

CHAPTER I

INTRODUCTION

1.1. Background

Business entity has become the subject of law and regulation in Indonesia since colonial era. *Burgerlijk Wetboek* or Indonesian Civil Code (*Staatsblad* No. 23 of 1847) regulates the associations of individuals that aim to run a company in the form of *Maatschap* (*Persekutuan Perdata*), while in the *Wetboek van Koophandel* or Indonesian Commercial Code (*Staatsblad* No. 23 of 1847) regulates the arrangements of *Vennootschap onder Firma* (*Persekutuan Firma*, abbreviated as Fa), *Commanditaire Vennootschap* (*Persekutuan Komanditer*, abbreviated as Cv), and *Naamlooze Vennootschap* or Limited Liability Company (*Perseroan Terbatas*).¹

The regulations in both Indonesian Civil Code and Indonesian Commercial Code concerning company emphasize solely on company as institution that aims to make profit. The implementation of these regulations applies to individuals who are involved in the company. The rights and obligations arise from these regulations also focus on the relation between members of company or partners. Therefore, commercial law, which regulates company matters in Indonesia is defined as civil law specifically regulating agreements that arise in the running process of a company.

¹ Janus Sidabalok, *Hukum Perusahaan: Analisis Terhadap Pengaturan Peran Perusahaan Dalam Pembangunan Ekonomi Nasional di Indonesia*, (Bandung: Nuansa Aulia, 2012), p.1.

As time progresses, the development of companies in Indonesia affects other parties outside of the company. This rises the needs of legal protection regarding company that can be done by complementing the existing regulations, which have been carried out since the colonial era, or enacting new regulations.²

There were various laws established in the past during colonial era that governed many aspects related to companies in Indonesia, such as Stb. 1933 No. 108 concerning Cooperatives, Stb. 1038 No. 100 concerning Air Freight, Stb. 1939 No. 569 Jo. No.717 concerning Indonesian Airlines, and so on. The development of regulations pertaining to companies was growing even more after Indonesia's Independence, covering more business aspects, such as state owned company law, company/foreign investment law as an amendment to limited liability company law, and so on.

The driving factor of the establishment of these regulations, especially after the independence of Indonesia, is the awareness of companies as an important variable in national economic development, where companies are seen as both economic actors as well as one of the pillars in the development of national economy. Moreover, other aspects outside of companies also need to be legally protected, namely business partners, consumer protection, environment, manpower, and many more.

Unincorporated Entity is a company that is established under partnership agreement between two or more individuals who bind themselves to continuously work together by providing income in form of money, goods, labor, expertise,

² *Ibid*, p.2.

and/or clients or customers to be jointly coordinated, having shared name and place to run with the aim of finding and dividing future profits. An Unincorporated Entity in Indonesia is a business entity that is established under *Maatschap*, *Firma*, and *Commanditaire Vennootschap*.

The regulations of establishment of an Unincorporated Entity are stipulated in Article 16 to Article 35 of Indonesian Commercial Code and Article 1618 to Article 1652 of Indonesian Civil Code. However, since the issuance of Ministerial Regulation of Law and Human Rights No. 17 of 2018 concerning the Registration of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*, certain changes have been made in terms of registration procedures of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*.

In general, Ministerial Regulation No. 17 of 2018 regulates the registration of *Commanditaire Vennootschap*, *Firma*, and *Maatschap* which covers registration of deed of establishment, registration of amendments to Deed of Establishment, and registration of dissolution. The purpose behind Ministerial Regulation No. 17 of 2018 is to carry out the notions manifested in provisions stated in Article 15 Paragraph (3), Article 16 Paragraph (3), and Article 17 Paragraph (3) of Government Regulation No. 24 of 2018 concerning Electronic Integrated Business Licensing Services.

The implementation of Ministerial Regulation No. 17 of 2018 has certainly set out some legal implications on *Commanditaire Vennootschap*, *Firma*, and *Maatschap* in terms of registrations in Indonesia. For this reason, the author is interested in conducting in-depth analysis on this matter in form of research with

the title, “LEGAL ANALYSIS ON IMPLICATIONS OF MINISTERIAL REGULATION OF LAW AND HUMAN RIGHTS NO. 17 OF 2018 TOWARD REGULATIONS OF *COMMANDITAIRE VENNOOTSCHAP*, *FIRMA*, AND *MAATSCHAP* IN INDONESIA.”

1.2. Formulation of Issues

Based on the background stated above, this thesis shall address some issues, which are:

1. How are the regulations of *Commanditaire Vennootschap*, *Firma*, and *Maatschap* prior to the issuance of Ministerial Regulation No. 17 of 2018 concerning Registration of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*?
2. What are the implications of Ministerial Regulation of Law and Human Rights No. 17 of 2018 toward Regulations of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*?

1.3. Purpose of Research

This thesis has primary and secondary purposes. The primary purposes of this thesis are:

1. To discover and analyze the regulations of *Commanditaire Vennootschap*, *Firma*, and *Maatschap* prior to the issuance of Ministerial Regulation No. 17 of 2018 concerning Registration of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*.
2. To discover and analyze the implications that arise after the implementation of Ministerial Regulation No. 17 of 2018 concerning Registration of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*.

The secondary purposes of this thesis are:

1. Theoretical purpose, which aims to provide contributions to the development of legal study, specifically in the field of company law.
2. Practical purpose, which aims to provide all information related to company law for readers and government institutions in order to prepare themselves in facing matters related to company matters, specifically concerning regulations of *Commanditaire Vennootschap*, *Firma*, and *Maatschap*.

1.4. Thesis Structure

This thesis shall be divided into five chapters:

CHAPTER I INTRODUCTION

This chapter contains the overview of this thesis which is divided into: Background, Formulation of Issues, Purpose of Research, and Thesis Structure.

CHAPTER II LITERATURE REVIEW

This chapter contains elaboration of certain theories and regulations that will be discussed in this thesis pertaining to Unincorporated Entity and its differentiations to Incorporated Entity.

CHAPTER III RESEARCH METHODOLOGY

This chapter contains certain methods which will be used in thesis, namely: Definition of Research, Types of Research, Legal Research Materials, Approach and Nature of Analysis.

CHAPTER IV ANALYSIS AND DISCUSSION

This chapter contains discussion toward issues in this thesis regarding the regulations of *Commanditaire Vennootschap*, *Firma*, and *Maatschap* prior to the issuance of Ministerial Regulation of Law and Human Rights No. 17 of 2018 concerning Registration of *Commanditaire Vennootschap*, *Firma*, and *Maatschap* and the implications of Ministerial Regulation of Law and Human Rights No. 17 of

2018 toward regulations of *Commanditaire Vennootschap*, *Firma*, and *Maatschap* in Indonesia.

CHAPTER V CONCLUSION AND SUGGESTION

This chapter contains final conclusions and suggestions through analysis and discussion given in the previous chapters.

