

# LEGAL POSITION OF COMMANDITAIRE VENNOTSCHAAP (CV) AS HOLDERS OF BUILDING USE RIGHTS BASED ON MINISTER OF ATR/BPN NO. 2/SE-HT/02.01/VI/2019 JO. LAW NUMBER 5 OF 1960 CONCERNING BASIC AGRARIAN REGULATIONS (UUPA)

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## **ABSTRACT**

The Basic Agrarian Law provides regulation regarding subjects who can control and use land, on the basis of land rights, either in the form of primary land rights or secondary land rights. Hak Guna Bangunan (HGB) is the right to construct and own a building on land that is not its own with the subject of the right according to the provisions of the UUPA being an Indonesian citizen and a legal entity established according to Indonesian law and domiciled in Indonesia. Circular of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2/SEHT.02.01/VI/2019 regulates the granting of HGB to limited partnerships, the responsibilities of partners in limited partnerships, the HGB registration process and the implementation of the ministerial circular. Agrarian and Spatial Planning/Head of the National Land Agency Number 2/SEHT.02.01/VI/2019 in the Indonesian national land law. The provisions of Article 36 paragraph (1) UUPA in conjunction with Article 19 PP Number 40 of 1996 concerning HGB, HGU and HP, determine whether the subject of HGB is an Indonesian citizen or a legal entity established under law and domiciled in Indonesia. With the issuance of the Ministerial Decree, it will actually cause polemics if left unchecked, it will become a conflict between one regulation and another.

**Keyword : Commanditaire Vennotschaap, Building Use Rights**

## **ABSTRAK**

Undang-undang Pokok Agraria memberikan pengaturan tentang subjek yang dapat menguasai dan menggunakan tanah, dengan dasar hak atas tanah, baik berupa hak atas tanah primer maupun hak atas tanah sekunder. Hak Guna Bangunan (HGB) adalah hak untuk mendirikan dan mempunyai bangunan diatas tanah yang bukan miliknya sendiri dengan subjek hak menurut ketentuan dalam UUPA adalah Warga Negara Indonesia dan Badan Hukum yang didirikan menurut hukum Indonesia dan berkedudukan di Indonesia. Surat Edaran Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 2/SEHT.02.01/VI/2019 mengatur tentang pemberian HGB kepada Persekutuan Komanditer, Tanggung Jawab Para Sekutu Dalam Persekutuan Komanditer, proses pendaftaran HGB serta pelaksanaan Surat Edaran Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 2/SEHT.02.01/VI/2019 dalam hukum tanah nasional Indonesia. Ketentuan Pasal 36 ayat (1) UUPA jo Pasal 19 PP Nomor 40 Tahun 1996 tentang HGB, HGU dan HP, menentukan subjek HGB apakah WNI atau Badan Hukum yang didirikan berdasarkan hukum dan berkedudukan di Indonesia. Dengan dikeluarkannya SE Menteri tersebut justru akan menimbulkan polemik apabila dibiarkan akan menjadi pertentangan anatar peraturan yang satu dengan peraturan lainnya ,

**Keyword : Commanditaire Vennotschaap, Hak Guna Bangunan**

# I. INTRODUCTION

## 1.1. Background

Almost all countries are currently focused on improving the economy, and Indonesia is no exception. The government seeks to create a conducive investment climate in various forms of provisions and policies related to fiscal, taxes, permits, availability of human resources (expatriate), transfer of knowledge, import of raw materials, formation of PMA/PMDN companies, including the provision of infrastructure facilities related to land in various forms, rights to own/use, period of ownership, and others. This is done to increase investment and encourage economic growth in the country.

The issuance of the Ministerial Circular Letter provides an expanded understanding of the provisions of the Basic Agrarian Law Number 5 of 1960, especially in the provisions of Article 36 paragraph (1) UUPA in conjunction with Article 19 PP Number 40 of 1996 concerning HGB, HGU and HP, determines whether the subject of HGB is Indonesian citizens or legal entities established under the law and domiciled in Indonesia. The expansion of this meaning can become a polemic which, if left unchecked, will result in conflicts between the implementing regulations and the regulations above them (conflicts between the ministerial circular letter and the UUPA).<sup>1</sup>

The legal basis for the Circular Letter states that Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and PP. 40/1996 as the legal basis for granting Building Use Rights to CV, even though this is a violation of the UUPA and PP. 40/1996 because CV cannot be treated as a legal entity that can become a holder of Building Use Rights. As regulated in Article 36 Paragraph (1) UUPA jo. Article 19 of PP 40/1996 states that those who can own land rights with the status of Building Use Rights are Indonesian citizens and legal entities established according to Indonesian law domiciled in Indonesia.

Limited partnerships in carrying out their business activities can have assets or assets in the form of movable objects, while for fixed objects/immovable objects which require that the subject owner/holder of the object must be a legal entity, then the limited partnership cannot be the owner. or the holder of ownership rights to the fixed object or immovable object. This Circular Letter of the Minister of ATR/BPN Number: 02/SE-HT.02.01/VI/2019 "opens space" and "provides implementation technical regulations" for "recording ownership of land rights by way of nomenie", which is the name recorded in the land book contained in the local land office and on the certificate of land rights (building use rights) are not the actual owners of land rights (building use rights) (no-menie ownership) this violates the UUPA and statutory regulations implementation of the UUPA in effect and will lead to legal uncertainty regarding land registration in terms of recording land ownership/ownership (land rights/building use rights).<sup>2</sup>

The ATR/BPN Minister's policy contained in Circular Letter No.2/SE HT.02.01/VI/2019, regarding CVs being able to have HGB land rights needs to be reviewed and re-discussed. The reason for the Minister of ATR/BPN issuing this policy is in order to provide convenience in land services for Limited Liability Companies, so that CV can move more easily in investment. However, this circular letter raises a lot of cons from the PPAT, where the PPAT does not want to make a deed of transfer of rights to the land because they do not want to take risks in the future on the deed they make if there are problems because the policy is contrary to the UUPA. This circular letter contradicts a higher law, namely Article 36 Paragraph (1) UUPA juncto Article 19 PP Number 40 of 1996, and Article 39 Paragraph (1) letter c PP Number 24 of 1997 concerning Land Registration.<sup>3</sup>

Taking into account the matters mentioned above, the researcher deems it necessary to conduct further studies in the form of research proposals with the title: **"Legal Position of Commanditaire Vennotschaap (Cv) as Holder of Building Use Rights Based on Circular Letter No. 2/Se-Ht/02.01/Vi/2019 Jo. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA)"**.

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1 Nur Adhim, Siti Mahmudah, and Kornelius Benuf, "Polemic on Circular Letter of the Ministry of Agrarian Affairs and Spatial Planning No. 2/SE-HT.02.01/VI/2019 Concerning the Granting of HGB to CVs", *Justitia et Pax*, Volume 36, Number 1, June 2020

2 Michael Josef Widijatmoko, "Discussion and Inauguration of Members of the Central Java IPPAT Board", Thursday 28 June 2019.

3 Faizah Inas Hadisti, Widhi Handoko, Irawati, "POLICY OF THE MINISTER OF ATR/BPN RELATED TO LAND OWNERSHIP RIGHTS IN COMMANDITER COMPANIES", *NOTARIUS*, Volume 12 Number 2 (2019) ISSN: 2086-1702

### **1.2. Identification of problems**

- a. What is the binding strength and legal certainty of the CV (Commanditaire Vennootschap) as the subject of Building Use Rights (HGB)?
- b. How is the juridical implications of the Limited Partnership (Commanditaire Vennootschap) as the holder of Building Use Rights (HGB)?

### **1.3. Research methods**

The research method in writing this article is normative juridical, that is, a research method that refers to legal norms contained in laws and regulations, this research is analytical-descriptive in nature, that is, it is intended to provide as accurate data as possible about a situation or other symptoms do not only focus on the description of the research results of the library method, do a study of documents on secondary data related to the problems studied. Based on the results of the analysis, it is known that the Limited Partnership is not a legal entity, so it is not the subject of land rights with HGB status. However, the HGB can be used in limited partnership business activities by being registered on behalf of the partners.

## **2. DISCUSSION**

### **2.1. Binding Strength & Legal Certainty Limited Partnership (Commanditaire Vennootschap) as the subject of Building Use Rights (HGB)**

Limited Partnership, as a subject that can be given land with the status of Building Use Rights based on the Circular Letter of the Minister of ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019, does not fulfill the requirements as a Legal Entity as regulated by Article 36 UUPA and Article 19 Government Regulation (PP) Number 40 of 1996.

Based on the applicable laws and regulations, Limited Partnership is a business entity established based on the agreement of its partners, to run a joint business and aims to obtain profits to be shared among its partners, and has at least 1 (one) partner who is passive and has a role as a moneylender.

The legal status of a business entity in the form of a limited liability company can be seen from several legal aspects, including:

- a. Legal aspects relating to the process of establishing a limited partnership;
- b. Legal aspects relating to the construction of capital entry (in-breng) which become the assets of limited partnerships;
- c. Legal aspects relating to the responsibilities of partners in limited partnerships for engagements made with third parties.

A Limited Partnership is established by making an authentic deed which is carried out by its partners before a Notary as a General Official, to be registered at the Registrar's Office of the District Court where the partnership is located (raad van justitie), as stipulated in Article 23 Jo. Article 24 of the Commercial Law Code (KUHD).

The registration of the deed of establishment of the partnership is carried out in order to obtain legal status for an agreement made with a third party, especially in terms of differences in responsibilities between management partners/complementary partners and money-lender partners/limited partners. Without the registration of the deed of establishment to the District Court Registrar's Office, the partnership will be considered a civil partnership in general, where there is no difference in responsibilities between the partners, and all existing partners are allowed to act and are deemed entitled to manage the limited partnership.

Business entities in the form of partnerships are required to register through the Business Entity Administration System (SABU) at the Ministry of Law and Human Rights, as regulated by the Regulation

of the Minister of Law and Human Rights Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships and Partnerships Civil.

The Regulation of the Minister of Law and Human Rights Number 17 of 2018 was enacted in order to implement the provisions in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services, especially the provisions of Article 15 paragraph (3), Article 16 paragraph (3), and Article 17 paragraph (3).

Business entities in the form of limited partnerships are specifically regulated in Article 16 of Government Regulation Number 24 of 2018 and must be registered and comply with procedures regulated by the Ministry of Law and Human Rights, in order to be able to apply for business licenses that are integrated electronically.

Government Regulation Number 24 of 2018 which is the reference or starting point for the process of registering business entities in the form of partnerships as regulated by the Regulation of the Minister of Law and Human Rights Number 17 of 2018 has the main objective of accelerating and increasing investment and business as well as implementing licensing services trying to integrate electronically.

The procedure for establishing a business entity in the form of a limited partnership as regulated by the Regulation of the Minister of Law and Human Rights Number 17 of 2018 is divided into several stages, namely:

- a. The process of submitting the name of the partnership to be established;
- b. The process of making the partnership establishment deed before a Notary;
- c. The process of registering the deed of establishment of the partnership along with supporting documents;
- d. The process of issuing a Certificate of Registration Electronically by the Minister of Law and Human Rights.

The process of establishing a business entity in the form of a limited partnership as stipulated in the Criminal Code and the Regulation of the Minister of Law and Human Rights Number 17 of 2018, is established only through the registration process, and not through the approval process from the Minister of Law and Human Rights to obtain status as an entity. law, as must be passed by a Limited Liability Company or Foundation. The approval given by the Minister of Law and Human Rights was only in the form of approval to use the name of the limited partnership.

The difference between a business entity with a legal entity and a business entity without a legal entity can also be seen in the difference in the media used in the registration process at the Ministry of Law and Human Rights, where a legal entity will be registered in the Legal Entity Administration System (SABH), while a business entity in the form of a limited partnership will be registered. on SABU. Thus, even though the business entity in the form of a limited partnership that has been established has been registered in SABU at the Ministry of Law and Human Rights, it does not necessarily result in a business entity in the form of a limited partnership getting the status of a legal entity, because the limited partnership does not have the characteristics of a legal entity like a Limited Liability Company. or the Foundation.

Furthermore, the procedure for registering a business entity in the form of a limited partnership in the SABU is carried out solely for the purpose of orderly administration in the framework of facilitating the granting of business licenses.

The legal status of a limited partnership can also be seen from the aspect of capital entry (inbreng) which will become the assets of the limited partnership. The partners in the limited partnership form assets which become the business capital of the limited partnership by including money, goods, goods or expertise, in accordance with the agreement of the partners in the limited partnership.

Even though the assets in the limited partnership have been included in the partnership, they still have a civil relationship with the original owner, especially for assets in the form of tangible goods

which are included only the right to use or enjoy, while the ownership of the tangible goods remains with the partners who put him in communion.

This civil relationship can also be seen from the responsibilities of the partners in the limited partnership, where the management partners will be responsible up to personal property and the limited partners will only be responsible to the extent of the amount of income made to the agreements made by the limited partnership with other parties. third.

Thus, there is no separation between the assets entered by the partners into the partnership and the assets belonging to the limited partnership, so that the business entity in the form of a limited partnership does not meet the qualifications as a separate legal entity from its partners.

Legal responsibility for engagements made with third parties is also an aspect that determines the legal status of a business entity. In a limited partnership, those who have the right to manage and represent the partnership, both inside and outside the court, are complementary partners or management partners. The agreements with third parties made in the context of carrying out business activities of the limited partnership are signed by the complementary partners, and the complementary partners are fully responsible jointly and severally up to their personal assets for the agreement they made. Unlike the case with limited partners who are passive in managing the limited partnership and only invest capital in the form of money, the limited partners have limited liability in the amount of capital they put in. If there is a loss in the agreement made with a third party, the third party can file a claim for compensation to the limited partnership against the assets of the partnership, and if the assets of the limited partnership are insufficient in paying off its obligations, the claim for compensation can also be made against personal assets belonging to complementary partners who perform the engagement.

The responsibilities of partners in a limited partnership, especially the responsibilities of complementary partners, determine the legal status of the limited partnership which qualifies as a separate legal entity from its partners.

These three aspects clearly show the legal status of a limited partnership that does not qualify as a separate legal entity from its partners.

Thus, a limited partnership cannot control or own land with the status of Building Use Rights, as stipulated in Article 36 of the UUPA and Article 19 of Government Regulation (PP) Number 40 of 1996, where those who can control or own land with Building Use Rights are Indonesian Citizens or Legal Entities established under Indonesian State Law and domiciled in the territory of the Republic of Indonesia.

The binding power of the Limited Partnership (Commanditaire Vennootschap) as the subject of the Building Use Rights (HGB) qualifies as land ownership with the status of Building Use Rights by an unauthorized subject and will cause the land to be released or its rights transferred within a period of 1 (one) year or the Building Use Rights will be deleted and the land will return to the State.

Land with the status of Building Use Rights can be controlled and used by a limited partnership in its business activities, provided that the land with Building Use Rights is not registered in the name of the limited partnership, but is registered in the names of the partners or one of the partners in the limited partnership.<sup>4</sup>

Registration of land with Building Utilization Rights used for the business interests of a limited partnership has been facilitated by the issuance of Ministerial Circular Letter ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019, with several terms and conditions that must be fulfilled by the limited partnership, including:

- a. The limited partnership has been registered in the Business Entity Administration System (SABU) at the Ministry of Law and Human Rights;

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<sup>4</sup> I Topan Budi Pratomo, Widodo Suryandono, Pieter Everhardus Latumeten, "Implementation of the Circular of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2/SE-HT.02.01/VI/2019 in the National Land Law regarding the Granting of Building Utilization Rights as Assets A Limited Partnership (Commanditaire Vennotschaap)", UI, Journal Vol 1, No. 004, 2019.

- b. Applications for building use rights are submitted by limited partners or complementary partners or their proxies acting for and on behalf of and with the approval of all limited partners and complementary partners.

Registration of HGB registration for a limited partnership (CV) is carried out on behalf of all limited and complementary members in the said limited partnership (CV) or one of the limited and complementary members with the approval of all limited and complementary members. In the Building Use Rights Certificate, it is recorded that the owner of the HGB is a limited and/or complementary member or each of these members with the approval of the limited and complementary members.

The provisions mentioned above in terms of HGB applications for CV business entities are no different from HGB applications for other legal subjects (WNI/Legal Entity). It is said that there is no difference or specificity in the process of registering the land with Building Use Rights in the Limited Partnership with the registration of other land rights. The Land Office will process the registration of the Land Use Rights if all the conditions and documents above have been fulfilled.

If the application for the Building Use Right is approved by the Government, cq. The local Land Office, then based on the Circular Letter of the Minister of ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019 the land rights will be recorded with the following options:

- a. Recorded and registered on behalf of all limited partners and complementary partners in the said limited partnership; or
- b. Recorded and registered on behalf of one of the limited partners and complementary partners c.q. all limited partnerships with the approval of all limited and complementary partners

The recording and registration of land with the status of Building Use Rights on behalf of the partners in the limited partnership has also been confirmed from the results of interviews with the Ministry of Agrarian Affairs and Spatial Planning/BPN. The author had the opportunity to conduct an interview with the resource person, Mr. Andri Yunandri in the Section for Determination of Rights and Registration of the Office of the Ministry of Agrarian Affairs and Spatial Planning/BPN, Cimahi BPN Office. Based on the results of interviews related to the issuance of the Circular of the Minister of ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019 several things are known, including:

- a. The Circular of the Minister of ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019 was issued based on the provisions in the UUPA and PP Number 40 of 1996, so that the implementation of the circular letter does not conflict with Article 36 UUPA and Article 19 PP Number 40 In 1996 by recording and registering Building Use Rights on behalf of partners in limited partnerships who control and use the Building Use Rights land in their business activities. In principle, the granting of Building Use Rights is still given in accordance with the provisions of the UUPA, namely only to Indonesian Citizens and Indonesian Legal Entities.
- b. A limited partnership is not a legal entity that can become the subject of a building use right holder, although currently a limited partnership must be registered with the SABU of the Ministry of Law and Human Rights, this registration does not give the limited partnership status as a legal entity. Registration of limited partnerships which is one of the conditions for granting building use rights in the circular letter is only carried out for the purpose of orderly administration based on Government Regulation Number 24 of 2017 and Regulation of the Minister of Law and Human Rights Number 17 of 2018.
- c. Building use rights certificates can be recorded and registered on behalf of several people, so that the building use rights land used for the business interests of the limited partnership can be recorded on behalf of the partners in the limited partnership.
- d. The sources are of the opinion that the land with building use rights that are controlled and used by the limited partnership are recorded and registered in the names of all partners in the limited partnership to protect the interests of these partners.
- e. The implementation of the granting and registration of Building Use Rights that are controlled and used by limited partnerships for their business activities continues to use standard procedures as stipulated in the Regulation of the Head of BPN Number 1 of 2010 concerning Service Standards and Land Arrangements.

- f. The resource person also said that up to now, for the working area of the Office of the Ministry of Agrarian Affairs/BPN, Cimahi City, there has not been any application for Building Use Rights for Limited Partnerships.

Thus the land that is controlled and used by a limited partnership in its business activities, either obtained through the partnership of partners or obtained through the application process as stipulated in the Ministerial Circular Letter ATR/Head of BPN Number 2/SE-HT.02.01/ VI/2019, recording and registration of building use rights is carried out on behalf of all partners in a limited partnership or on behalf of one of the partners in a limited partnership with the approval of all partners. Legal construction regarding limited partnership assets in the form of land with building use rights status will depend on how the limited partnership obtains ownership rights over the said building use rights land.

If the limited partnership obtains the right to control the land with the right to build from the inbrenng entered by the partners, then the land with the right to build can become the assets of the limited partnership and be recorded on behalf of all partners with all risks to the land with the right to build being borne by the limited partnership. In addition to being the assets of the partnership, the land with the building use rights can also be carried out only with the right to use or enjoy it, and the mastery of permanent rights to the partners who carry out the inbrenng along with responsibility for the risks that may arise on the land with the building usage rights. The choice of the legal construction of partnership assets in the form of land with building use rights is in accordance with the provisions of Article 1631 of the Civil Code.

In addition to obtaining land with the status of building use rights from inbrenng carried out by partners, limited partnerships can submit applications for building use rights, both on state land, on land with management rights and on land with ownership rights to the state, cf. The local Land Office, through the procedures stipulated in PP Number 40 of 1996. Land with the status of building use rights which is then given to the limited partnership will then be recorded and registered with the rights on behalf of all the partners in the the limited partnership, as joint property of the partners and to protect the interests of the partners in the limited partnership.

## **2.2. The juridical implications of the Limited Partnership (Commanditaire Vennootschap) as the holder of Building Use Rights (HGB)**

One of the impacts of the implementation of circular letter No. 2/SE-HT.02.01/VI/2019 has caused many cons from the PPATs as a profession that is in direct contact with the making of land deeds. If the policies in the circular letter are implemented, from the PPAT side it does not want to make a deed of transfer of rights over the land, the PPAT does not want to take risks later on the deed it made if there are problems because the ministerial policy in the circular letter is deemed contradictory with the UUPA, because the PPAT in carrying out its position in land law must be under the umbrella of the UUPA.

The role of the Land Deed Making Officer (PPAT) in the process of granting land with the status of building use rights to limited partnerships and the registration of the rights is very important, and will last from the time the building use rights are granted for the first time until the transfer of said building use rights if there are conditions that requires the transfer of the right to use the building.

The role of the PPAT is related to maintaining land registration data, especially on building use rights that are controlled and used in limited partnership business activities, as stipulated in the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration and then amended by Regulation of the Head of BPN Number 8 of 2012, among others:

- a. The PPAT prepares and draws up the Deed of Granting Building Use Rights on Freehold Land, as an authentic deed which proves that there has been a grant of building use rights on private land to partners in a limited partnership as well as being the basis for registering said building use rights to the Local Land Office.
- b. PPAT prepares and draws up a Sale and Purchase Deed of building use rights if the limited partnership partners agree to buy or sell building use rights in the framework of the transfer of

rights, and will serve as the basis for registering the transfer of said building use rights to the Local Land Office.

- c. PPAT prepares and draws up a Deed of Sharing of Shared Rights if there is a change in the structure of the partners in the limited partnership or the partners agree to dissolve the limited partnership and share ownership of the building use rights among the partners.
- d. The PPAT prepares and makes a Deed of Granting Mortgage Rights or a Power of Attorney for Imposing Mortgage Rights if the partners in the limited partnership agree to charge land with building use rights as collateral for debt repayment or financing facilities obtained by the limited partnership in their business activities.

Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 2/SE-HT.02.01/VI/2019 issued in accordance with the principles of Freedom of Action (Freies Ermessen) and manifested in the form of issuance of policy regulations (beleidre-gel) in the format of a Ministerial circular letter, in order to provide implementation instructions in the process of granting building use rights to limited partnerships, especially to the Land Office as a subordinate to the Minister of Agrarian Affairs and Spatial Planning/Head of BPN as well as executor of registration and registration of land rights.

In the field implementation, the granting of Building Use Rights by being registered on behalf of partners or one of the partners in a limited partnership will experience problems, especially in:

- a. the problem of the portion of the partners' ownership of the limited partnership among the partners, bearing in mind that there are 2 (two) types of partners in a limited partnership. The ownership of the partners in the limited partnership will depend on the amount of income they make.
- b. division of roles between limited partners and complementary partners. This will have an effect if any partner decides to leave or when the limited partnership is disbanded, there will be problems related to how much part the partners have in the Building Use Rights, especially those obtained from business activities and become joint property of the partners.
- c. profit sharing between partners in a limited partnership will affect the ownership of the Building Use Rights which become joint property of the partnership. Profit sharing in a limited partnership can be agreed upon by the partners or following the ratio of the amount of income to the partnership. However, if it is not agreed upon and follows the ratio of the amount of income then this will cause inequality, especially for complementary partners or administrators who only provide their energy or expertise into the partnership and get the smallest share of the profits in accordance with Article 1633 of the Civil Code, while the complementary partners will fully responsible up to his personal assets for the agreement made by the limited partnership.

Preferably, the right to build is only given to a legal entity that is completely separate from its founders or is only used or enjoyed in the business activities of a limited partnership, while the ownership and risk of the right to build remains with the original owner, to avoid any legal uncertainty related joint ownership of the partners on the Building Use Rights.

Thus, the Circular of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 2/SE-HT.02.01/VI/2019 is valid and binding and becomes one of the implementing regulations in Indonesian National Land Law, especially regarding the granting of use rights Buildings to limited partnerships based on Article 36 of the UUPA which regulates subjects who can control building use rights.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2016 concerning the Establishment and Evaluation of Legal Products within the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, states that a Circular Letter is the policy of ministers and/or officials Middle High Leadership which contains the effectiveness of the implementation of laws and regulations or arrangements related to technical implementation instructions.

As for Article 9 paragraph 2, it regulates the material for the contents of a Circular Letter which contains:

- a. Notification of certain things that are considered important;



- b. effectiveness of the implementation of laws and regulations;
- c. confirmation of technical policies; and/or
- d. urgent policy.

Issuance of Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No-mor 2/SE-HT.02.01/VI/2019 issued with the considerations as stated in Number I General namely intended to increase investment and encourage economic growth throughout the territory of the Republic of Indonesia and to provide convenience for land services, especially for granting building use rights to limited partnerships (Commanditaire Vennotschaap).

Upon the issuance of the Circular Letter, Permen ATR/BPN No. 21 of 2016 Article 25 paragraph 2 letter (b) and Article 26 paragraph 3 states that it is necessary to evaluate legal products and by analyzing the following criteria:

- a. the effectiveness of the implementation of legal products;
- b. problems that occur in the implementation of legal products; and
- c. solving problems that occur.

Article 11 Permen ATR/BPN No. 21 of 2016 states that if the results of the evaluation indicate that the said SE is not in accordance with the requirements or contradicts a higher legal product or legislation, then the legal product can be revoked. Revocation of Legal Products as referred to in paragraph (1) can only be revoked by equivalent legal products or higher laws and regulations.

By looking at the fact that the ineffective implementation of the Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 2/SE-HT.02.01/VI/2019 is proven by the lack of preparation of notarial deeds and submission of HGB by CV, as well as differences of opinion among practitioners, it can be concluded that the cause is the lack of socialization to all parties who will be involved in the implementation of the SE referred to, the legal risk of notarized deeds that will be made for HGB applications and deeds of transfer in the event of change of partners, dissolution, and others. Recommendations for settlement can be made through the mechanism of Article 11 of Permen ATR/BPN No. 21 of 2016 by revoking the said SE and returning it to regulations in accordance with higher statutory provisions or issuing new legal products.

### 3. CONCLUSION

Based on the description that discusses the subject matter above, it can be concluded as follows:

- a. A limited partnership cannot control or own land with the status of Building Use Rights, as stipulated in Article 36 of the UUPA and Article 19 of Government Regulation (PP) Number 40 of 1996, where those who can control or own land with Building Use Rights are Indonesian citizens. or a Legal Entity established under Indonesian State Law and domiciled in the territory of the Republic of Indonesia. The binding power of the Commander-in-Chief (Commanditaire Vennootschap) as the subject of the Building Use Rights (HGB) qualifies as land ownership with the status of Building Use Rights by an unauthorized subject and will cause the land to be released or its rights transferred within a period of 1 (one) year or the building use rights will be deleted and the land will return to the State.
- b. Legal certainty regarding the granting of Building Utilization Rights to Limited Partnerships as described in the Circular of the Minister of ATR/Head of the National Land Agency (BPN) Number 2/SE-HT.02.01/VI/2019 can be seen through the legal construction regarding limited partnership assets in the form of land with the status of building use rights, namely how to obtain ownership rights over the building use rights land. The method referred to can be in the form of inbreng with all the risks on the land of the Building Use Rights being borne by a limited partnership, or inbreng only on the right to use or enjoy the land and the mastery of permanent rights on the partners who carry out the inbreng along with responsibility for the risks that may arise on the land of building use rights the. Legal risks arise in the division of ownership of the partners over the Building Use Rights which will depend on the income made by the partners as well as the profit sharing agreement agreed upon, and will eventually lead to uncertainty over the ownership of the Building Use Rights. In addition, it can also be seen in the process of registration of Building Use Rights which will be recorded and registered for all limited partners and

- complementary partners or on behalf of one of the limited partners and complementary partners cq. All limited partnerships with the approval of all limited and complementary partners.
- c. The juridical implications of the issuance of Circular Letter Number 2/SE-HT.02.01/VI/2019 are the implementation of the duties and powers of the Minister of Agrarian Affairs/Head of BPN which is mandated by laws and regulations and does not conflict with Article 36 UUPA. The role of the Land Deed Making Officer (PPAT) in maintaining land registration data also includes the process of granting building use rights to limited partnerships as stipulated in the Circular of the Minister of ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019, which including preparing and making authentic deeds relating to the registration of building use rights on behalf of partners in limited partnerships, with the format of the deed determined by the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 3 of 1997 concerning Provisions for Implementing Regulations Government Number 24 of 1997 concerning Land Registration as amended by BPN Head Regulation Number 8 of 2012.
  - d. Mechanism Article 11 Permen ATR/BPN No. 21 of 2016 is an alternative solution to the issuance of the Circular of the Minister of ATR/Head of BPN Number 2/SE-HT.02.01/VI/2019 by revoking the said SE and returning it to regulations in accordance with higher statutory provisions or issuing legal products new.

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Law No. 8 of 2010 concerning the Crime of Money Laundering

Government Regulation no. 40 of 1996 concerning Cultivation Rights, Building Use Rights, Use Rights

Government Regulation no. 24 of 1997 concerning Land Registration

Government Regulation no. 24 of 2018 concerning Electronically Integrated Business Licensing Services

Presidential Regulation No. 15 of 2015 concerning the Ministry of ATR

Presidential Regulation No. 20 of 2015 concerning BPN

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 17 of 2018 concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships

ATR/BPN Ministerial Regulation No. 21 of 2016 concerning Formation and Evaluation of Legal Products within the Ministry of Agrarian Affairs and Spatial Planning of the Office of the National Land Agency

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