

Legal Aspects of the Procedure for Establishing a Commanditaire Vennootschap (CV) to Ensure Legal Certainty

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Keywords:

Communiter Fellowship (CV);
Legal Certainty; SABU; Legal
Position; Notary.

Abstract

The growth of the micro, small, and medium-sized enterprise (MSME) sector in Indonesia has generated considerable interest in the limited partnership, or Commanditaire Vennootschap (CV), as a form of business organization. However, the transition from the manual registration procedure through the District Court, as regulated under the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang, KUHD), to an electronic registration system through the Business Entity Administration System (Sistem Administrasi Badan Usaha, SABU), pursuant to Regulation of the Minister of Law and Human Rights Number 17 of 2018, has raised several legal issues. This normative legal study examines the consistency of the relevant regulatory provisions and their implications for legal certainty in the establishment of CVs in Indonesia. The findings reveal regulatory dualism and normative conflicts arising from differences in the designated registration authorities and the removal of the requirement to publish an announcement in the State Gazette, as stipulated in the KUHD. These inconsistencies between regulations of different hierarchical levels undermine legal certainty in the establishment of CVs. Therefore, legislative reform is necessary, either through amendments to the KUHD or the enactment of a comprehensive partnership law that explicitly incorporates the electronic business registration system. Such reforms are essential to harmonize the regulatory framework, eliminate legal ambiguities, and ensure comprehensive legal certainty for business actors in Indonesia.



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Publikasiku Publisher

INTRODUCTION

Economic activity and the business sector in Indonesia have experienced rapid growth alongside the expansion of the micro, small, and medium-sized enterprise (MSME) sector. To sustain economic activity and promote business development, entrepreneurs require a business entity that offers straightforward establishment procedures, efficient management, and substantial operational flexibility. One of the most widely recognized and frequently selected forms of business organization in Indonesia is the limited partnership (*persekutuan komanditer*), commonly referred to as a Commanditaire Vennootschap (CV) (Ardiansyah, 2023; Saliman, 2016).

The CV has become a preferred business structure because its operational characteristics are relatively straightforward compared with those of incorporated entities, such as limited liability companies (*Perseroan Terbatas*, PT), particularly regarding capital requirements and administrative procedures for establishment. A CV consists of two categories of partners: active partners (*general partners*, *sekutu komplementer*), who manage and control

business operations and bear unlimited personal liability for the partnership's obligations, with joint and several liability where applicable; and passive partners (limited partners, *sekutu komanditer*), who primarily contribute capital and whose liability is generally limited to their agreed contributions, provided they do not participate in management in a manner that triggers broader liability under applicable law. This organizational structure provides investment and management flexibility, making CVs particularly attractive to microenterprises and small businesses (Fuady, 2017; Tanriawan et al., 2023).

Historically and legally, the regulatory framework governing CVs in Indonesia originates from colonial-era legislation, particularly Articles 19–21 of the Indonesian Commercial Code (*Kitab Undang-Undang Hukum Dagang, KUHD*), within the broader provisions governing commercial partnerships (Muhammad, 2010). Under this legal framework, a CV is recognized as a specialized form of partnership that incorporates characteristics of a general partnership (*persekutuan firma*). However, with the increasing digitalization of commercial activities and the modernization of public administration, certain provisions of the KUHD have become less responsive to contemporary business practices and the evolving requirements of electronic administrative systems (Andini et al., 2026; Perkasa et al., 2026; Rahmah et al., 2025).

In response to the growing need for administrative digitalization, the Indonesian government enacted Regulation of the Minister of Law and Human Rights Number 17 of 2018 concerning the Registration of Limited Partnerships, General Partnerships, and Civil Partnerships (*Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 17 Tahun 2018, Permenkumham No. 17 of 2018*). This regulation introduced significant changes to partnership registration procedures through the Business Entity Administration System (*Sistem Administrasi Badan Usaha, SABU*), an integrated electronic registration platform. Consequently, the registration of CV establishments, previously conducted through the registry of the competent District Court under the KUHD, was transferred to an electronic administrative system managed by the Ministry of Law and Human Rights (*Kementerian Hukum dan Hak Asasi Manusia, Kemenkumham*) (Novitasari, 2026; Sudarsa & Parsa, 2020; Surya et al., 2021). This transition represented a substantial shift in the institutional authority and administrative mechanisms governing the registration of CVs in Indonesia (Alim, 2026; Dewi, 2022).

Although this digital transformation has streamlined administrative procedures and improved registration efficiency, it has also raised important legal questions concerning regulatory harmonization and potential conflicts between legal norms of different hierarchical levels. The KUHD, as a statutory legal instrument, occupies a higher position in Indonesia's hierarchy of laws and regulations than a ministerial regulation (Tobing & Dwijyanthi, 2024). Accordingly, differences between the registration requirements established under the KUHD and those introduced by Permenkumham No. 17 of 2018 have generated debate regarding the consistency of the applicable legal framework and the legal certainty afforded to CVs registered under the electronic system (Firdaus, 2025; Halilah & Arif, 2021; Nurhayati et al., 2025). Against this background, this study addresses the following research question: How do the legal provisions governing the establishment and registration of CVs in Indonesia affect legal certainty for business actors? The novelty of this research lies in its systematic examination of

potential normative inconsistencies between the KUHD and Permenkumham No. 17 of 2018, particularly concerning registration authority, administrative procedures, and the legal implications of electronic registration. Through this examination, the study seeks to contribute to the development of a more coherent regulatory framework that supports administrative modernization while safeguarding legal certainty for business actors in Indonesia.

METHOD

This study employed a normative juridical approach using a descriptive qualitative research design. The analysis focused on primary legal materials, including the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang, KUHD), the Law on Compulsory Company Registration, and Regulation of the Minister of Law and Human Rights Number 17 of 2018, supplemented by relevant legal literature and scholarly publications. Legal materials were collected through library research and analyzed qualitatively using deductive reasoning to assess regulatory consistency and its implications for legal certainty in the establishment of limited partnerships (Commanditaire Vennootschap, CVs) in Indonesia.

RESULTS AND DISCUSSION

Transformation of the Establishment Procedure and Legal Antinomy

Before Permenkumham No. 17 of 2018 came into force, the procedure for establishing a CV in Indonesia was governed entirely by Articles 23 and 28 of the KUHD. Under the conventional procedure, the founders were required to execute a deed of establishment before a notary, to register the deed in the register kept at the Registry of the District Court within whose jurisdiction the CV is domiciled, and to publish an official extract of the deed in the Supplement to the State Gazette of the Republic of Indonesia (Tambahan Berita Negara Republik Indonesia/TBNRI).

The introduction of SABU through Permenkumham No. 17 of 2018 completely overhauled this procedure and converted it into an electronic system. Under the new procedure, the name of the CV must first be submitted through the online system, and the deed must then be executed before a notary, followed by the electronic completion of the Registration Form no later than 60 days after the signing of the deed, whereupon a Certificate of Registration (Surat Keterangan Terdaftar/SKT) is issued by the Minister of Law and Human Rights.

This transformation has given rise to legal antinomy in the form of a sharp vertical conflict of norms. First, there has been an absolute shift in the competent institution: the KUHD designates the Registrar of the District Court, whereas the Permenkumham designates the Minister of Law and Human Rights. Second, the Permenkumham abolishes the obligation to publish an announcement in the TBNRI, which is expressly required by Article 28 of the KUHD. Third, under the principle of *lex superior derogat legi inferiori*, the provisions of a Ministerial Regulation lack the binding force to override a statutory code (the KUHD). Consequently, from a formal normative standpoint, the electronic procedure creates legal uncertainty regarding the absolute validity of the CV's operational status vis-à-vis third parties (Sudarsa & Parsa, 2020; Surya et al., 2021).

The Role of the Notarial Deed in Legal Protection and Evidentiary Proof

Despite the dualism in the registration system, the notarial deed remains an irreplaceable central pillar in the formation of a CV. The notarial deed performs both a constitutive function and the function of conclusive evidence under Articles 1868 and 1870 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata). The deed rigorously sets out the identities of the parties, the limits of their capital contributions, their profit-sharing rights, and a clear separation of roles between the active and passive partners. The existence of this authentic deed eliminates the potential for internal disputes and provides legal protection to third parties that enter into business engagements with the CV (Fuady, 2017; Saliman, 2016).

Analysis of Incomplete Legal Certainty

The application of the procedure under Permenkumham No. 17 of 2018 has created a phenomenon of incomplete legal certainty. Business actors obtain administrative procedural certainty (a fast process, a centralized name system, and possession of an SKT), yet at the same time they face vulnerability arising from normative uncertainty. Under Article 29 of the KUHD, for as long as registration at the District Court and publication in the TBNRI have not been effected, the limited partnership shall be deemed a general partnership for an indefinite period, and all partners shall be deemed authorized to act on behalf of the partnership (Muhammad, 2010). This legal risk may prejudice the passive partners if a third party acting in bad faith claims full liability, extending to their personal assets, on the basis of Article 29 of the KUHD.

Legal Breakthroughs in Response to Regulatory Overlap

In response to this regulatory impasse, a progressive legal breakthrough is required (Putro, 2024). In the short term, a teleological interpretation approach (*teleologische interpretatie*) may be employed by judges and legal practitioners (Mertokusumo, 2014). From a teleological perspective, the ratio legis of registration at the District Court and publication in the State Gazette is to fulfill the principle of publicity so that third parties are informed of the profile of the business entity (Rahmasari & Priyono, 2025). Since the SABU of Kemenkumham is able to provide a public database that can be accessed transparently and in real time, the publicity function under the KUHD has, in substance, already been fulfilled.

However, to achieve robust legal certainty, the medium- and long-term solution lies in legislative reform of the national codification of commercial law. The Government, together with the House of Representatives of the Republic of Indonesia (Dewan Perwakilan Rakyat Republik Indonesia/DPR RI), needs to draft a Partnership Law or undertake a comprehensive revision of the KUHD through a modern compilation method, in order to legitimize SABU and the Online Single Submission (OSS) system as the sole valid instruments for the registration of partnerships, replacing the archaic sanction under Article 29 of the KUHD.

CONCLUSION

Based on the foregoing analysis, it can be concluded that the legal framework governing the establishment of limited partnerships (*Commanditaire Vennootschap*, CVs) in Indonesia continues to reflect regulatory dualism between the provisions of the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang, KUHD), particularly Articles 19–21 concerning limited partnerships and the related provisions governing partnership registration, and

Regulation of the Minister of Law and Human Rights Number 17 of 2018 (Permenkumham No. 17 of 2018), which introduced an electronic registration mechanism. The transfer of registration authority from the District Court to the Ministry of Law and Human Rights (Kementerian Hukum dan Hak Asasi Manusia, Kemenkumham) through the Business Entity Administration System (Sistem Administrasi Badan Usaha, SABU), together with changes to the publication requirements in the Supplement to the State Gazette of the Republic of Indonesia (Tambahan Berita Negara Republik Indonesia, TBNRI), has raised concerns regarding potential conflicts between legal norms of different hierarchical levels. These inconsistencies must be examined in light of the principle of *lex superior derogat legi inferiori*, under which a higher-ranking legal provision prevails over a conflicting lower-ranking provision. Such regulatory inconsistencies may undermine legal certainty concerning the establishment and registration of CVs and create potential legal risks for partners, particularly in disputes involving third parties.

FUNDING

The authors state that no financial support was received for the conduct of this research and/or the publication of this article.

CONFLICT OF INTEREST

The authors state that this research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

AUTHOR CONTRIBUTION

Endang Sutrisno contributed to the conceptualization of the research, the development of the theoretical framework, supervision, and the critical review of the manuscript. Augist Laksamana Putra contributed to the collection and analysis of legal materials, the drafting of the original manuscript, and its revision. Both authors have read and approved the final version of the manuscript.

GENERATIVE ARTIFICIAL INTELLIGENCE USAGE STATEMENT

The authors state that generative artificial intelligence (AI) was used in the preparation of this manuscript. Specifically, generative AI was used to assist in translating the manuscript from Indonesian into English, improving language clarity, and refining the grammatical structure of the manuscript. Such use was carried out in compliance with applicable ethical guidelines on the use and disclosure of generative AI in scientific research. Each author has made substantial intellectual contributions to this work. The entire content of the manuscript has been carefully reviewed to ensure its accuracy, and the authors bear sole responsibility for the integrity and final content of the manuscript.

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