

## PalArch's Journal of Archaeology of Egypt / Egyptology

### REGISTRATION LEGALITY OF DEED OF ESTABLISHMENT THROUGH SYSTEM ADMINISTRATION OF ENTERPRISE (THE ANALYSIS OF MINISTRY OF LAW AND HUMAN RIGHTS REGULATION NO. 17 OF 2018)

*Ramlan<sup>1</sup>, Eka NAM Sihombing<sup>2</sup>, Fajriawati<sup>3</sup>, Muhammad Iqbal<sup>4</sup>*

<sup>1,2,3,4</sup>Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Indonesia

<sup>1</sup>[ramlan@umsu.ac.id](mailto:ramlan@umsu.ac.id), <sup>2</sup>[ekahombing@umsu.ac.id](mailto:ekahombing@umsu.ac.id), <sup>3</sup>[fajriawati@umsu.ac.id](mailto:fajriawati@umsu.ac.id),

<sup>4</sup>[m.iqbal@umsu.ac.id](mailto:m.iqbal@umsu.ac.id)

**Ramlan, Eka Nam Sihombing, Fajriawati, Muhammad Iqbal. Registration Legality Of Deed Of Establishment Through System Administration Of Enterprise (The Analysis Of Ministry Of Law And Human Rights Regulation No. 17 Of 2018)-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(4), 525-540. ISSN 1567-214x**

**Keywords: Deed Of The Establishment; Registration; Company; System Administration Of Enterprise**

#### **ABSTRACT**

The paper examines the position problem of the Ministry of Law and Human Rights Regulation No. 17 of 2018 in the official hierarchy of Indonesian legislation. On a theoretical level, this research can contribute thoughts on the binding power of a rule in the hierarchy of legislation. Based on article 23 on *Wetboek van Koophandel voor Indonesie*, company registration of the deed of establishment is carried out at district court registrar where the company is established since the Ministry of Law and Human Rights issue Regulation No. 17 of 2018 regarding The Registration of Limited Partnership, Firma Partnership, and Civil Partnership is carried out at the Ministry of Law and Human Rights. This paper uses normative juridical legal research, with the principles of the law approach and statute approach. Based on Article I regarding Transitional Rules of the 1945 Constitution of the Republic of Indonesia, the position of *Wetboek van Koophandel voor Indonesie* is still a law, which is reinforced by Article 7 paragraph (1) of Law No. 12 of 2011. Based on the principle of "*lex superior derogat legi inferior*", the one who remains authorized to accept the registration deed of establishment Limited Partnership, Firma Partnership, and Civil Partnership is the district court registrar. Furthermore, it is not appropriate "Civil Partnership is defined as a partnership that runs the profession...". It is because Civil Partnership Because civil partnership runs businesses and looks for profit, whereas a profession is a job that provides skills services by receiving wages. The government must issues regulation regarding Individual Enterprise and Enterprise which is conceived in 2003 and finally in 2013 with the issue of the "Academic Draft Bill on Civil Partnership, Firma Partnership, and Joint

Partnership".

## INTRODUCTION

A decent and prosperous life is the dream of every community. According to the constitution it has been determined in Article 27 Paragraph (2) of the 1945 State Constitution of the Republic of Indonesia, that "every citizen has the right to a decent life". Based on the provision, it can be understood that a decent life can be obtained if there is an increase in the economy and welfare of every Indonesian citizen (Anastasia, 2013). This is reiterated in Article 28 C Paragraph (1) of the 1945 Constitution, that "every person has the right to develop themselves through the fulfillment of basic needs, in order to improve the quality of life and for the welfare of mankind".

To realize a decent and prosperous life, the community can run a business by establishing various kinds of businesses, both in the form of individual companies, Limited Partnership, Firma Partnership, and Civil Partnership and Naamloze Vennootschap. The companies intended in this study are Limited Partnership, Firma Partnership, and Civil Partnership.

According to Ridwan Khairandy as quoted by Ramlan (2016) one business activity can be said as a company if it meets the following elements:

1. Forms of business, whether run by individuals or business entities;
2. Conducting activities continuously and
3. The goal is to look for profit.

For the government, company registration is very important to conduct guidance, direction, supervision and create a healthy business climate, because the company register records information that is correctly made from each business activity so as to better guarantee the development and certainty of business for the business world. . The list of companies in question is official information for all interested parties that contains the identity and matters relating to the business world and companies that are established, working and domiciled in the territory of the Republic of Indonesia (Ministry of Trade of the Republic of Indonesia, 2013).

The registration itself is based on Wet Boek van Koophandel located at the district court where the company was founded, which can be divided into two stages; the first stage, pursuant to Article 23 of the Indonesian Criminal Code, is that the firms are obliged to register the company's deed of establishment in the register provided for this by *raad van justitie* (District Court) of the legal area where the company is located. This means that after the company is formed, the company owners are obliged to register the company deed of incorporation made by a notary in the district court partnership where the company was founded. The existence of Notary's function holds an essential role to make an authentic written item of evidence for legal activity done by the community (Adinugraha et al, 2018).

The second stage, based on Article 38 of the Indonesian Criminal Code, the companies are required to re-register the deed in its entirety along with the permits obtained in the register held for that matter at the clerk's *raad van justitie* (district court) in the legal jurisdiction of the company established, and subsequently announced in the official newspaper. It means that after

registration legality of the deed of establishment is complete, the company owners re-register the company to the local district court committee, which includes; company name, company brand, date of establishment of the company, period of establishment of the company, main activities and other business activities of the company, business licenses owned, address of the company at the time of establishment and any changes thereof, address of each branch office, sub-office and agent as well as company representatives, the complete identity of the company management, company capital, the date of commencement of business activities, etc. including at the time of the registration are required to submit an official copy of the company's deed of establishment.

However, since the promulgation of the Regulation of Obligatory Registration on February 1, 1982, the second stage of registration obligations, in particular Article 38 of the Criminal Code, is no longer carried out in the district court organizations where the company was founded. The company registration is carried out in the company registration office (trading sector), while the registration of company establishment deed still remains in the partnership of the district court where the company was founded.

In further developments, after the issuance of Law Number 1 of 1995 concerning Naamloze Vennootschap, registration of Naamloze Vennootschap establishment certificates has also undergone a change, which has so far been carried out in district court partnerships, now carried out in the Ministry of Law and Human Rights. This is expressly determined in Article 7 paragraph (6) of the Company Law that the company obtains legal status after the deed of establishment is approved by the Minister. The Minister referred to herein under Article 1 number 7 of the Company Law is the Minister of Justice, while the registration of the deed of establishment of Limited Partnership, Firma Partnership, and Civil Partnership is still in the district court partnership.

The advances in technology and business, the Government wants to bring order to the registration process to better provide legal certainty and ease for entrepreneurs, especially for Limited Partnership, Firma Partnership, and Civil Partnership. For this reason, the Government issued Government Regulation Number 24 of 2018 concerning Online Integrated Business Licensing Services. The processes of the legal evolution of the company form as it has developed in Indonesian history (Mahy, 2013). Following up Government Regulation Number 24 of 2018, the Ministry of Law and Human Rights issued Regulation Number 17 Year 2018 regarding the Registration of Limited Partnership, Firma Partnership, and Civil Partnership, and based on this regulation, the registration deed of establishment of Limited Partnership, Firma Partnership and Civil Partnership which had been carried out in the district court partnership where the company was founded, turned to the Ministry of Law and Human Rights.

Based on the description, the question is whether the ministry regulation overrides the law? For this reason, this paper is intended to analyze the regulation No. 17/2018 which overrides Wetboek van Koophandel voor

Indonesia in the official hierarchy of Indonesian legislation and explains the meaning of civil alliance.

## **RESEARCH METHODS**

The research method used in this paper is a legal research method with a legislative approach. Peter Mahmud Marzuki as quoted by Diantha (2015) says that legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues being faced. The normative methodology is used to collect the data within the constitution and conceptual approach (Sesung and Iqbal, 2018)

The research approach used is the legal principles approach and statute approach. Rahardjo as quoted by Sutrasno (2014) says the principle of law is the "heart" of the rule of law because it is the most extensive foundation for the issue of law rule. It means that the legal regulations can eventually be returned to the principles. This legal principle deserves to be called the reason for the issue of the rule of law or is a *legis ratio* of the rule of law. The principle of law is not of law rule, but no law can be understood without knowing the legal principles contained therein.

The statute approach or law synchronization is a study of various legal rules. Soerjono Soekanto and Sri Mamudji as quoted by Yani (2018) emphasizes that the statute approach was carried out by examining all the laws and regulations relating to the legal issues being handled.

The nature of the research used in this paper is prescriptive, adhering to the characteristics of legal science as applied science. Peter Mahmud Marzuki as quoted by Sihombing (2018) explains the prescriptive given in legal research activities must be able and possible to be applied. Therefore what is produced by legal research, even if it is not a new legal principle or a new theory, is at least a new argument

## **DISCUSSION AND ANALYSIS**

### ***Registration legality of deed of establishment through system administration of enterprise***

One of the most important requirements in establishing a company is the deed of establishment. If the company is small-scale and has no business with government agencies or other large companies with legal status, the deed of the establishment may not be so urgent. However, if the company is large-scale with a high level of productivity, moreover has a working relationship with government agencies, then a company deed of the establishment will be questioned because, without a deed of establishment, the company will not be able to take care of other documents.

Deed of Establishment deed is a document made before a notary to establish a company. The purpose of making deed of establishment is:

- a. To find out the purpose of the company establishment.
- b. The company can conduct transactions with other parties, both government and private institutions (small or large scale) who have legal

entities.

c. Legalize the company before the law, so as to provide clarity about the company's ownership status.

d. To find out the proportion of profit-sharing of a company, so as to avoid disputes regarding the distribution of profits and the proportion of losses that must be borne by each founder.

The steps for making a company deed of the establishment are generally the same as filing a company name. Regarding the deed of establishment of a company which is a legal entity must be approved by the Ministry of Law and Human Rights. While the deed of establishment of a company that is not a legal entity, does not need to get approval from the Ministry of Justice and Human Rights, it is enough to make it in front of the notary registered at the Registrar's Office of the Local District where the company is founded.

Broadly, the company deed of establishment contains the articles of association, which formally contains the title, number, place, day, and date of drafting and signing of the deed of establishment. Materially contains the identity of the founders, company identity, company objectives, the organizational structure of the company, the period of the company's standing, the company's business, corporate legal relations (internal and external), obligations and rights to third parties, ways of resolving disputes, and others if need.

But now, since the issuance of the Ministry of Law and Human Rights No. 17/2018, the establishment of a company that is not a legal entity (especially Limited Partnership, Firma Partnership, and Civil Partnership) registration of the deed of establishment of the company is no longer in the partnership of the District Court where the company was founded, but in the Ministry of Law and Human Rights with the following stages:

### ***Request for name submission***

Based on the provisions of Article 3 jo Article 5 paragraph (1) Ministry of Law and Human Rights No. 17/2018, the application for registration of the establishment of Limited Partnership, Firma Partnership, and Civil Partnership is submitted by the Applicant to the Minister, or the founders jointly authorize the Notary to submit the application through the System Administration of Enterprise. The application for registration of the establishment of Limited Partnership, Firma Partnership, and Civil Partnership is based on Article 4 Ministry of Law and Human Rights Regulation No. 17/2018 must be done first with the submission of the name Limited Partnership, Firma Partnership, and Civil Partnership.

Submission of the name is usually done for the establishment of a legal entity of Naamloze Vennootschap or Foundation. The process for submitting the use of the name Limited Partnership, Firma Partnership, and Civil Partnership submitted based on the provisions of Article 5 paragraph (2) Ministry of Law and Human Rights Regulation No. 17/2018 must meet the following requirements:

- a. written in Latin letters;
- b. has not been used legally by Limited Partnership, Firma Partnership and Civil Partnership on System Administration of Enterprise;
- c. not contrary to public order and / or decency;
- d. not the same as or not similar to the name of a state institution, government agency, or international institution unless obtaining permission from the relevant institution; and
- e. does not consist of numbers or series of numbers, letters, or series of letters that do not form words.

Name submission is done electronically by filling out the name submission format that at least contains:

- a. payment number for approval of the use of the name Limited Partnership, Firma Partnership, and Civil Partnership from the bank of perception; and
- b. name of Limited Partnership, Firma Partnership, and Civil Partnership ordered.

Application for submission of the name Limited Partnership, Firma Partnership and Civil Partnership based on Article 6 Ministry of Law and Human Rights Regulation No. 17/2018 is charged. Payment of fees is done through a perception bank in accordance with statutory provisions.

After the request for submission of the name Limited Partnership, Firma Partnership, and Civil Partnership has been completed, the applicant is just waiting for approval by the Minister based on Regulation No. 17/2018 The Minister will convey the answer electronically. Approval given by the Minister at least contains:

- a. order number of Limited Partnership, Firma Partnership, and Civil Partnership;
- b. name of Limited Partnership, Firma Partnership, and Civil Partnership that can be used;
- c. order date;
- d. expiration date; and
- e. payment code.

Approval given by the Minister is only for 1 (one) name of the Limited Partnership, Firma Partnership, and Civil Partnership. However, if the application for a name does not meet the requirements for submitting and using the name Limited Partnership, Firma Partnership, and Civil Partnership, then based on Article 8 Ministry of Law and Human Rights Regulation No. 17/2018 The Minister can electronically reject the name of the Limited Partnership, Firma Partnership, and Civil Partnership. Whereas the use of the name Limited Partnership, Firma Partnership, and Civil Partnership which has been approved by the Minister based on Article 9 Ministry of Law and Human Rights Regulation No. 17/2018 is only valid for a maximum period of 60 (sixty) days. So the name that has been approved by the Minister must be followed up immediately by making a deed of establishment of Limited Partnership, Firma Partnership and Civil Partnership and continued to the registration process through SABU.

### *Application for Registration of Establishment*

Based on Regulation No. 17/2018 applications for registration of the establishment of a Limited Partnership, Firma Partnership and Civil Partnership Alliance must be submitted by the Applicant through SABU, and must be submitted no later than 60 (sixty) days from the date the deed of establishment of Limited Partnership, Firma Partnership and Civil Partnership has been signed. The application is made by filling in the registration format. If the registration for the establishment of Limited Partnership, Firma Partnership, and Civil Partnership exceeds the specified time period, then the application for registration of the establishment of a Limited Partnership, Firma Partnership, and Civil Partnership cannot be submitted to the Minister.

Registration of the establishment of Limited Partnership, Firma Partnership, and Civil Partnerships specified in Article 11 No. 17/2018 is charged according to the provisions of the laws and regulations in the field of PNPB that apply to ministries that carry out government affairs in the field of law and human rights. Payment of registration fees is made through a perception bank in accordance with statutory provisions.

Fill in the registration format for the establishment of Limited Partnership, Firma Partnership and Civil Partnership based on Article 12 Ministry of Law and Human Rights Regulation No. 17/2018 must be accompanied by supporting documents submitted electronically. The supporting documents include:

- a. an electronic statement from the Petitioner stating that the documents for registration of Limited Partnership, Firma Partnership, and Civil Partnership are complete; and
- b. Statement from the Corporation regarding the truth of the information of the beneficial owner of the Limited Partnership, Firma Partnership, and Civil Partnership Alliance.

All documents for Limited Partnership, Firma Partnership, and Civil Partnership registration are then kept by a Notary, which includes:

- a minute deed of establishment of Limited Partnership, Firma Partnership and Civil Partnership which at least contains;
  - 1) founder's identity consisting of the name of the founder, domicile, and occupation;
  - 2) business activities;
  - 3) the rights and obligations of the founders; and
  - 4) the term of the Limited Partnership, Firma Partnership, and Civil Partnership.
- b. Photocopy of a certificate of the complete address of Limited Partnership, Firma Partnership, and Civil Partnership.

If the application for registration of the establishment of Limited Partnership, Firma Partnership, and Civil Partnership is accepted, then based on Article 14 Limited Partnership, Firma Partnership and Civil Partnership No. 17/2018 The Minister issues a Tax Registered Certificate of Limited Partnership, Firma Partnership, and Civil Partnership delivered to the Applicant electronically. In this case, the Notary can directly print his / her own Tax Registered Certificate of Limited Partnership, Firma Partnership, and Civil Partnership using F4 /

folio size white paper weighing 80 (eighty) grams.

***Position of limited partnership, firma partnership and civil partnership that was issued before the issuance of the ministry of law and human rights regulation no. 17/2018***

When this Ministerial Regulation comes into force, based on Article 23 Limited Partnership, Firma Partnership and Civil Partnership No. 17/2018 Limited Partnership, Firma Partnership and Civil Partnership that have been registered in the District Court based on statutory regulations, then within 1 (one) year after the promulgation of this Ministerial Regulation, which is not later than August 1, 2019, must register registration in accordance with the provisions of this Ministerial Regulation.

Registration is permitted to use names that have been legally used by Limited Partnership, Firma Partnership and Civil Partnership that have been registered through System Administration of Enterprise and this registration is free of charge.

CVs registered at a district court prior to the enactment of the Minister of Law and Human Rights Regulation No. 17 of 2018 are legally valid because their establishment is based on provisions stipulated in the Commercial Code, thus providing legal certainty for the owner, with the obligation to record CV registration in the business organization application system (Mulada and Rahman, 2019).

**THE ANALYSIS OF THE MINISTRY OF LAW AND HUMAN RIGHTS REGULATION NO. 17 OF 2018**

***The legality of the authority to record the deed of establishment of limited partnership, firma partnership and civil partnership from district court to the ministry of law and human rights***

As it is known that based on Article 23 of the Indonesian Criminal Code, companies that establish firms are required to register a deed of establishment in the register provided for this by the Registrar of *Raad van Justitie* (District Court) of the legal area where the company is located. However, since 2018 the registration deed of the establishment of the company has been conducted at the Ministry of Law and Human Rights, as determined in Article 3 Limited Partnership, Firma Partnership and Civil Partnership No. 17/2018 that:

"An application for registration of the establishment of a Limited Partnership, Firma Partnership, and Civil Partnership was submitted by the Petitioner to the Ministry of Law and Human Rights through System Administration of Enterprise".

The application for registration of the establishment of a Limited Partnership, Firma Partnership and Civil Partnership is based on Article 2 letter a Limited Partnership, Firma Partnership and Civil Partnership No. 17/2018 includes; "Registration deed of an establishment".

Then the question is whether the Ministry of Law and Human Rights



Regulation (Limited Partnership, Firma Partnership and Civil Partnership No. 17/2018) overrides the *Wetboek van Koophandel voor Indonesie*? For this reason, it is also necessary to see whether *Wetboek van Koophandel voor Indonesie* is classified as law and still valid.

Historically the *Wetboek van Koophandel voor Indonesie* was a product of legislation legacy from the Dutch colonial era, and it was a codification of Dutch commercial law whose contents and forms were largely the same as *French Code De Commerce* (codified French trade law) which was declared in force in the Netherland since October 1, 1808, until 1838, because at that time the Netherlands was a French colony. The same thing the Dutch had colonized Indonesia, based on the principle of concordance then the Netherlands imposed the *Wetboek van Koophandel voor Indonesie* (codification of Dutch commercial law) in Indonesia through an announcement with publication on April 30, 1847 (Stb. 1847 No. 23) which came into force on May 1, 1848 (Ramlan, 2016: 67).

After Indonesia's independence in 1945, the *Wetboek van Koophandel voor Indonesie* still applies in Indonesia based on Article II of the Transitional Rules of the 1945 Constitution (1945 Constitution). So *Wetboek van Koophandel voor Indonesie* as a law is still valid in Indonesia, as long as it has not been replaced with a new law.

The types and hierarchy of Regulations consisting of:

- a. 1945 Constitution of the Republic of Indonesia;
- b. Resolutions of the People's Representative Council;
- c. Act and Government Regulation in Lieu of Acts;
- d. Government regulations;
- e. Presidential regulation;
- f. Regional Regulations; and
- g. Local Regulations.

So *Wetboek van Koophandel voor Indonesie* in the type and hierarchy of Indonesian Legislation is considered as a law, which until now is still declared valid as a law.

If related to *stufentheorie* concept of Hans Kelsen and Hans Nawiasky, which in legislation is known as hierarchical theory, according to Jimly Asshiddiqie and M. Ali Safa'at as quoted by Aditya and Winata (2018) that the system The law is arranged in stages and stratified like a ladder. The relationship between norms governing the actions of other norms and other norms is referred to as super relations and sub-ordination in spatial contexts. Furthermore, Farida Indrati said that the norm that determines the actions of other norms is superior, whereas the norms that do actions are called inferior norms. Therefore, actions carried out by higher norms (superior) become the reason for the validity of the whole legal system that forms a single unit (Aditya and Winata, 2018).

So in this case Ministry of Law and Human Rights Regulation No. 17/2018 clearly contradicts *Wetboek van Koophandel voor Indonesie*, which when related to the hierarchy or order of the laws and regulations under the 1945 Constitution in accordance with the provisions of Article 7 paragraph (1) of

Law 12/2011 above. The hierarchy or sequence of the laws and regulations has legal force in the said laws and regulations, as determined in Article 7 paragraph (2) jo Article 5 letter c of Law 12/2011 that; "The legal force of legislation in accordance with the hierarchy as referred to in paragraph (1)".

#### **Article 5 letter c:**

"Informing legislation, it must be done based on the principle of the establishment of good legislation, which includes, among others, the principle of conformity between

types, hierarchy, and material content" ie the principle that determines in the formation of legislation must really pay attention to the material the right content in accordance with the type and hierarchy of the legislation ".

Based on these provisions, it is clear that the legal force and binding power of each statutory regulation, so that the material for statutory regulations may not contain a substance that conflicts with higher regulations. The material of laws and regulations can only make rules that are detailed and implement the laws and regulations on it. In this case, Purnadi Purbacaraka and Soerjono Soekanto as quoted by Setiawan (2017) said that in the formation of laws and regulations must pay attention to the principles of statutory regulations, including the principle of *lex superiori derogat legi inferiori*, where laws made by a higher authority has a high position as well. Febriansyah (2016) says the principle of *lex superior derogat legi inferiori* is a principle where higher regulations can defeat lower regulations, so that if there is a conflict or conflict between high and low laws, then the higher should take precedence.

Based on the description above, the Ministry of Law and Human Rights Regulation No. 17/2018 does not have legal force and binding power as a rule, so that what is still in effect is *Wetboek van Koophandel voor Indonesie*, then the one who has the authority to accept the registration deed of establishing Limited Partnership, Firma Partnership, and Civil Partnership remains Panitra District Court. Unless the order to register the deed for the establishment of Limited Partnership, Firma Partnership, and Civil Partnership is ordered by law, then the principle of *"lex post teriori derogat legi priori"*, that the provisions of new laws and regulations exclude/remove the enactment of the old statutory provisions governing the same legal material. " So, if there is a conflict between the old law and the new one, then the new law will be enacted.

#### **DEFINITION OF CIVIL PARTNERSHIP**

Based on Article 1 number 3 Ministry of Law and Human Rights Regulation No. 17/2018, a civil alliance is defined as a partnership that runs the profession on an ongoing basis and each of its allies acts on its own behalf and is personally responsible to third parties.

The author considers it improper to mean " Civil Partnership is a partnership that runs the profession ...". In Indonesian Civil Code, Civil Partnership is known as *"maatschap"*, which is regulated in Article 1618 through Article

1652. The name *maatschap* or *vennootschap* (in Dutch), partnership (in English) is translated into Indonesian as "partnership" or "company ", But in addition, there are those who translate it into "partnership ". To maintain consistency, in this case, continue to use the term "fellowship".

When viewed from nature and function, the alliance (*maatschap*) can be divided into two senses; First, if the partnership does not run the company, it is called a "civil union", while those who administer it are called "members". Second, if the partnership runs the company then it is called "civil partnership", while those who run the company are called "allies".

Based on the description, there are two terms that have almost the same meaning, namely "civil union" and "civil partnership". Make the term civil union also known as non- profit or non-commercial activities. The government calls it association, as determined in Article 1 number 1 of the Ministry of Law and Human Rights Regulation No. 6 of 2014 concerning Ratification of the Association's Legal Entity.

"Associations are legal entities which are groups of people established to realize the common goals and objectives in the social, religious and humanitarian fields and do not share profits with their members".

The civil partnership runs the business and looks for profit. According to Agustin (2014: 137) the difference between a civil union and a civil partnership is that a civil union does not run a company, whereas a civil union runs a company. That way the civil union is a business entity that is included in general civil law because it does not run the company. While the civil alliance is a business entity that is included in the special civil law (commercial law), because it runs the company.

Meanwhile, Angela Schneeman as quoted by Agustin (2014) said that civil partnership with a partnership to get profits that are shared together in accordance with parts or portions that have been mutually agreed upon.

The profession is literally adapted from English, namely "profession" which comes from the Latin "professus", which means capable or expert in a particular field. According to Sidharta (2015) professional words are defined as work (permanent) to earn a living (Dutch: baan; English: job or occupation), legal or not. So, the profession is defined as every job to earn money. In a more technical sense, the profession is defined as any particular permanent activity to obtain a living carried out in a way that is related to how to work and produce high-quality works by receiving high fees. Such authenticity is obtained through a process of experience, learning at certain (higher) educational institutions, intensive training, or a combination of these.

There are several characteristics and characteristics of the profession that are not found in the type of work that is not a profession. Robert W. Richey, as quoted by Arikunto in Mustain (2017), put forward several characteristics and professional requirements as follows:

a. More concerned with ideal humanitarian services compared to personal interests.

- b. A professional worker, actively requires a long time to learn the concepts and principles of specific knowledge that supports his expertise.
- c. Have certain qualifications to enter the profession and be able to follow developments in the growth of the position.
- d. Have a code of ethics that regulates membership, behavior, attitudes, and ways of working.
- e. Requires a high intellectual activity.
- f. The existence of an organization that can improve service standards, self-discipline in the profession, and the welfare of its members.
- g. Provide opportunities for progress, specialization, and independence.
- h. Look at the profession of a life career (alive career) and become a permanent member.

While the characteristics as a condition of civil alliance according to Gunawan Widjaya as quoted by Zakhina et al., (2016: 4), namely:

- a. Agreement between 2 (two) or more people.
- b. Each member is solely responsible for the third party.
- c. Do not have wealth, for that every ally put something (inbreng).
- d. The goal is to share the profits from the income.
- e. Use the name of one of its members, and may not use a common name or firm.
- f. Each member cannot bind other members unless they have authorized it.
- g. Free to determine the advantages and disadvantages of its members.

Based on the description above, it is very clear to us that it is not appropriate if a civil alliance is defined as carrying out the profession as determined in Article 1 number 3 Ministry of Law and Human Rights Regulation No. 17/2018. Because the Civil Partnership is an association of two or more people who jointly own and run a business for profit, and all business gains and losses by the agreement will be divided proportionally. While the profession is a job that requires certain expertise obtained from higher education, which generally includes work that is supported by personalities and professional attitudes, such as architects, doctors, accountants, soldiers, lawyers, teachers, designers, and so forth.

***Position of limited partnership, firma partnership and civil partnership that issued before the enactment of the ministry of law and human rights regulation no. 17/2018***

Article 23 paragraph (1) Regulation No. 17/2018 specifies that; when this Ministerial Regulation comes into force, Limited Partnership, Firma Partnership and Civil Partnership that have been registered at the District Court based on statutory regulations, within 1 (one) year after the enactment of this Ministerial Regulation are obliged to record such registration in accordance with the provisions of this Ministerial Regulation.

If the article is interpreted, all Limited Partnership, Firma Partnership, and Civil Partnership that were established prior to the issuance of Ministry of Law and Human Rights Regulation No. 17/2018 must register registration in accordance with the provisions of this Ministerial Regulation, and be made no later than 1 (one) year after the promulgation of this Ministerial Regulation, no

later than August 1, 2019.

Sanctions are only given to the owner of Limited Partnership, Firma Partnership, and Civil Partnership in the future if discrepancies in the data and supporting documents are found at the time of registration, the SKT is revoked and declared invalid, as determined in Article 22 of Regulation No. 17/2018: "If later found incompatible data and supporting documents in the format of registration of incorporation, registration of amendments to the articles of association, and registration of dissolution of Limited Partnership, Firma Partnership and Civil Partnership, Tax Registered Certificate revoked and declared invalid".

Anton M. Moeliono as quoted by Effendy (2013) said; "The language in the law should be clear, precise and not be meaningful, and not greet people personally. In addition, the sentence in the law tends to resemble a formula, such as the following example: "Whoever is ... convicted/convicted with punishment ...". While Montesquieu, as quoted by Effendy (2013), said that in formulating a statutory regulation, there are several limitations that must be considered, namely:

- a. The style of language should be concise as well as simple;
- b. The term chosen is as far as possible absolute and not relative, with the intention to leave as little as possible the emergence of individual differences of opinion;
- c. Limiting oneself to the real and actual, and avoiding the figures of speech and conjecture;
- d. Not smooth so it requires sharpness of mind readers, because many people have a moderate level of understanding;
- e. Not for the practice of logic, but for the simple thoughts that exist in the average human;
- f. Do not confuse the principal with the exception, or alteration, unless it is deemed absolutely necessary;
- g. Does not provoke debate/dispute; it is dangerous to give reasons that are too detailed because this can open the door to conflict;
- h. It is really considered whether it contains practical benefits;
- i. Do not shake the foundations of reason and fairness and natural fairness.

So the legislation made must meet the "principle of usability and effectiveness" as specified in Article 5 letter e of Law No. 12/2011, that; "Every statutory regulation made is really needed and useful in regulating the life of society, nation, and state". In this case according to Munir Fuady as quoted by Rosana (2014:); "The law must be in accordance with the legal awareness of the community, meaning that the law must follow the will of the community. As Gustav Radburch said, quoted by Sagama (2016) that; "The law in its achievement cannot be separated from justice, certainty and usefulness". The existence of the law in question is both active law (judge in court) and passive (legislation). That way the registration system through System Administration of Enterprise is expected to truly provide justice and convenience for the community, especially for entrepreneurs.

## CONCLUSION

Based on Article I of the Transitional Rules of the 1945 Constitution, the position of *Wetboek van Koophandel voor Indonesie* as a law is still valid in Indonesia, this is confirmed in the provisions of Article 7 paragraph (1) of Law 12/2011, that *Wetboek van Koophandel voor Indonesie* is in the type and hierarchy of Indonesian Legislation, domiciled as a law, which until now is still declared valid as a law. If related to the Ministry of Law and Human Rights Regulation No. 17/2018, it is still *Wetboek van Koophandel voor Indonesie* which has legal force and binding power as a rule. In accordance with the principle of "*lex superior derogat legi inferior*", that the high law (*lex superior*) overrides the low law (*lex inferior*). Then the consequence, who remains authorized to accept the registration deed of the establishment of a Limited Partnership, Firma Partnership, and Civil Partnership are the District Court.

The Ministry of Law and Human Rights Regulation No. 17/2018 does not provide clear arrangements for Limited Partnership, Firma Partnership and Civil Partnership that do not register registration in accordance with the provisions of this Ministerial Regulation. Are the Limited Partnership, Firma Partnership, and Civil Partnership declared closed (disbanded), or have to take care of them again (establishing from the start), or re-register again? The law should be made in accordance with the wishes of the people and the need for a sense of justice for the community.

## REFERENCES

- Agustin, Adha Dia. (2014). The Independence of Notary in The Civil Partnership of Notary. *Rechtsidee Law Journal*, 1(2), 1-12.
- Adinugraha, Calvin Oktaviano., Sudarwanto, Albertus Sentot., & Amiruddin, Novendri. (2018). A Review on Notarial Deed Restriction Regulation based on Law on Office of Notary Public. *International Journal of Multicultural and Multireligious Understanding*, 5(2), 318-329.
- Yani, Ahmad. (2018). Sistem Pemerintahan Indonesia: Pendekatan Teori dan Praktek Kontitusi Undang-Undang Dasar 1945". *Jurnal JIKH*, 12(2), 55-68.
- Sidharta, B. Arief. (2015). Etika dan Kode Etik Profesi Hukum. *Veritas et Justitia Jurnal Ilmu Hukum*, 1(1), 220-249.
- Sihombing, Eka N.A.M. (2018). Kebijakan Afirmatif bagi Usaha Mikro, Kecil dan Menengah di Bidang Kekayaan Intelektual. *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*, 7(3), 427-444.
- Rosana, Ellya. (2014). Kepatuhan Hukum Sebagai Wujud Kesadaran Hukum Masyarakat". *Jurnal TAPIS*, 10(1), 1-25.
- Febriansyah, Ferry Irawan. (2016). Konsep Pembentukan Peraturan Perundang-undangan di Indonesia". *Jurnal Perspektif*, 21(3), 220-229.
- Mustain, Iing. (2017). *Karakteristik dan Syarat Profesi Guru*. Cirebon: Fakultas Tarbiyah IAIN Syekh Nurjati.
- Setiawan, I Kadek. (2015). Inkonsistensi Pengaturan dalam Pelaksanaan Kewenangan dan Biaya Pemberian Izin Usaha Mikro. *Jurnal Legislasi Indonesia*, 14(3), 337-344.
- Diantha, I Md Pasek. (2015). *Konsepsi Teoritis Penelitian Hukum Normatif*.

- Denpasar: Fakultas Hukum Universitas Udayana.
- Zakhina, Ina., Safa'at, Rachmad., and Istislam. (2016). Karakteristik dan Bentuk Persekutuan Perdata Notaris. *Jurnal Program Studi Magister Kenotariatan Fakultas Hukum Universitas Brawijaya Malang*, 9(2), 1-24.
- Kementrian Perdagangan Republik Indonesia. (2013). *Laporan Analisis Pelaksanaan Wajib Daftar Perusahaan di Era Otonomi Daerah*. Jakarta: Pusat Kebijakan Perdagangan Dalam Negeri Badan Pengkajian dan Pengembangan Kebijakan Perdagangan Kementrian Perdagangan.
- Mahy, Petra. (2013). The Evolution of Company Law in Indonesia: An Exploration of Legal Innovation and Stagnation. *American Journal of Comparative Law*, 61(2), 377-432.
- Mulada, Diman Ade., and Rahman, Arief. (2019). Legal Certainty of Limited Partnership (CV) Registered in the District Court After The Enactment of Minister of Law And Human Rights Regulations Number 17 of 2018. *UNRAM Law Review*, 3(2), 108-113.
- Noor Muhammad Aziz. "Urgensi Penelitian dan Pengkajian Hukum dalam Pembentukan Peraturan Perundang-undangan". *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*, Vol. 1, no. 1 (2012): 23.
- Ramlan. *Hukum Dagang; Perkembangan Buku Kesatu Kitab Undang-Undang Hukum Dagang Indonesia*, Pertama. (Malang: Setara Press, 2016), 67.
- Rini Fitriani. "Aspek Hukum Legalitas Perusahaan atau Badan Usaha dalam Kegiatan Bisnis," *Jurnal Hukum Samudra Keadilan*. Vol. 12, no. 1 (2017): 136-137.
- Sesung, Rusdianto., and Iqbal, Muhammad. (2018). Legal Consequences Embedded on the Charity Institution Due to Uncompleted Synchronization Based on Constitution Number 28 the Year 2014". *International Journal of Science and Research (IJSR)*, 7(2), 61-66.
- Sutrasno, S. Andi. (2014). Kajian Normatif Pasal 1 Ayat 3 Undang-undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Journal Rechstaat Ilmu Hukum Fakultas Hukum UNSA*, 8(1), 1-9.
- Sagama, Suwardi. (2016). Analisis Konsep Keadilan, Kepastian Hukum dan Kemanfaatan dalam Pengelolaan Lingkungan. *Mazahib Jurnal Pemikiran Hukum Islam*, 15(1), 20-41.
- Anastasia, Tamara. (2013). Pemberdayaan Usaha Mikro, Kecil dan Menengah di Kota Manado (Ditinjau Berdasarkan Undang-Undang Nomor 20 Tahun 2008). *Jurnal Hukum Unsrat*, 1(5), 64-79.
- Effendy, Taufik. (2018). Language of Legislation". *Jurnal Al' Adl*, 5(10), 20-27.
- Aditya, Zaka Firma and Winata, M. Reza. (2018). Rekonstruksi Hierarki Peraturan Perundang-undangan di Indonesia". *Jurnal Negara Hukum*, 9(1), 79-100.

## LAW OF INDONESIA

1945 Constitution.

Wetboek van Koophandel. Staatsblad 1847: 23.

Regulation Number 12 of 2011 regarding Formation of Legislation  
Legislation Number 3 of 1982 regarding Company Registration Required.

Government Regulation Number 24 of 2018 regarding Online Integrated

Business Licensing Services.  
Ministry of Law and Human Rights Regulation Number 17 of 2018 regarding  
Registration Limited Partnership, Firma Partnership, and Civil Partnership.