

Validity and Legal Consequences of Granting Building Use Rights to the Komanditer/Comanditaire Venootshap Guild (CV)

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ABSTRACT

The granting of Building Use Rights (hereinafter referred to as HGB) cannot be given to limited partnerships. This is because the Limited Partnership is a business entity, while what can be granted HGB is a legal entity. HGB is the right to construct or own a building on land that is not one's own for a limited period of time. In Indonesia, this HGB is regulated in the Basic Agrarian Law (hereinafter referred to as UUPA) and those who can own this HGB are Indonesian Citizens (WNI) and legal entities established and domiciled in Indonesia as described in Article 36 paragraph (1) UUPA. In practice, there is a policy that allows these Limited Partnerships to own HGB as contained in Circular Letter Number 2/SE-HT.02.01/VI/2019 issued by the Minister of Agrarian Affairs and Spatial Planning regarding the Granting of HGB to Limited Partnerships. This Circular Letter aims to increase investment and encourage economic growth in all regions of Indonesia by granting HGB to Limited Partnerships. This research focuses on discussing the suitability and legal consequences of granting HGB to limited partnerships based on Circular Letter Number 2/SE-HT.02.01/VI/2019. This study uses a normative juridical method with a statutory approach and an analytical approach. This research will explain the granting of HGB based on the UUPA and government regulations, the status of limited partnerships in Indonesia, and the legal consequences of enforcing Circular Letter Number 2/SE-HT.02.01/VI/2019 on obtaining HGB for limited partnerships.

ABSTRAK

Pemberian Hak Guna Bangunan (untuk selanjutnya disebut HGB) tidak dapat diberikan kepada Persekutuan Komanditer. Hal ini disebabkan karena Persekutuan Komanditer merupakan badan usaha sedangkan yang dapat diberikan HGB adalah badan hukum. HGB merupakan hak untuk mendirikan atau mempunyai bangunan di atas tanah yang bukan miliknya sendiri dengan jangka waktu yang terbatas. Di Indonesia, HGB ini diatur di dalam Undang-Undang Pokok Agraria (untuk selanjutnya disebut UUPA) dan yang dapat memiliki HGB ini adalah Warga Negara Indonesia (WNI) dan badan hukum yang didirikan dan berkedudukan di Indonesia seperti yang dijelaskan dalam Pasal 36 ayat (1) UUPA. Dalam praktiknya, terdapat kebijakan yang memperbolehkan Persekutuan Komanditer ini memiliki HGB seperti yang terdapat di dalam Surat Edaran Nomor 2/SE-HT.02.01/VI/2019 yang dikeluarkan oleh Menteri Agraria dan Tata Ruang tentang Pemberian HGB untuk Persekutuan Komanditer. Surat Edaran ini bertujuan untuk meningkatkan investasi dan mendorong pertumbuhan ekonomi di seluruh wilayah Indonesia dengan memberikan HGB kepada Persekutuan Komanditer. Penelitian ini fokus membahas terkait kesesuaian dan akibat hukum dari pemberian HGB kepada Persekutuan Komanditer berdasarkan Surat Edaran Nomor 2/SE-HT.02.01/VI/2019. Kajian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan analitis. Dalam penelitian ini akan dijelaskan mengenai pemberian HGB berdasarkan UUPA dan Peraturan Pemerintah, Kedudukan Persekutuan Komanditer di Indonesia, dan akibat hukum pemberlakuan Surat Edaran Nomor 2/SE-HT.02.01/VI/2019 terhadap peroleh HGB bagi Persekutuan Komanditer.

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I. INTRODUCTION

In the context of implementing the national economy organized on democracy as regulated in article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which reads:

“(4) The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.”

The democratic system of the national economy is based on the kinship and cooperation of the people, by the people, for the people, and with the people under the leadership and supervision of the government towards social welfare. (“Naskah Akademik RUU Badan Usaha,” n.d.) In line with this, Indonesia must be ready to face global economic competition so that it is necessary to create an investment climate that is conducive, promotive, provides legal certainty, justice, and efficiency while still paying attention to national economic interests. In response to this, the Government needs to make efforts that can encourage economic growth, including creating ease of starting a business which is one of the parameters used to measure the ranking of ease of doing business. Based on the results of the study, the company's business form is komanditer or *comanditaire vennootschap* (CV). The use of the term CV in the Trade Law Code (KUHD) translated by F.M. Prasetyo is identical to the company.

In Circular No. 02/SE-HT.02.01/VI/2019, the term CV is synonymous with communion. In this writing, the author will use the term used in the Circular, namely communion for the next. The communitarian fellowship is still widely chosen by small and medium-scale entrepreneurs, in addition to the establishment process is relatively easy because it does not require ratification by the state, there is also no minimum capital requirement to establish a komanditer guild. (“Naskah Akademik RUU Badan Usaha,” n.d.) The draft law also said that it is necessary to prepare a form of communion as a legal entity, the concept of a legal entity is specifically aimed at helping clarity on the status of ownership of the alliance's property and ease in the transfer of ownership (interest) of the fellowship which aims to provide convenience in the process of registering the common property of the allies in the fellowship as property or assets of the fellowship.. (“Naskah Akademik RUU Badan Usaha,” n.d.)

As a form of implementation of article 33 paragraph (4) of the 1945 Constitution, the Minister of Agrarian affairs and Spatial Planning issued Circular Number: 02 / SE-HT.02.01 / VI / 2019 concerning the Granting of Building Use Rights (HGB) for communal partnerships, dated June 29, 2019. The Circular letter was made to increase investment and encourage economic growth throughout the territory of the Republic of Indonesia, in accordance with the general section of the Circular which contains:

“In order to increase investment and encourage economic growth throughout the territory of the Republic of Indonesia, it is necessary to provide ease of land services, especially for the granting of Building Use Rights to communal partnerships..”

However, in the content of the letter d of Circular Number: 02 / SE-HT.02.01 / VI / 2019 which contains:

“Registration of Building Use Rights registration for komanditer fellowship (komanditer fellowship) is carried out: On behalf of all members of the komanditer and complementary in the communion of the

said communion; or One of the komanditer and complementary members with the consent of all komanditer and complementary members”

The HGB regulation in article 35 paragraph (1) of Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA) reads:(Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, n.d.)

“(1) Building use rights are the right to erect and own buildings on land that is not their own, with a maximum period of 30 years.”

In general, HGB in Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA) is only given to Indonesian citizens (WNI) and Legal Entities formed under Indonesian law and domiciled in Indonesia, in accordance with article 36 paragraph (1) of the UUPA which contains:(Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, n.d.)

“(1) Those who can have building use rights are a. Indonesian citizens; b. a legal entity established under Indonesian law and domiciled in Indonesia.”

Basically, a legal entity is a business entity whose liability is limited. Regarding the definition itself of a legal entity is not explained in the Civil Code (Civil Code). However, according to Rochmat Soemitro, what is meant by a legal entity is an entity that has property, rights and obligations like private people.(Sembiring, 2012) An entity, association, or business entity can have the status of a legal entity if it has met several conditions, namely:(Raharjo, 2009) Separate property, separated from the wealth of its members; Specific objectives (idiosyncratic/commercial bias); Have your own rights and obligations, can sue / be sued; Have an organized organization, reflected in AD/ART.

There are also unincorporated business entities, a fairly basic difference, namely the issue of responsibility. In other words, if there are demands from third parties on the business entity, whether the business entity is fully responsible or there is personal responsibility from the company's property. In essence, business entities can be divided into three groups.

First, a business entity whose members are fully responsible for all their property such as the business of a person and the Firm. Second, a business entity whose members are not responsible for all its wealth. Included in this group are incorporated business entities such as limited liability companies (PT). Third, the transitional form that belongs to this last group is communion. In the communion there are two types of members, namely members of the board who have unlimited responsibilities, such as firms and firm members and there are also limited responsibilities such as PT.(Sembiring, 2015)

Therefore, based on the explanation above, the author feels that a study is needed related to the relationship between Circular Letter Number 2 / SE-HT.02.01 / VI / 2019 and the Basic Agrarian Law, so that we can interpret more clearly and precisely the various conflicts between Article 36 of the UUPA and Circular Letter Number 2 / SE-HT.02.01 / VI / 2019 concerning the provision of HGB to communal partnerships. Being the formulation of the problem in this research is: How is the conformity of Circular Letter Number 2 / SE-HT.02.01 / VI / 2019 concerning the Granting of Building Use Rights for the Komanditer Fellowship with provisions on the procedures for granting HGB according to UUPA and Government Regulation Number 18 of 2021?; What are the legal consequences of the implementation of Circular Letter Number 2 / SE-HT.02.01 / VI / 2019 on the acquisition of HGB for a Komanditer Guild?

II. RESEARCH METHOD

This research uses a juridical-normative literature research method. The research method is carried out to obtain the necessary data by reading, quoting, and analyzing everything related to this research object obtained from library materials and laws and regulations. This study is descriptive analysis. The data collection tool that will be used in this study is in the form of a study of documents or library materials, which is a data collection tool carried out through written data using "*content analysis*".(Soerjono, 1989).

In conducting this research, research data will be analyzed qualitatively so as to produce analytical descriptive research. The data obtained from primary legal materials and secondary legal materials will be linked to the problem case in the background with the aim of answering the problem in the case and providing a solution to the problem.

III. RESULT AND DISCUSSION

1. Conformity of Granting Building Use Rights for Communitarian Alliances between Circular Letter Number 2 / SE-HT.02.01 / VI / 2019 with the Basic Agrarian Law and Government Regulation Number 18 of 2021
- a. Granting Building Use Rights Based on the Basic Agrarian Law and Government Regulation Number 18 of 2021

Boedi Harsono defines that HGB is the right to erect and own buildings on State land or owned by others, for a limited period of time.(Harsono Boedi, 1995) According to Kartini Mulyadi, what is meant by HGB is the right to build and own buildings on land that is not his own, within a maximum period of 30 years and can be extended for another 20 years, can be transferred and transferred to other parties, can be used as collateral for debts and given Dependent Rights.(Kartini Mulyadi, 2004) Meanwhile, Maria S.W. Sumardjono defines that HGB is the right to erect and own buildings on land that is not its own for a maximum period of thirty years and at the request of the rights holder can be extended by twenty years. HGB can be obtained from State land or other people's land rights (Maria S. W. Sumarjono, 2001).

Regarding the provision of HGB in Indonesia, those who can provide HGB are countries and Indonesian citizens. This can be seen in Article 37 of the UUPA jo. Article 36 PP 18/2021 concerning land that can be granted with HGB, namely land directly controlled by the State, land with property rights, and land with management rights. Regarding the subject that can be given HGB in Indonesia, it is regulated in UUPA Article 36 paragraph 1 jo. Article 34 PP 18/2021 which says that those who can have HGB are Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia, both public legal entities and private legal entities.

Based on Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia (UUKRI), regarding Indonesian citizens regulated in article 4 which explains that an Indonesian citizen is a) any person who based on laws and regulations and/or based on agreements between the Government of the Republic of Indonesia and other countries before this Law takes effect has become an Indonesian citizen; b) a child born from the legal marriage of an Indonesian father and mother; c) a child born from the legal marriage of an Indonesian citizen father and a foreign citizen mother; d) a child born from the legal marriage of a foreign citizen father and an Indonesian citizen mother; e) a child born from the legal marriage of an Indonesian citizen mother, but his father had no citizenship or the laws of his father's home country did not grant citizenship to the child; f) a child born within a grace period of 300 (three hundred) days after his father dies from a legal marriage and his father is an Indonesian citizen; g) a child born outside of the legal marriage of an Indonesian citizen mother; h) a child born outside of the legal marriage of a foreign citizen mother who is recognized by an Indonesian citizen father as his child and the recognition is made before the child is 18 (eighteen) years old or unmarried; i) children born in the territory of the Republic of Indonesia who at the time of birth are not clear about the citizenship status of their father and mother; j. a newborn child found in the territory of the Republic of Indonesia as long as the father and mother are unknown; k. children born in the territory of the Republic of Indonesia if their father and mother do not have citizenship or their whereabouts are unknown; l. a child born outside the territory of the Republic of Indonesia to an Indonesian citizen father and mother who due to the provisions of the country in which the child was born grants citizenship to the child concerned; m. the child of a father or mother who has been granted an application for citizenship, then the father or mother dies before taking the oath or declaring the pledge of allegiance.

Regarding Legal Entities, according to R. Subekti, a legal entity is basically a body or association that can have rights and do deeds like a human being, as well as having its own wealth, can be sued or sued in front of a judge. There are 4 (four) theories regarding the qualifications of an entity so that the body can be referred to as a legal entity, namely: (Sembiring, 2015)

- a) Teori Fiksi (Carl Von Savigny)
According to adherents of this theory, legal entities are solely state-made. Naturally, man alone as a subject of law, a legal entity is a fiction, that is, something that does not actually exist, but one creates in its shadow a legal practitioner (legal entity) who as a subject of law counts equally as man.
 - b) Theory of Purposeful Wealth (Brinz)
According to adherents of this theory, it is quite reasonable to say that only humans can be the subject of law. However, it is also indisputable that there are rights to a property accumulated in a container. These property rights are not owned by individuals who are proponents of those rights. The so-called rights of a legal entity, are actually rights that no one has and in lieu of which is a property bound by a purpose or wealth belonging to a purpose.
 - c) Organ theory (Otto von Gierke)
According to adherents of this theory, the legal entity is a real reality just as the nature of human nature exists in legal associations. Here not only is a real person, but the legal entity also has its own will or will formed through its fittings, namely the board and its members. Furthermore, it was stated by Hofman who was cited by J. Satrio, a legal entity is a unit (*entity*) recognized as having its own legal authority (*rechtsbevoegdheid*), regardless of the people who form it. What its organs decide is considered to be the will of the legal entity itself. Viewed from a representative point of view, then here there is a representative who represents a legal entity and if the representative acts in such quality, consequently binds the legal entity he represents. The authority of a legal entity is based on the articles of association of the legal entity concerned.
 - d) Propriete theory (Planiol)
According to this theory, the rights and obligations of members are together. In addition, private property rights, property rights, and wealth are common property. The members can not only have each for the whole so that they personally do not, together all become owners.
 - e) Teori Kenyataan Yuridis (Mejers) (Paraningrum, 2014)
The legal entity is a real and concrete thing, though not palpable, nor is it a matter of juridical but a juridical reality, according to the opinion of this theory. Furthermore, this theory emphasizes that in equating legal entities with humans, it should be limited to the field of law only.
 - f) The Theory of Common Wealth (Rudolf von Jhering) (Paraningrum, 2014)
This theory of shared wealth considers a legal entity as a collection of human beings. The interests of a legal entity are those of all its members. Thus a legal entity based on the Theory of Common Property is a juridical construction of the interests of members, thus the rights and obligations of legal entities are the rights and obligations and legal responsibilities of members together. The juridical consequence is that the property of a legal entity is the common property of all members. Based on this explanation, an entity can be said to be a legal entity if it has 4 elements, namely having separate assets, having a certain purpose, having its own interests, and there are organs in the legal entity.
- b. The Position of the Komanditer Guild in Indonesia
According to I.G.Rai Widjaya Persekutuan Komanditer is a company established by one or several persons responsibly, responsible for the whole or solidarily responsible with one or more persons as a releaser of money. (Saptini, 2015) The rationale for the formation of this Guild is that one or more entrusts money or goods to be used in business or other companies to another or more

who runs the company alone who is generally related to third parties. It is also because of this that the entrepreneur is fully responsible for third parties, and not all of its members act outwardly. (C.S.T. Kansil, 1985) Regarding the term "money releaser" there are different translations, Prof. Subekti translates it "money giver" while Prof. Sukardono more accurately translates it with the term "a person who entrusts money". Prof. Sukardono uses the term "entrusting money" because what is meant by each of them is to "hand over" property rights to the capital concerned to complementary companies. So that capital during the running of the communitarian company cannot be withdrawn, but only at the end of the settlement of the Communion after its resolution, if it turns out that there is a profitable remainder. (Saptini, 2015).

R. Ali Rido brought up the most important elements of the Communion of Komanditer. First, the prevalent element in civil partnerships. It is so called because the legal basis of the Communion is a civil communion. For this reason, in the Komanditer Guild, there must be cooperation, income (*inbreng*), and the purpose of dividing profits. Secondly, organizing the company. Third, there are two types of perseros, namely active persero (complementary) and passive persero (*komanditer*). (Sembiring, 2015) There are no specific regulations governing the Komanditer Guild but the provisions become one with the regulations regarding firms in Articles 16 to 35 of the Criminal Code. The definition of Communion in the Kuhd is explained in Article 19 which reads:

"The Company releases money, also called the Company, established between one person or several companies who are liable to all of them on one party, and one or more persons as a release of money to another party. Thus it may happen, a Company is at one time the same Company a firm against the firms in it and is a Company against the release of money"

Based on this explanation, that in Article 19 of the KUHD it can be seen that in the Komanditer Guild there are two members, namely complementary persero and komanditer persero. Regarding complementary Persero (active persero) According to R. Ali Rido, what is meant by active persero is a persero that can bind the Komanditer Partnership with third parties and is responsible responsibly to personal wealth. This type of Persero acts as a management. (Sembiring, 2015) The business activities of the Komanditer Guild are carried out by its active companies. Those responsible for administering or working within the Fellowship. Even if pulled further, these active companies may also be held liable for their Guild engagements. (Rachmadhani, 2013)

Regarding responsibility, each member of the Communion is the same as the responsibility of the members of the firm described in article 18 of the Criminal Code which says that each member of the Guild, is responsible for all the agreements of the Guild. This means that each member of the Komanditer Guild is directly and individually responsible for the solider's agreements to third parties.

Meanwhile, Persero Komanditer (*Persero Pasif*), according to R. Ali Rido, a passive persero is a persero that only provides income (*inbreng*) and does not participate in managing the Partnership. Liability is limited to the capital entered. The status of an ally can be equated with a person who entrusts capital to a company that only waits for the results of the profits from the included *inbreng*, and does not interfere in the management, control, or business activities of the company. (Saptini, 2015) Given the relationship with third parties in the Komanditer Guild, it is only the management companies that run the company and act outwardly, and are bound to third parties. On the other hand, those who have a position as a person who entrusts capital have no relationship with third parties. (C.S.T. Kansil, 1985) Regarding passive companies in the Komanditer Guild, it is regulated in Article 20 of the Criminal Code which reads:

"Notwithstanding the exception mentioned in the second paragraph of article 30, the name of the moneylender shall not be used in the firm. The company has recently not been allowed to do management actions or work in the Guild company, so that he may be authorized to do so. He does not have to bear losses that are more than the amount of money that has been or must be included by him as capital in the Guild, nor does he need to return all the profits he has enjoyed."

Under these provisions, passive companies are obliged to hand over money or goods as previously agreed and then benefit from the partnership based on the amount of capital they have

deposited. Passive liability is limited to the amount of capital it has been able to deposit. In practice, a passive persero always wants to be involved in the management of the company because it considers that a passive persero in the company has the same role as an active persero. The division of members into active persero and passive persero certainly has different consequences where this passive persero cannot carry out management activities of the Komanditer Guild itself as described in Article 20 of the Kuhd. The regulation regarding violations committed by passive companies is regulated in Article 21 of the Criminal Code which reads:

“Each money release company that violates the provisions of the first or second paragraph of the previous article is liable in its entirety for all debts and all engagements of the Company.”

Under Article 21 of the Criminal Code, it can be said that if a passive company intervenes in the implementation and preparation of the Guild, in carrying out such an action he will create an impression on a third party as if he were also a member of the responsible board. In order to prevent third parties from suffering losses by such actions, the existence of Article 21 of the Criminal Code, thus a passive persero who behaves as a member of the board, has responsibilities such as members of the board to third parties and its liability is extended also to the agreements held by passive companies in the implementation of the company, and to the approvals that will still be held.

2. Granting Building Use Rights based on the contents of the Circular letter of the Minister of Agrarian affairs and Spatial Planning Number 2 / SE-HT.02.01 / VI / 2019.

In June 2019, the Minister of Agrarian affairs and Spatial Planning has issued Circular Number 2/SE-HT.20.01/VI/2019 concerning the Granting of HGB for communal fellowships. This circular aims to increase investment and encourage economic growth in all regions of the Republic of Indonesia by providing ease of land services, especially for the provision of HGB to communitarian partnerships. This circular is also an implementation instruction for the communion to have HGB. In the content of letter a of the circular, it is said that the communitarian association can apply for land rights in the form of HGB.

In letter b of the circular it is said that the petitioner is a member of the komanditer or complementary who acts for and on behalf of all members of the komanditer communion and in letter d of the circular it is said that the submission of the application is made by the member of the komanditer or complementary or his attorney acting for and on behalf and with the consent of all members of the komanditer and complementary by attaching the Articles of Association that have been registered in the Ministry of Law and Human Rights. Broadly speaking, the circular contains instructions for the implementation of HGB application submissions for komanditer guilds whose registration of HGB is carried out on behalf of all komanditer and complementary members in the komanditer fellowship or one of the komanditer and complementary members with the approval of all komanditer and complementary members by attaching the Articles of Association that have been registered with the Ministry of Law and Human Rights.

If you look at the purpose of the circular letter, it is to encourage economic growth in all regions of the Republic of Indonesia by providing ease of land services, especially the provision of HGB to communal partnerships. Regulations regarding the provision of HGB are regulated in UUPA and PP 18/2021 as previously explained, can only be given to Indonesian citizens and entities domiciled and established in Indonesia. Meanwhile, the communion itself as previously explained that in the communion there are active members who are fully responsible for personal property, so that in the communion there is no separate property between the communion and its members. Meanwhile, the elements for an entity to be said to be a legal entity if it meets the elements of having separate wealth, certain goals, certain interests, and the existence of organs.

If you look at the difference between a communitarian guild and a legal entity, it can be concluded that the komanditer fellowship does not include a legal entity but a business entity. However, if you look at the contents of the circular, the registration of HGB for the communitarian fellowship is carried out on behalf of all members of the komanditer fellowship or one of the komanditer and complementary members with the approval of all members of the komanditer

fellowship, the provision of HGB in the circular letter is in accordance with UUPA and PP 18/2021. Because the granting of HGB in the circular even though the HGB submission is done by the komanditer guild, the registration of HGB is still carried out on behalf of the individual/individual of the member of the communitarian fellowship and in accordance with article 36 paragraph (1) of the UUPA jo. Article 34 PP 18/2021 concerning the subject of HGB, namely Indonesian citizens individually.

3. Legal Consequences of the Implementation of Circular Letter Number 2 / SE-HT.02.01 / VI / 2019 on the acquisition of Building Use Rights for a Komanditer Guild

According to Soeroso, legal consequences are the result of an action taken to obtain a result desired by the perpetrator and which is regulated by law. This action is called a legal action. So a legal consequence is the result of a legal action. (Hasanah, n.d.) Enforcement according to the KBBI is a process, method, act of enactment. In Circular Letter No. 2/SE-HT.02.01/VI/2019, it is not regulated regarding the legal consequences of the enactment of the circular so that if it is not regulated regarding the legal consequences, the circular is not binding and cannot be used as a legal basis for the communitarian alliance to have HGB.

Circular No. 2/SE-HT.02.01/VI/2019 does not guarantee legal certainty because as I have explained earlier that in letter b of the contents of the circular that those who apply are members of the komanditer or complementary in the communion of komanditer, but they act not for and on behalf of the communion of komanditer, but for and on behalf of all members in the communion of komanditer. In addition, in letter d it is explained that the registration of HGB for communitarian fellowship is carried out on behalf of all members of the company in the communion komanditer personally (individual persons). This is contrary to letter a part of the circular, which stipulates that the HGB applicant is a komanditer partnership, but the name of the HGB holder listed in the certificate is the name of the members of the komanditer fellowship of individual persons not the name of the business entity of the komanditer fellowship.

In addition, there is a mistake regarding the registration of HGB which was made on behalf of a member of the communitarian fellowship but the documents were completed in the name of the communitarian guild. It should be that if what is registered is the individual name of a member of the komanditer guild, then the completeness document used is the completeness document of the person not the completeness document of the communion of komanditer. Thus, it can be qualified as a nominee agreement because, registration on behalf of members using the completeness documents of the komanditer guild reflects the recognition of the trustees personally that the title to the land belongs to the komanditer guild and that it is prohibited.

In *Black's Law Dictionary*, a nominee is someone who acts on the other party's name as a representative in a limited sense. The term *nominee* is often equated with the term representative or borrow a name, based on an affidavit or power of attorney made by both parties. It is in the context of the nominee's agreement that this is what should be wary of, since it is only borrowed his name to cover and hide the property that is forbidden or unlawful. (Sonia Caroline Batubara; et. al, 2019) The nominee agreement could be detrimental to the member of the communion itself if one of the members whose name is written on the HGB certificate dies.

If that happens, then whether the land can become the person's estate or not. If it is based on the nominee's agreement, the HGB land cannot be an inheritance because the HGB actually belongs to all members of the communion fellowship. Furthermore, as explained in the previous chapter, in the communion there are two members, namely active persero and passive persero, both members of which have different responsibilities. For active liability that is carried out as a whole to concern personal property and acting as a caretaker. Meanwhile, passive liability is limited to only the amount of capital deposited into the communitarian fellowship and does not participate in the management of the communitarian partnership. Regarding this passive matter, it is explained in Article 20 of the Criminal Code which reads:

“Notwithstanding the exception mentioned in the second paragraph of article 30, the name of the moneylender shall not be used in the firm. The company, which has recently not been allowed to do management actions or work in the company, let it be authorized to do so though. He does not have to bear losses that are more than the amount of money he has or has to put in as capital in the company, nor does he need to return all the profits he has enjoyed.”

From the content of the article above, it is explained that this passive company is not allowed to do management actions or work in communion. If we look at the letter d part of the contents of Circular No. 02/SE-HT.02.01/VI/2019, it is said that the registration of HGB for communitarian fellowship is carried out on behalf of all complementary members and komanditers or one member with the consent of all members of the communitarian fellowship. Based on the contents of the circular, the words "all complementary members and komanditer" and "with the consent of all members of the komanditer guild" this means that initially passive companies who should not have participated in the management of the komanditer fellowship became involved in the management of the Komanditer fellowship with their involvement in the registration of HGB. So that it is by Article 21 of the Criminal Code which reads:

“Each money release company that violates the provisions of the first or second paragraph of the previous article is liable in its entirety for all debts and all engagements of the company.”

In the event of such a thing, consequently, all members of this komanditer are liable in their entirety to become equal to the complementary members.

4. CONCLUSION

The conformity between the granting of HGB in Circular Letter Number 2/SE-HT.02.01/VI/2019 with the provisions for the granting of HGB in UUPA and PP 18/2021 is appropriate but can be misleading and can cause thoughts in the community that the Komanditer Guild can have HGB because in letter d the content of the circular it is said that the registration of HGB for the Komanditer Guild is carried out on behalf of all members of the Komanditer Guild or one of the members of the Fellowship Komanditer. So that the circular letter does not conflict with the provision of HGB according to UUPA and PP 18/2021, namely Indonesian citizens. Then when it is taken from the title of the circular, it says that the circular gives HGB to the Komanditer Guild but when viewed in its contents, the HGB is given to individuals. So it can cause thinking in the general public that the Komanditer Guild can have HGB. Therefore, based on the explanation, there should be no need for Circular Letter Number 02/SE-HT.02.01/VI/2019 because the provision of HGB according to the circular does not conflict with the provision of HGB according to UUPA and PP 18/2021.

The legal consequences of the enactment of Circular No. 02/SE-HT.02.01/VI/2019 may give rise to the first legal consequences that can occur in the nominee agreement, namely a simulation or pretend agreement due to registration on behalf of the member using the completeness documents of the komanditer guild, reflecting the recognition of the perseros personally that the right to the land belongs to the komanditer guild which the Komanditer Guild should not have. can have an HGB because the status of the Komanditer Guild is a business entity, then the Komanditer Guild itself does not qualify as the subject of the HGB in Article 36 paragraph (1) which is a legal entity domiciled in Indonesia and established according to Indonesian law. In addition, the granting of the HGB is not by Article 20 of the Criminal Code which says that passive companies are not allowed to manage the Komanditer Guild. Thus, the contents of the circular violated the provisions regarding the Communion of Communion in the KUHD.

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