



REGULATIONS AND CONCEPTS OF TRADE LEGAL FORM IN THE COUNTRIES OF BRUNEI DARUSSALAM AND INDONESIA

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ABSTRACT

This research aims to determine the legal regulations and concepts of trade law in Brunei Darussalam and Indonesia as regulated in the Laws of Brunei, Chapter 106 Contracts. There are 5 points that can be studied from the regulations in these 2 countries, namely: Legal Entity Status, Partnership Establishment, Partnership Organs, Responsibilities and Partnership Dissolution. This is a reference for updating Partnership regulations in Indonesia in the future by referring to Brunei Darussalam state regulations. This research is normative legal research, namely research that prioritizes library research to obtain secondary data. The approach used in this research is a statutory approach.

Keywords: *Brunei Darussalam, Indonesia, Trading System*

A. INTRODUCTION

There are 2 legal systems used by the country: Common Law and Civil Law. In Dutch it is usually called *maatschap* or *vennootschap*, while in English it is known as *partnership*. These forms are commonly used in business activities in a country. Common Law countries adopted by Anglo Saxon countries such as the United States, England and Brunei Darussalam adhere to a legal system that focuses on justice based on jurisprudence and uses the *Adversary System* in its judicial processes. Meanwhile, civil law countries adopted by continental European countries such as the Netherlands, France, Italy, Germany, including Indonesia itself, focus on statutory regulations in their legal system, a judicial system that is *inquisitorial* in nature. The definition of partnership referring to English law which adheres to the Common Law legal system can be found in Article 1 of the Partnership Act 1890, namely the relationship between people who carry out business activities with the aim of making a profit. In the Netherlands, which is a country with a Civil Law legal system, the term *Partnership* is known as *Vennootschapsrecht* which is more simply limited to NVs, Firms and CVs which are regulated in the Commercial Code, while Civil Associations (*maatschap*) which are considered as the parent are regulated in Code of Civil law.

In the Common Law legal system, a partnership is an association consisting of owners and managers with the aim of making a profit and having full responsibility for running it. In practice, a partnership is usually an association that cannot be legally separated in which the partners are given equal rights to gain profits from their business. Partnerships have different forms, namely special forms of partnerships based on business forms in the Civil Law legal system. Meanwhile, limited partnerships are more commonly found in Common Law countries. If we look at this general understanding, it can be concluded that partnerships or civil alliances in both Common Law and Civil Law countries have similarities. The similarities can be seen in the partners' relationships which are based on agreements. This makes the partnership terms subject to contract law. Seeing this, a partnership is basically a business activity based on an agreement by the partners in order to gain profit. Because it is dominated by contract law, in partnerships there is no separation of assets between the partnership and partners.

The consequence is that the partners' liability is unlimited. This is what distinguishes that a partnership is not a legal entity. However, a partnership is understood as a forum that is deliberately formed to carry out commercial and professional (non-commercial) business activities such as accountants, advocates, contractors and others. In its development, it is precisely non-commercial partnerships that are growing rapidly, namely the activity of carrying out a profession. Furthermore, if it is related to Indonesia which adheres to the Civil Law legal system and Brunei Darussalam which adheres to the Common Law legal system, this country is a country in the Southeast Asia region. Diplomatic relations between Indonesia and Brunei Darussalam began on January 1 1984. Since then, bilateral cooperation between the two countries has gone very well in various fields and levels. Close cooperation in the political field has become a strong foundation for strengthening cooperation in other fields such as the economy, trade and employment.

In order to provide a platform for regular bilateral communication, Indonesia and Brunei Darussalam agreed to form the Joint Commission for Bilateral Cooperation (JCBC) forum in 2003. Through this forum, the two countries can discuss various bilateral issues, seek to resolve pending matters and agree on directions. in order to improve bilateral relations in the future. In its development, JCBC was stopped in 2003 and started to be reactivated in 2011. To date, JCBC has been held three times, most recently in Bandar Seri Begawan on April 11 2013. From an economic perspective, based on 2019 Asian Development Outlook data published by Asian The Development Bank (ADB) projects that economic growth or gross domestic product (GDP) in 10 countries in Southeast Asia will be at 4.9 percent in 2019, then increase slightly to 5.0 percent in 2020. Indonesia itself is the country with the highest total GDP. largest in ASEAN. Referring to World Bank data, Indonesia's GDP in 2018 reached US\$ 1.04 trillion, while Brunei Darussalam had the lowest total GDP, namely US\$ 13.57 billion. From a legal perspective, the legal system in Brunei Darussalam is slightly different from the legal system in Indonesia. If the legal system in Indonesia is in the form of a presidential state, meanwhile in Brunei the legal system is based on the English legal system with a combination of the Sharia system for Muslims. In 2014, Brunei became the first country to adopt strict Islamic law, for both Muslims and non-Muslims, with the enactment of the 2013 Sharia criminal law.

Law in Brunei consists of the constitution, statutes and additional legislation, Islamic law, case law/judicial precedents and English law. Since 1962 Brunei has been ruled under a state of emergency. The Sultan has great legislative powers, and during an emergency, the Sultan can pass laws that he deems to be an Emergency Order. There is no judicial review of his actions. Viewed from the aspect of economic law, in principle most countries recognize 3 (three) forms of business organizations or companies, namely sole proprietorship or sole trader, partnership and company or corporation. A partnership which is a form of company has a relationship with the company structure and develops as long as the partnership has a company structure. Departing from the description above, in this writing the author will examine the differences in Partnership concepts and regulations between Indonesia and Brunei Darussalam using normative juridical research methods using comparative legal methods, namely a study and research method in which the laws and legal institutions of two countries, namely Brunei Darussalam and Indonesia. The main problem in this writing is how the Partnership concept differs in Brunei Darussalam which is a country with a Common Law legal system and Indonesia which adheres to a Civil Law system.

B. FORMULATION OF THE PROBLEM

1. How is the trading system regulated in Brunei Darussalam?
2. How is the trading system regulated in Indonesia?
3. How do trading system arrangements compare in Brunei Darussalam and Indonesia?



C. RESEARCH METHODS

This research has the character or form of normative juridical research, where this research will be based on library research. This legal research will be carried out by examining library materials or secondary data as a benchmark for conducting analysis, so that this legal research is classified as normative juridical legal research.

D. DISCUSSION

1. Trading System Regulations in Brunei Darussalam

The form of company in Brunei Darussalam is divided into 3, namely, Sole Proprietorship, Partnership and Company. Furthermore, based on information provided by the Ministry of Finance of Brunei Darussalam from its official website, it is explained that Partnerships or what are referred to as Perkongsian are not legal entities. The rules regarding Partnership in the country of Brunei Darussalam are specifically regulated in Chapter 106 of the Laws of Brunei "Contract" Part XI. In Article 192, it mentions "Partnership" and "firm", Furthermore, paragraph 192 explains that: "Partnership" is the relationship which subsists between persons who have agreed to combine their property, labor or skill in some business and to share the profits thereof between them." Persons who have entered into partnership with one another are called collectively a "firm". Meanwhile in Chapter 92, Section 1, Article 2 it is also written that: "firm" means an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who or which have entered into partnership with one another.

So in this case Brunei recognizes the concept of a partnership and also a firm. Based on the provisions above, it can be concluded that Firm is a term for an Partnership that occurs between one another. Regarding the name of the firm itself, it is also regulated in Article 4 Chapter 92, where the firm name cannot use the full names of its partners. Furthermore, in this case the Brunei regulations also provide an illustration, namely:

- a. A and B buy 100 bales of cotton, which they agree to sell for their joint account, A and B are partners in respect of such cotton.
- b. A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.
- c. A agrees with B, a goldsmith, to buy and furnish gold to B to be worked up by him and sold and that they shall share in the resulting profit or loss. A and B are partners.
- d. A and B agree to work together as carpenters but that A shall receive all profits and shall pay wages to B. A and B are not partners.
- e. A and B are joint owners of a ship. This situation does not make them partners.

From the above illustration it can be concluded that the form of Partnership in Brunei is a relationship between people who have agreed to combine their property, labor or skills in some business and to share the profits therefrom between them. Persons who have entered into partnership with each other are referred to collectively as the "Firm". Regarding the responsibilities of partners, it is regulated in Article 198, which states, "A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible for him as a partner in such firm." It can be interpreted that the party who is believed to be an partner of the Partnership is a person who is agreed either verbally or in writing by his actions to make him believe that he is part of the partnership. Furthermore, in Article 199, it is written that, "Anyone consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership." This article stipulates that partners in the Partnership who agree to be representatives of the Partnership are responsible to third parties who have trusted the Partnership. Partnership in Brunei also regulates the responsibilities of underage partners, namely regulated in Article 200, namely: 200. A person who is under the age of majority according to the law to which he is subject may be

admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such a minor in the property of the firm is liable for the obligations of the firm. From the rules above, it is explained that every person who is under the age of majority under Brunei regulations, is only responsible for the portion he or she gives to the Association, and cannot be personally responsible for the obligations of the association. However, further in Article 201, it is written that:

201. A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his reputation of the partnership.

This article explains that a minor partner who has reached the age of majority is responsible for any obligations of the Partnership for actions that have occurred since the person was admitted, unless the person gives notice to the public within a reasonable period of time that he or she refuses the Partnership. Regarding responsibility for debts, it is regulated in Article 202, which reads:

202. Each partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner." This means that each partner is responsible for all debts and obligations as long as he is a partner, however a person who becomes a partner after the Partnership has been formed is not necessarily responsible for the debt that occurred before he became a partner. Furthermore, in Article 203, it is regulated that "Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm." With this Article, all partners are responsible for losses to third parties committed by partners who commit fraud or damage.

Furthermore, Chapter 106 also regulates matters in Partnership as outlined in Article 206, namely: 206. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules:

- a. all partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss;
- b. all partners are entitled to share equally the profits of the partnership business and must contribute equally towards the losses sustained by the partnership;
- c. each partner has a right to take part in the management of the partnership business;
- d. each partner is bound to attend diligently to the business of the partnership and is not entitled to any remuneration for acting in such business;
- e. when differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners;
- f. no person can introduce a new partner into a firm without the consent of all the partners;
- g. if, from any cause whatever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members;
- h. unless the partnership has been entered into for a fixed term, any partner may retire from it at any time;



- i. where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of court;
- j. partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

The rules above can be concluded that if there is no Agreement that regulates specific matters that conflict with that Article, then the Alliance in Brunei has rules, namely:

- a. All partners are joint owners of all property or capital brought into the Partnership, and all such assets are referred to as Partnership assets. The share of each partner is the initial value of the contribution which increases or decreases based on losses or profits from the Partnership;
- b. All partners share equally in the profits and losses incurred by the Partnership;
- c. Each partner has the right to take part in the management of the partnership;
- d. Each partner is obliged to be present in matters relating to the running of the Partnership's business, and is not entitled to remuneration in actions relating to the running of the Partnership's business;
- e. If a dispute arises relating to the running of the Partnership's business, the decision is taken based on the majority opinion of the partner members in the Partnership;
- f. Every partner who brings another person as a new partner must obtain approval from all members of the Alliance;
- g. If there is no term regarding the Partnership, then each partner can retire at any time; and If the Partnership regulates the term then each member cannot retire unless there is agreement from all partners.

Furthermore, Articles 216 and 217 Chapter 106 Brunei regulate:

Article 216. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

Article 217. Persons dealing with a firm will not be affected by a dissolution of which No. public notice has been given, unless they themselves have notice of such dissolution. These two articles stipulate that the rights and responsibilities of partners continue even though the partnership has been dissolved, to end the business of the partnership. Furthermore, third parties are not affected by the dissolution of the Company unless the dissolution has been announced to the public or has been notified directly to the third party.

Apart from being regulated in Chapter 106, Partnerships in Brunei are also regulated in Chapter 39 of the Companies Act, Laws of Brunei. The regulation regulates the number of partners of the Partnership, namely in Section XI, which states that "Prohibition of partnerships with more than twenty members". It can be seen from these rules that the number of allies in the Guild cannot exceed 20 members. Furthermore, regarding Partnership tax regulations, it is regulated in accordance with Section III of the Income Tax Act (Chapter 35), which stipulates that Partnerships are exempt from paying resident tax.

Apart from regulating Partnerships, Brunei also recognizes the concept of Limited Liability Partnerships which is regulated in a derivative of Article 83(3) of the Constitution of Brunei Darussalam with the title Limited Liability Partnerships Order, 2010, in Section 5

Article 1 is, "A limited liability partnership is a body corporate which is formed by being registered under this Order and which has legal personality separate from that of its partners."

Based on the rules above, it can be seen that Limited Liability Partnerships are a legal entity and are a different entity from its partners. Furthermore, Article 21 also regulates that:

- a. A firm may convert to a limited liability partnership by complying with the requirements set out in the Second Schedule.
- b. Upon such conversion, the partners of the firm, the limited liability partnership to which the firm has been converted and the partners of that limited liability partnership shall be bound by the provisions of the Second Schedule.
- c. The Minister may, with the approval of His Majesty the Sultan and His Majesty and by order published in the Gazette amend the Second Schedule.
- d. In this section, "convert", in relation to a firm converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the limited liability partnership in comply with the Second Schedule.

Meanwhile, Section 8 explains that partners are not responsible for "wrongful acts" committed by other partners. This is what differentiates the Partnership concept which was explained previously, namely in Chapter 106 of the Laws of Brunei, where in this regulation the partners are responsible for negligence committed by one of their partners.

2. Regulation of the Trading System in Indonesia

The form of partnership company in Indonesia is divided into three, namely: Civil Partnership (*maatschap*), Partnership with a Firm (*vennootschap onder firm*) or abbreviated as "FA", and Commandery Partnership (*commanditaire vennootschap*) or abbreviated as "CV". These forms of company are regulated in the Civil Code (hereinafter referred to as the "Personal Code") and the Commercial Code (hereinafter referred to as the "KUHD"). The form of Civil Partnership (*maatschap*) is the same as the form of "Civil Partnership". A partnership with a firm where the partners take full responsibility is the same as a "General Partnership". Meanwhile, a Limited Partnership which has partners who only invest capital and does not take part in managing the company and has limited responsibility is the same as a "Limited Partnership" in countries with a Common Law system. To differentiate more clearly, it will be explained in the table below:

Characteristics	Civil Partnership	Firm	CV
Legal basis	Articles 1618-1652 Civil Code	Article 16-35 KUHD	Articles 19-21 of the Criminal Code
Interpretation	An agreement in which two or more people commit themselves to enter something into a partnership, with the intention of sharing the profits what happened because of it.	A civil partnership established to run a company under a common name.	A Limited Partnership is a Firm Partnership with the addition of one or more people as partners releasing money (<i>Geldschieter</i>), material, and energy or his expertise.
Responsibility	It is an obligation to compensate for losses if the promised agreement is not carried out, so that if the agreement is actually not carried out then the responsible partner can be challenged to fulfill its performance. 1. a partner enters into a legal relationship with a third party, then the partner must be fully responsible even though the legal	Partners who are appointed or authorized to carry out management duties are specified in the firm's AD (deed of establishment). If it has not been determined, the management must be determined in a separate deed and registered with	Internal liability: Limited partners: Liability is limited to the investment paid in. Ordinary partner: Personal responsibility for the whole, even though the partner is an partner who according to the AD is not permitted to have contact with third parties. External responsibilities:



	<p>relationship is carried out for the benefit of the partnership.</p> <ol style="list-style-type: none"> Legal acts become binding on other partners if there is a power of attorney from the other partners, the profits obtained are clearly enjoyed by the partnership. Several partners enter into a legal relationship with a third party, then the partners are jointly and severally liable even though the shares are not the same unless it has been previously agreed that there is a balance between the shares and the liability. If a partner enters into legal relations with a third party on behalf of the partnership, the partnership can directly sue that third party. 	<p>the local PN Registrar's Office and announced in the BNRI (so that third parties know who is the management related to them. All members are considered capable and permitted to act outside the name of the firm, a member can binding on other members, all members are deemed to have the right to receive and spend money on behalf of and for the benefit of the firm.</p>	<p>Complementary partners who are responsible for the relationship with the party third.</p>
Element	<p>A Civil Partnership is an agreement (contract). The achievements of the parties by entering something into the partnership. The aim is to share profits</p>	<p>Civil partnership, running a company using a joint name, partners' responsibility is personal to the whole.</p>	<p>The existence of limited partners</p>
Types and Kinds	<p>General/full civil partnership: where the partners include all their assets or equivalent parts without any details. Special civil partnership: where the partners promise the income of certain objects or part of their labor.</p>	<p>Using a joint name (the partner's name is used as the company name).</p>	<p>Secret CV: a limited partnership that has not openly stated to third parties that it is a limited partnership. Overt CV: limited partnership who has declared himself as a CV to the party third. CV with shares: an open limited partnership whose capital consists of shares</p>
How to Establish	<p>Consensual or with a Notarial Deed: intended to avoid disputes or disputes in the future regarding responsibilities, distribution of matters and obligations of each party.</p>	<p>The firm must be established with an authentic deed, however the absence of such a deed cannot be said to be detrimental to third parties. The deed of establishment of the firm must be registered at the local District Court Registrar's Office. Once</p>	<p>CV is a firm in a special form, so the provisions on firm establishment can be applied.</p>

		registered, the deed of establishment is published in	
The ending	<p>A civil partnership can end because:</p> <ol style="list-style-type: none"> 1. The lapse of time for which communion was held. 2. The destruction of goods or the completion of actions that are the subject of the partnership. 3. The sole will of some or one partner. 4. Termination based on valid reasons. One of the partners dies, is placed under guardianship or is declared bankrupt. 	<p>The firm ended because:</p> <ol style="list-style-type: none"> 1. The agreed time has passed. 2. Termination by a partner. 3. Death of an ally. 4. There is bankruptcy. 5. Carrying out a business that is not in accordance with the deed of establishment violates decency or public order based on the judge's decision. <p>Every dissolution of a firm requires settlement, where the dissolved firm is considered to still exist if there are still rights and obligations that have not been resolved. The arrangement is carried out by their administrators who are stipulated in the AD. If it is not specified in the AD, then the administrator is a management partner or can also appoint a non-management partner with the majority of votes. If the majority vote is not achieved, then the judge will be determined by the District Court. The manager's job is to settle all the firm's debts using the firm's cash.</p>	<p>CV ends because:</p> <p>Expiration of the agreed time, Termination by one of the partners, Termination based on valid reasons, Completion of an action, Destruction of the object that is the object of the partnership, Death of one of the partners, There is forgiveness or bankruptcy.</p>

3. Comparison of Trading System Arrangements in Brunei Darussalam and Indonesia

The Partnership concept between Indonesia and Brunei has several similarities and differences. The first similarity is that in these two countries they both divide Partnerships into 3 forms of company, namely Partnerships or Civil Partnerships, Firms, and Limited Partnerships (In Indonesia they are called CVs or Limited Liability Companies, while in the Philippines they are called Limited Liability Partnerships). However, what is different is that in Indonesia the three forms of company are not legal entities, whereas in Brunei for



companies that are not legal entities they are Partnership and Firm, but for Limited Liability Partnerships they are legal entities that have separate responsibilities. The second similarity is that Firms in Indonesia and Firms in Brunei have the same concept where Firms are the development of a Partnership that has a common name (In Indonesia it is regulated in Article 16 of the KUHD while in Brunei it is regulated in Article 4 Chapter 92), but the difference is that in Indonesia does not prohibit using a collection of the names of its partners as the name of the firm, whereas in Brunei there is a prohibition on using the full names of all partners as the name of the firm. Furthermore, the third similarity is that the partner's responsibility for the Partnership Firm in Indonesia and the Firm in Brunei are both jointly and severally liable. The difference is that if the firm is in Indonesia, the agreement only binds the agreement participant who entered into the agreement, and does not bind other participants unless the participant has authorized the agreement to enter into the agreement. Meanwhile in Brunei, each partner has the authority to represent the Partnership or Firm without power of attorney, and the partners are also responsible if there is negligence committed by one of the partners in the Partnership.

The fourth similarity is the need to obtain approval from other partners if you want to incorporate new partner members into the company. However, there is a difference, namely that in Brunei it has been regulated that the number of Guild members cannot exceed 20 allies, whereas in Indonesia there is no such regulation. The fifth equation is the dissolution of the Partnership if one of the partners dies. This is regulated in Article 1646 of the Civil Code (For Indonesia) and Chapter 106, Laws os Brunei, Article 206 paragraph (j) (For Brunei Darussalam). Furthermore, regarding the dissolution, there are differences between Indonesia and Brunei when. The Partnership wants to be disbanded for the reasons: the Partnership's business is likely to suffer losses, there is a partner who is guilty of a dispute in the Partnership against another partner, there is a partner who has an unhealthy mind, there is a partner who is bankrupt based on local law, and there is a partner who is no longer able to carry out his obligations according to the Partnership agreement, the dissolution must be based on a Court decision requested by one of the Partnership partners.

E. CONCLUSION

The basic difference is that Indonesia divides Partnerships into 3 parts, namely Civil Partnerships, Firms and Limited Liability Companies. Where these three forms have quite clear different concepts in terms of regulations and boundaries that differentiate the three forms. Meanwhile in Brunei Darussalam, Firma is the term used for partnerships entered into by partners. Firm provisions are also regulated the same as the provisions in Partnership regulations, which results in no differences in the regulatory boundaries used in Civil Partnerships and Firms in Brunei Darussalam. Civil partnerships and firms in Indonesia and Brunei Darussalam are both not legal entities. The concept of Liability Partnership in Indonesia, which is also known as a Limited Partnership, is a development of the form of a firm which only adds one or more limited partners who only invest money. This form of Limited Partnership is also not a legal entity. Meanwhile, in Brunese Darussalam it is known as a Limited Liability Partnership, but this form of company is a legal entity.

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