanism, or upon the departure of one of the general partners. Under certain circumstances, dissolution may be reversed if the partners agree to appoint a replacement general partner to continue the partnership. In addition, if the agreement stipulates a specific event that may give rise to dissolution, then that event shall be considered grounds for dissolution of the partnership under Section 17-801(5) of the Delaware Code, Title 6 [5].

If you look at the settings regarding Limited *Partnership* (LP) in the United States, which is comprehensively regulated in Delaware Code Title 6, it is clear that the LP structure in America has fundamental differences with Limited *Partnership* (CV) in Indonesia. These differences primarily relate to the rights of limited partners and the dissolution mechanism through the courts due to the occurrence of a breach *of the partnership agreement.*

In an American LP, limited partners have the right to perform certain actions within the scope of the partnership without losing their limited liability status. These

actions are known as safe *harbor activities*. With this provision, limited partners are not only involved in internal supervision but can also take external actions, such as borrowing funds from third parties. The provisions regarding the limitations of limited partner liability are contained in Section 17-303 of the Delaware Code, Tit. 6, which essentially provides room for limited partners to participate in controlling the partnership if this is stated in the partners' agreement [5]. In contrast, in CVs in Indonesia, limited partners are not permitted to carry out management actions, even when they have obtained certain powers, as stated in Article 20 paragraph (2) of the Commercial Code. Article 21 of the Commercial Code also states that limited partners who carry out management actions will lose the protection of limited liability and be treated the same as general partners.

Another difference lies in the possibility of dissolving a partnership through the courts due to a breach of the partnership agreement. In the American context, dissolution of a partnership can be requested if there is a breach of the agreement, and the court will assess the evidence presented by the partner seeking the termination of the partnership. This is stated in Section 17-802 of the Delaware Code, Tit. 6 [5]. In Indonesia, similar rules have not been specifically regulated in the context of a CV. Article 1646 of the Indonesian Civil Code opens the opportunity for dissolution of a CV through a court decision, but only under certain conditions, such as when one of the partners is bankrupt or under guardianship.

Article 1266 of the Civil Code stipulates that a breach of obligations by one of the parties can result in the cancellation of the agreement through the courts. If a partnership agreement is canceled, the parties' conditions are restored to their original state, as if the agreement had never existed. However, if this general provision is applied to the dissolution of a CV, questions arise regarding the status of third parties who have entered into contracts with the partners, and whether the cancellation of the agreement automatically results in the dissolution of the CV. This situation creates legal uncertainty when Article 1266 of the Civil Code is used by partners as a basis for dissolving the partnership.

Thus, it can be concluded that although the general rule (*general law*) regarding the cancellation of the agreement is available in Article 1266 of the Civil Code, special rules (*special law*) that explicitly regulate the cancellation of an agreement as a reason for dissolving a CV do not yet exist. This regulatory gap has the potential to create uncertainty for partners operating in the form of limited partnerships.

3.2. Implementation of Partner Liability in CVs in Indonesia based on Decision No. 687/Pdt.G/2019/PN.Jkt.Pst

The application of the principle of limited liability and the limitation of authority for limited partners in managing the partnership (CV. Bintang Timur) is clearly evident in a civil case with Decision No. 687/Pdt.G/2019/PN.Jkt.Pst. In this case, the limited partner, Gino Sarikis, did not interfere in the company's managerial affairs, in accordance with his position as a party without controlling authority. CV. Bintang Timur itself is classified as a limited partnership that uses a capital participation system in the form of shares, where Gino holds 40% of the shares, and the remaining 60% is owned by Jovinus as an active partner. As stipulated in Article 5 of Deed No. 17 dated February 13, 2003, Gino, as a passive partner, is not permitted to bind the partnership with third parties or carry out administrative actions, so that all management is in the hands of the complementary partners. Therefore, Gino fully entrusts the capital he invested to be managed by Jovinus as the main manager.

However, this trust was not carried out in good faith by the limited partners. During the course of the business, Gino did not obtain the results or profits as previously

agreed. The partners' agreement stipulated that Gino would receive a fixed profit of Rp50,000,000 every month, paid on the 1st to the 10th. If there was a delay in payment, an additional 1% per day would be charged as compensation. This discrepancy between the realization and the agreement indicates that the business was managed in a non-transparent manner and was detrimental to the limited partners.

Due to the irresponsible actions of the active partner, the court proved that there was a breach of contract as well as an element of an unlawful act. In Decision No. 687/Pdt.G/2019/PN.Jkt.Pst, Jovinus was given a civil sanction in the form of a joint liability obligation to pay compensation of Rp10,878,500,000. This nominal amount was determined based on the judge's calculation, which was supported by written evidence numbered T-14 to T-22. In addition to the civil sanction, Jovinus was also given a criminal sanction in Decision No. 134/Pid.B/2019/PN.Bpp, namely an eight-year prison sentence for being proven to have committed forgery, embezzlement, and money laundering. The decision has permanent legal force. Thus, the complementary partner was declared to have committed a breach of contract, which resulted in serious losses for the limited partner, as well as violating the basic principles of responsibility in managing the partnership as stipulated in applicable law.

3.3. Implementation of Dissolution *Breach of Partnership Agreement at* the LP in America based on C.A. Decision No. 2018-0840-SG

Dissolution through the Court due to breach *of partnership agreement* submitted by limited partners (GMF ELCM*Fund*L.P) in the Health Care Real Estate "HCRE" structure (*Limited Partnership*) is clearly seen in the decision of C.A No. 2018-0840-SG. In the partnership, ELCM LLC acts as a general partner represented by Mr. White and holds full responsibility for managing all LP operations. The partners involved in HCRE are in the form of corporations, in line with the concept of entity theory in Limited *Partnership* which views partnerships as independent entities so that the status of "partner" is not only limited to individuals but can also be in the form of legal entities.

Mr. White's negligence in carrying out his managerial functions led to the neglect of HCRE's operational activities and had a serious impact on the residents of the nursing home facilities. These problems emerged at various HCRE facilities spread across several states, such as Vermont, North Carolina, and Tennessee. These impacts included neglect of management responsibilities, shortages of food supplies for residents, late payment of employee salaries, shortages of nurses, and failure to pay rent to the National Health Center, Inc. (NHI). As a result of these actions, the condition of all facilities experienced a significant decline in the quality of service and threatened the safety of residents.

Limited partners ultimately lost their economic benefits and management rights because HCRE's operating licenses were permanently revoked across all jurisdictions. This situation rendered the partners unable to carry out the LP's vision and business activities. Therefore, the *Court of Chancery granted* the limited partners' petition to dissolve HCRE, because the partnership was deemed unable to continue its business purposes as outlined in the partnership agreement and based on the provisions of Delaware Code Title 6 Section 17-802.

In the context of comparison, the implementation of provisions regarding liability and dissolution of partnerships due to default in Limited *Partnership* (LP) in the United States and Limited *Partnership* (CV) in Indonesia exhibits both similarities and differences. The legal framework for LPs in the US refers to Delaware Code Title 6 Chapter 17, while CVs in Indonesia are subject to the provisions of the Civil Code and Commercial Code. The fundamental similarity between these two legal regimes is the actions of the managing partners (complementary partners/general partners) that result

in a breach of the partnership agreement, resulting in losses for the other party. However, the form of breach varies across jurisdictions.

In decision No. 687/Pdt.G/2019/PN.Jkt.Pst, the breach of contract was in the form of failure to implement the agreed profit distribution, thus causing losses to the limited partners. The panel of judges referred to the general provisions on breach of contract, namely Article 1243 and Article 1267 of the Civil Code, as well as specific provisions regarding the responsibilities of partners in a CV as regulated in Article 18 in conjunction with Article 19 of the Commercial Code. Based on this, the limited partners were declared jointly and severally liable for the losses incurred.

Meanwhile, in the decision of C.A. No. 2018-0840-SG, the general partner's default had a broader impact, not only harming the limited partners but also causing losses to third parties. The limited partners were unable to operate the partnership due to the revocation of the statewide license. Furthermore, workers were not paid on time, patients were denied adequate services, threatening their well-being, and creditors suffered losses due to non-payment of building rent. These conditions prevented the partners from continuing the business, and the limited partners were no longer willing to cooperate with the general partner. Under Delaware law, this type of default is grounds for dissolution of an LP, as regulated by lex specialis in Delaware Code Title 6 Section 17-802, which provides the legal basis for a court to order dissolution if the partnership can no longer achieve its purpose.

4. CONCLUSION

Limited Partnership (CV) or Limited Partnership is a form of business that brings together partners with full responsibility and limited partners who only bear limited obligations. In Indonesia, CV is based on the Aggregate *Theory*, so that all assets, rights, and obligations become the joint property of the partners as regulated in Articles 19–21 of the Commercial Code. In contrast, in the United States, LP adheres to Entity *Theory*, which separates the ownership of assets and liability of the partnership from the individual partners and gives the LP the capacity to be a party in court under Delaware Code Title 6, Chapter 17. Articles 20 and 21 of the Commercial Code restrict limited partners from managing the partnership, and if this prohibition is violated, their liability changes to unlimited, like that of a general partner. In America, limited partners can still exercise "control" functions without losing limited liability protection, as long as they are within safe limits (*safe harbor activities*) as regulated in Section 17-303 of the Delaware Code. Regarding dissolution, an LP can be dissolved through a court decision if there is a default that prevents the achievement of the objectives of the partnership according to Section 17-802 of the Delaware Code Title 6, while in Indonesia, the dissolution of a CV due to default does not have specific regulations.

In Decision No. 687/Pdt.G/2019/PN.Jkt.Pst, a breach of contract by a general partner does not automatically result in the dissolution of the partnership because the settlement still refers to the general provisions of Articles 1243 and 1267 of the Indonesian Civil Code, while limited partners are jointly and severally liable based on Article 18 in conjunction with Article 19 of the Indonesian Commercial Code. However, in Decision C.A. No. 2018-0840-SG in the United States, a breach of the agreement by a general partner is the basis for the dissolution of the LP because the relationship between the partners no longer allows for cooperation to achieve the goals of the partnership, in accordance with the provisions of Section 17-802 of the Delaware Code Title 6. This difference shows that the practice of Limited Partnerships in the United States can be a reference for the development of business entity regulations in Indonesia, particularly regarding the authority of limited partners and the dissolution mechanism through the courts. In addition, if the regulations

on CVs are updated, it will be possible for Indonesia to have two forms of CVs, namely incorporated and unincorporated, which can adopt the concept of liability protection like Limited *Liability Partnership* (LLP) as defined in Section 15-1001 Delaware Code Title 6.

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