



**The Right of Members of Limited Partnership Communities Towards Company Assets
(Case Study on Supreme Court Decision Number 3007 K / Pdt. / 2014)**

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Abstract

Limited partnership is a form of company not a legal entity. There are two allies in limited partnership who have different responsibilities, namely complementary allies or active allies responsible for personal property and acting in carrying out Vennootschap Commanditaire, management and entering into agreements or legal relations with third parties. The limited allies are only responsible for the amount of capital that has been deposited into the Vennootschap Commanditaire. The allies' agreement to establish a limited partnership was set out in the deeds of a limited partnership. In a limited partnership does not rule out the existence of default actions carried out by allies against other allies that are not in accordance with the agreement contents of the deeds of limited partnership. As in the Supreme Court Decree Number 3007 K / Pdt / 2014, this research examines and discusses, firstly how the rights of limited partnership members of company assets and the legal consequences of allies who commit acts of default, and secondly how the responsibility of the Director of Commanditaire Vennootschap in default action on the deed of establishment of limited partnership partnership. This research is a normative legal research with the type of analysis descriptive research, the analysis is carried out based on the description and facts obtained. The data used are secondary data, namely data obtained through library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research and discussion determine that the rights of limited partnership members to company assets agreed by the plaintiff as a limited partner are entitled to receive a profit of 40 (forty) percent and the actions of the defendant as a complementary ally who stopped the plaintiff's rights are qualified as acts of default. The legal consequence arising from the act of default is the issuance of the Supreme Court's decision No. 3007 K / Pdt. / 2014 which rejected all reasons for appeal from the Defendant as Director. The decision of the Pekanbaru High Court, which annulled the Batam District Court's decision, was not wrong to apply the law because the decision and judgment were considered to be true, stating that it was legal according to the law of the Company Deed Commanditaire vennootschap. Prima, punish the defendant for submitting financial statements,

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Introduction

The business world in Indonesia is growing rapidly resulting in more and more problems arising in society in meeting their needs. Likewise with business actors require costs to run a business. Every business activity carried out usually uses the company's business operations for new entrepreneurs in the form of business entities. One form of business entity is the Comanditaire Vennotschap, which is the most widely used form of business entity by Small and Medium Enterprises entrepreneurs as a form of business entity organizational identity in Indonesia. Because the process of establishing Comanditaire Vennotschap is not as complicated other business entities such as Limited Liability Companies. Comanditaire Vennotschap is a non-legal business entity such as a Limited Liability Company, however the existence of this business entity does

not reduce its rights and obligations as a company recognized by the government and the business community in particular. This can be seen from the many entrepreneurs, especially Small and Medium Entrepreneurs who use the Comanditaire Vennotschap business entity to be able to conduct business activities in Indonesia.

The existence of Vennotschap Comanditaire in business traffic has been known to the public, especially the business community as a form of business entity. The basis for regulating Vennotschap Comanditaire in the Commercial Law Code is not specifically regulated as the law firm and civil alliance (maatschap), but some jurists believe that for Comanditaire Vennotschap it is regulated in Articles 19, 20, 21 and 32 of the Laws Act (maatschap). Commercial law.¹

The legal arrangements for the Comanditaire Vennotschap are the same as the firm alliance which is strictly regulated in Article 19 through Article 35 of the Commercial Law Code. However, what distinguishes the arrangement between the Comanditaire Vennotschap Comanditary Company and the alliance of the firm is the existence of money-releasing allies that are regulated according to the provisions of Article 19 through Article 21 of the Commercial Law Code. In this case it can also be said that the Comanditaire Vennotschap Comanditaire Company is an alliance of firms that has one or several limited allies. Because in a firm alliance there are only firm firm allies, whereas in the Vennotschap Comanditaire in addition to work allies there are also limited allies that are silent allies who only provide income and do not take care of the company.²

The Civil Code which regulates the Civil Company which is the parent or initial form of the Vennotschap Comanditaire and Firm, in Article 1618 the Civil Law Book explains that there is an agreement between two people or more binding themselves to put something (inbreng) into the company with the intention of dividing the profits derived from it. The provisions of Article 15 of the Commercial Law Code confirm that all provisions of the Civil Code regarding maatschap also apply to firms and Comanditaire Vennotschap.

Article 19 paragraph 1 of the Law on Commercial Law explains that a limited partnership is a company that runs a company formed between one person or several state-owned companies that bears responsibility and responsibility for all of one party and one or more persons as money-lenders. to the other party.

Article 19 of the Commercial Law states:

Paragraph (1): Company formed by lending money or also called limited partnership, established between a person or between several state-owned companies that are jointly responsible for the whole and one or more people as lenders money.

Paragraph (2) a company can be in the form of a firm at the same time the firms in the company and limited liability company against money loans. The limited partnership consists of 2 (two) kinds of allies, namely:

- a. A complementary partner (complementary partner), which is an active ally who is a board administrator. In addition he is a limited partner who also contributed capital income.
- b. A silent partner, a passive ally who does not take part in managing the alliance, whose status is only as a lender of capital or a lender. Because the limited allies did not take part in managing the limited partnership, he did not take part in acting out.³

An agreement to establish a civil alliance unless it has to fulfill the conditions as specified in Article 1320 of the Civil Code must also fulfill the conditions that are not prohibited by the Law, does not conflict with decency and public order, and must be a common interest pursued that is profit.⁴

The establishment of the Vennotschap Comanditaire is basically not much different from the alliance of the firm, which is generally with a notarial deed and then registered at the Registrar's District Court where the

¹ IGRai Widjaya, *Corporate Law (Act and Implementing Regulations of the Act in the Field of Business)*, Kesain Blanc, Bekasi, 2005, page. 142.

² HMN Purwosutjipto, *Basic Understanding of Indonesian Trade Law, Form of Company*, Volume 2, Djambat, Jakarta, 2008, page. 75.

³ M. Yahya Harahap, *Limited Liability Company Law*, Sinar Grafika, Jakarta, 2011, page.17.

⁴ *Ibid.*, page. 22.

Comanditaire Vennotschap is domiciled and then announces a summary of the establishment deed in the State Gazette of the Republic of Indonesia. But at this time the establishment of the Comanditaire Vennotschaps Comandita Alliance was very different, namely through the online system. Based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018, now the establishment of the Comanditaire Vennotschap Community Alliance with an easier system through the Business Entity Administration System, after that we can register it at the local District Court.

Decision of the Supreme Court number 3007 K / Pdt. / 2014, this case occurred between the Plaintiff namely Taw Kining aka Kining with Defendant Hoi Fat aka Patrick Pangestu who was originally Defendant (Hoi Fat) intends to establish a business in the form of Comnitaire Vennotschap. Then the Plaintiff and Defendant had made an agreement to establish the Military Alliance which was named Comanditaire Vennotschap. Prima as outlined in the Comanditaire Vennotschap Comandita Alliance Fellowship Deed. Prima Number 14 Date 3 November 1994 made before Soehendro Gautama, Notary in Batam.

Arrangement of limited partnership as stipulated in Article 5 of the deed of the Comanditaire Vennotschap Community Alliance. Prima is the Defendant (Hoi Fat) as the administrator or Complementary Ally (Director) of Comanditaire Vennotschap. Prima is fully responsible for alliance efforts and their consequences, while the Plaintiff is agreed to be a limited Allies or Passive Allies who bear no more than the amount of capital in the company.

The Plaintiff as a limited alliance has several times demanded his right to obtain information on the income and profit sharing of Comanditaire Vennotschap. Prima to the Defendant (Hoi Fat) but was always rejected by the Defendant with the reason for the company's business development going forward. Even in the addition and sale of the assets of Comanditaire Vennotschap. Prima and did a cooperation agreement with a third party there was no report at all from the Defendant to the Plaintiff about it.

The rejection led to a conflict of interests of the Vennotschap Comanditaire parties. Prime because of not fulfilling the achievements and resulting in the emergence of legal consequences in the management of wealth Vennotschap Comanditaire. The prime gives birth to legal sanctions. The actions of the defendant, as if the Plaintiff's right to void the portion of the profits, are acts of breach of default based on Article 9 of the Deed of the Comanditaire Vennotschap Comanditer Company. Prima Number 14 dated November 3, 1994 which reads "profits received and or losses suffered by the company are divided according to the balance of capital entered by each company in the company, with the advantage that the limited partnership does not bear more than the number of shares in the company."

De facto (das sein) in managing the wealth of Comanditaire Vennotschap. Prime has a conflict of interests of the allies because the actions of the defendant as if that negates the right of the plaintiff over the profit portion of the Comanditaire Vennotschap resulted in losses to the plaintiff as an allied commander, where the plaintiff requested a profit and loss report and the profit of Vennotschap Comanditaire. Prima will always be rejected by the defendant. The Defendant considers that the Plaintiff has never submitted his capital to the Comnitaire Vennotschap, and considers the deed of establishment of Comanditaire Vennotschap. Prima Number 14 dated 3 November 1994 was invalid because there was a defect in the will which initially only borrowed the name known as the nominee agreement and asked for 40 (forty) percent of the profit even though it never included the capital at all.

In de jure (das sollen) that according to the deed of establishment Vennotschap Comanditaire. Prima proved that the Plaintiff's participation in providing capital of 40 (forty) percent of shares, as a limited partnership of the Plaintiff (Kinning), is obliged to claim his rights as far as the capital included in the Comanditaire Vennotschap. Prima is referred to the Defendant as stated in the agreement as set forth in the establishment deed of limited partnership number 14 dated November 3, 1994. Provisions of Article 1633 of the Civil Code Book "If in the company's agreement no part of each participant is determined by the profits and losses of the company, each participant was calculated according to the ratio of the amount of capital entered by each.

Allied commanders are prohibited from making arrangements even with the power of attorney. However, limited allies may supervise if stipulated in the deed of incorporation. If the limited allies carry out alliance arrangements, then the responsibility is expanded to be the same as the complementary allies, that is, joint responsibilities.

Result and Discussion

For the breach of contract or breaking the promise to the deed of establishment of the Comanditaire Vennotschap joint partnership. Prime done by the Defendant to the Plaintiff, the Defendant must be responsible for his actions as stated in the Decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR dated June 10, 2014 which canceled the decision of the Batam District Court Number 82 / Pdt.G / 2012 / PN Btm .

The Batam District Court rejected the plaintiff's claim in full because of a disability that initially only borrowed the name but still demanded his right as much as 40 (forty) percent, if related to the legality of the agreement as referred to in Article 1320 of the Civil Code which results in a deed these are invalid and can therefore be canceled.

Furthermore, in the Decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR which canceled the Batam District Court's decision and granted the plaintiff's claim that was legally valid the Comanditaire Vennotschap Prima Comandita Company Deed Number 14 dated 3 November 1994 because if seen in Article 1338 of the Book The Civil Code which states that all treaties that have been made legally apply to those who make them, all agreements cannot be withdrawn except by mutual agreement of the two parties or by reason of the Act being declared sufficient for that.

In the trial, there was also no fact that the existence of Deed No. 14 dated November 3, 1994 was canceled or deleted by both parties who made it. Based on the evidence above, namely Deed Number 14 dated November 3, 1994 whose existence cannot be proven otherwise by the defendant, the Comanditaire Vennotschap Prima Company Deed Number 14 dated November 3, 1994 is valid.

In connection with the legal conditions of agreement in Article 1320 of the Civil Code, if the subjective and objective conditions are not met, the following consequences will be met:

1. If there is no agreement then no contract will arise.
2. Can be canceled, if the contract was born because of a defect or because of lack of skill.
3. Cancel by law if there is a contract that does not meet the requirements of a particular object or does not have a causa or the cause is not allowed so that the contract results are null and void.

According to the theory of legal certainty, the law has the duty to guarantee the existence of certainty about the rule of law that aims to achieve justice for the rights and obligations of allies in the management of company assets, where the rights and obligations of each partner have a portion and position as outlined in the deed of establishment of the partnership. limited partnership.

The Decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR has provided legal certainty to what the parties promised in the deed of Comanditaire Vennotschap's limited partnership. Prima. Each party who feels aggrieved due to default by another party has the right to sue the Court to claim compensation set forth in Article 1243 which reads "Reimbursement of costs, losses and interest due to failure to fulfill an agreement began to be required, if the debtor, even though declared negligent. , it remains negligent to fulfill the engagement or if something must be given or done within a time limit that has been determined.

Article 1244 of the Civil Code also states that "the debtor must be punished for reimbursing expenses, losses and interest, if he cannot prove that the agreement was not carried out or the inaccurate time in carrying out the agreement was caused by an unexpected thing, which was not can be insured to him, even though there is no bad faith in him.

1. Case chronology

This case occurred between the Plaintiff namely (Taw Kining) aka Kining with the Defendant namely Hoi Fat aka Patrick Pangestu, the defendant (Hoi Fat) originally intended to establish a business in the form of the Comanditaire Vennotschap Comanditaire Company with a minimum requirement of 2 (two) founders, Defendant (Hoi Fat) asked his brother-in-law Plaintiff (Kining) to be willing to lend his name in order to establish the Comanditaire Vennotschap.

On November 3, 1994, the Plaintiff and Defendant agreed to establish the Comanditaire Vennotschap Company, which was named Comanditaire Vennotschap. Prima. The agreement established the Comanditaire Vennotschap Community Alliance. Prima (hereinafter referred to as the company) is then poured in the Comanditaire Vennotschap Comanditer's Company Deed. Prima Number 14 dated November 3, 1994 made before Soehendro Gautama, SH, Notary in Batam with the composition of the board, namely the Defendant (Hoi Fat) as the manager (Director) while the Plaintiff (Kining) as Limited Commander.

Commodity Deed of the Comanditaire Vennotschap Commissioner. Prima Number 14 dated November 3, 1994 is an expression of the agreement between the Plaintiff and the Defendant. The Plaintiff and Defendant as a company have agreed to deposit the initial capital in the company for the first time in the amount of Rp.100,000,000.00 (one hundred million rupiah), each defendant (Hoi Fat) in the amount of Rp.60,000,000.00 (sixty million rupiah) and the Plaintiff (Kining) in the amount of Rp. 40,000,000.00 (forty million rupiah).

During the first 3 (three) years of the company's establishment, namely from 1994 to 1998, financial and profit and loss were still counted as losses. But stepping on year 4 (four), namely in 1999, the company began to benefit, this is the Plaintiff's knowledge of the information directly orally delivered by the Defendant (Hoi Fat) himself. The abuser (Kining) several times demanded his right to obtain financial statement information and income statement to the Defendant (Hoi Fat). However, the Defendant (Hoi Fat) was always rejected on the grounds for the company's business development going forward.

The Defendant (Hoi Fat) suggested that the company's profits did not need to be shared and should be added as the company's capital with the aim that the company could move forward. Finally the Plaintiff (Kining) approved the Defendant's (Hoi Fat) proposal. As a concrete manifestation of the realization of the additional capital of the company referred to is the purchase of 1 (one) shop unit in addition to the Comnitaire Vennotschap Office. Prima is located in Komplek Bumi Indah Number 20 Batam City and 3 (three) shop units are located at Komplek Bumi Indah Blok K Batam City. That the 3 (three) shop units are intended as additional sub-businesses of the company Comanditaire Vennotschap. Prima, which is leased to PT. Batam ANN.

In 2003 until 2008, the Plaintiff (Kining) several times stated again to the Defendant (Hoi Fat) regarding the company's financial statements and income statement in order to know the company's development. Because the Plaintiff (Kining) believes the company has experienced very good / rapid development, it is proven that the company has several times applied for several loans / loans at Bank Internasional Indonesia Batam Branch and Bank UOB Indonesia Tbk, where the Plaintiff (Kining) has signed for each credit agreement at both banks. That all credit has been able to be fully paid by the company.

Furthermore, as one of the concrete manifestations of the company's profit transfer for the development of other businesses conducted by the Defendant (Hoi Fat) with the purchase of 2 (two) shop units located in the Batam Batam Complex in 2001, the two shop units were built by the hotel business which is now known as the Prima Asia Hotels. This shows that during the period since the establishment of the Vennotschap Comanditaire. Prima in 1994 until 2001 has produced profits as evidenced above.

In the middle of 2011, the Defendant (Hoi Fat) suddenly asked the Plaintiff (Kining) to resign as a limited partnership in the company Comanditaire Vennotschap. Prima and will be replaced by the Defendant's biological child (Hoi Fat). This certainly makes the Plaintiff (Kining) surprised, but based on thought because of family or relative relationships, the Plaintiff (Kining) did not really question the Defendant's wishes (Hoi Fat). However, the Plaintiff (Kining) first requested financial responsibility of the company Comanditaire Vennotschap. Prima to the Defendant (Hoi Fat). Because as long as the company is established, the Plaintiff

(Kining) has never received financial reports and income statements including profit sharing on the company's business from the Defendant (Hoi Fat).

The Plaintiff's request for the company's financial statements and profit sharing remained rejected by the Defendant (Hoi Fat). The Defendant (Hoi Fat) stated that he was not willing to provide Comanditaire Vennotschap's financial statements. Prime to the Plaintiff (Kining). So finally on December 14, 2011 and February 15, 2012 through Tri Mandiri Justice Law Firm to submit the financial report of the company Comanditaire Vennotschap. Prima.

The response from the Defendant through his legal counsel, Mr. Rustam Ritonga was really disappointing. The response from the Defendant's attorney (Hoi Fat) shows that the Defendant (Hoi Fat) as the executive board or Director of Comanditaire Vennotschap. Prima does not have the good faith to submit the company's financial statements and income statements to the Plaintiff (Kining) as the company commander of the Comanditaire Vennotschap. Prima. The actions and actions of the Defendant (Hoi Fat) are actions that can be classified as acts of default or broken promises for the obligations of the Defendant (Hoi Fat) of the Comanditaire Vennotschap Establishment Agreement. Prima Number 14 dated November 3, 1994. So that upon the refusal the Plaintiff finally filed a lawsuit to the Batam District Court. Furthermore the Plaintiff (Kining) requested that the Batam District Court give the following verdict:

- a. To grant the Plaintiff's claim in full;
- b. Declares legal according to the law of the Comanditaire Comanditaire Vennotschap Company Deed. Prima Number 14 dated 3 November 1994;
- c. Stating that the defendant has legally committed a default (broken promise);
- d. To punish the defendant for submitting financial statements and profit and loss of the company Comanditaire Vennotschap. Prima from 1999 until 2012 to the competitor;
- e. Punishing the defendant to pay 40 (forty) percent of the profit of the Comanditaire Vennotschap limited partnership. Prima counted from 1994 to 2012 to the plaintiff;
- f. Declares a valid seizure (conservatoir beslaag) against:
 - 1) 2 (two) shop units of the Comanditaire Vennotschap office. Prima, located in Komplek Bumi Indah Blok V Number 19 and 20 Batu Amparn District, Batam City;
 - 2) 2 (two) units of Prima Asia Hotel shophouses located in Nagoya Complex 2000 Number 9 and 10, Batam City;
 - 3) 1 (one) housing unit located in the Baloi Permai Penuin Housing Complex, Block J Number 11, Batu Ampar District, Batam City, and;
 - 4) 1 (one) unit of Toyota Corolla sedan, red color, Police Number BP 1565 ZI; Strong and valuable;
- g. Punishing the defendant to pay forced money (dwangsom) in the amount of Rp2,000,000.00 (two million rupiah) per day of delay, submission of finance and payment of 40 (forty) percent of the plaintiff's profit, as of the decision of a permanent legal force (inkracht van gewijsde), for if necessary use state power tools;
- h. Stating the verdict in this case can be made in advance, even though there is an appeal or appeal (uitvoerbaar bij voorraad), if it is denied by the assistance of the Police;
- i. Punish the defendant to pay all costs incurred in this case;

Batam District Court Decision Number 82 / Pdt.G / 2012 / PN Btm stated that the Plaintiff's claim was rejected in its entirety. In the appeal level The plaintiff's decision of the Batam District Court has been canceled by the Pekanbaru High Court with a decision Number 10 / PDT / 2014 / PT PTR which in its decision:

1. Declares legal according to the law of the Comanditaire Comanditaire Vennotschap Company Deed. Prima Number 14 dated November 3, 1994
2. Declare by law the Defendant has broken a promise / breach of contract
3. Sentencing the Defendant to submit the Comanditaire Vennotschap's limited profit and loss statement. Prime to the Plaintiff
4. Punish Defendant to pay 40 (forty) percent of the profit of Comanditaire Vennotschap limited partnership. Prima and capital amounting to Rp40,000,000.00 (forty million rupiah) to the plaintiff.

After this final decision was notified to the Defendant then by the Defendant with the proxy of his attorney an application for cassation was filed with the reasons submitted by the Defendant / Cassation

Appellant, the conclusion of the appeal memory was principally at the level of appeal as referred to in Article 1320 of the Civil Code, then it is invalid and therefore can be canceled due to a disability of the will (wilsgebreke) which initially on behalf of, has requested as much as 40 (forty) percent while never entering the capital, so it is no longer in accordance with the agreement when making the deed of the Comanditaire Vennotschap. The deed is invalid and does not have binding legal force anymore for the Defendant to fulfill in order to hand over the assets of Comanditaire Vennotschap. Prime to the Plaintiff.

2. Judge Considerations and Judgments

The considerations of the Batam District Court panel of judges prior to deciding a case are essentially as follows:

- a. Deed of establishment of the Comanditaire Vennotschap. Prima is invalid, and therefore can be canceled due to a disability of the will (wilsgebreke), which was originally only in the name of the company, has requested 40 (forty) percent of its capital while never entering its capital, so it is not appropriate again with the agreement at the time of making the deed intended, and therefore the deed is invalid and can be canceled and the contents have no binding legal force anymore for the Defendant to fulfill in order to hand over the assets of Comanditaire Vennotschap. Prima is 40 (forty) percent.
- b. Agreements made before a Notary or Authorized Officer are not always considered correct but are considered authentic, so the deed of establishment is invalid and can be canceled, because the fact that the deed is not in accordance with the facts that occurred when the deed was made and signed was in fact contrary to the rules applicable rules.

Batam District Court Decision Number 82 / Pdt.G / 2012 / PN Btm

With the form of a lawsuit as follows:

- 1) That on November 3, 1994, the Plaintiff and Defendant had made an agreement to establish a Limited Partnership Company named Comanditaire Vennotschap. Prima is furthermore set forth in the Deed of the Comanditaire Vennotschap Prima Company Number 14 dated November 3, 1994 made before Soehendro Gautama, Notary in Batam.
- 2) Whereas as stated in Article 4 of the Deed of Establishment of the Comanditaire Vennotschap. Prima, the Plaintiff and Defendant agreed to first deposit the initial capital of Rp 100,000,000.00 (one hundred million rupiah), namely Defendant / Hoi Fat in the amount of Rp 60,000,000.00 (sixty million rupiah) and the Plaintiff (Kinning) of Rp 40 .000,000.00 (forty million rupiah)
- 3) Whereas afterwards, in managing the company Comanditaire Vennotschap. Prima, as stated in Article 5 of the Deed of the Company Comanditaire Vennotschap. Prima Defendant (Hoi Fat) is fully responsible for the company's business and its consequences, while the Plaintiff (Kinning) is agreed as a limited partnership that bears no more than the amount of capital in the company.
- 4) Whereas for certain actions, namely buying immovable property, motorized vehicles and selling the company, making and signing a letter can only be carried out by the Defendant as a management company after obtaining prior approval from the Plaintiff.
- 5) That as agreed by the plaintiff and the defendant, the plaintiff has the right to supervise the work of the defendant and the Plaintiff also has the right to inspect the company's books, letters and finances and the estimated profit and loss. For this reason, the Defendant is obliged to close the company's books at the end of the year and 3 (three) months after the closing of the company's books. The Defendant is obliged to prepare a company balance sheet and estimated profit and loss which will then be submitted to the Plaintiff.
- 6) Whereas during the first 3 (three) years of the company's establishment from 1994 through 1998 the company finances still suffered losses. But by the fourth year of 1999 the company had begun to benefit. The Plaintiff is aware of the information that was conveyed orally directly by the Defendant. For the benefit of the Plaintiff to ask for financial statements and the Defendant stated that the company's profits do not need to be shared temporarily, it would be nice to add to the company's capital. With the purchase of 1 (one) shop unit at Bumi Indah Batam City Complex and 3 (three) shop units at Batam City Penuin Complex.
- 7) Whereas 3 (three) shop units were leased to PT. JST Batam, last Defendant changed this shop as a place of massage business but the Defendant never gave a report to the Plaintiff. The Defendant even bought 3

(three) other shop units in the Penuin Complex which were eventually sold to another party (Lovina Hotel), but there was no report at all from the Defendant to the Plaintiff.

- 8) That subsequently from 2003 to 2008, the Plaintiff several times asked for financial statements. Because Amplifiers believe the company has experienced development, it is proven that the company has applied several times for several loans / loans at the Batam International Bank Indonesia Branch, where the Plaintiff has signed for each credit agreement.
- 9) Whereas subsequently, as the real intention of the transfer of the company's profit for the development of other businesses carried out by the Defendant as Director, was the purchase of 2 (two) shop units which were turned into hotels which are now known as Prima Asia Hotels.
- 10) That in the middle of 2011, the Defendant asked the Plaintiff to resign himself as a limited partnership and would be replaced by the Defendant's biological son. Upon the request, the Plaintiff did not make too much of a problem because it was based on family thinking that there were family relationships. However, the Plaintiff asked for accountability beforehand and still asked for financial statements. But the Plaintiff's request was still denied.
- 11) That to be able to guarantee the Plaintiff's claim from the Defendant's good faith, the Batam District Court is requested to confiscate the Defendant's assets and Comanditaire Vennotschap's assets. Prima.

Regarding the lawsuit, the Batam District Court has made a decision, which is the decision Number 82 / Pdt.G / 2012 / PN Btm., Dated July 4, 2013, whose application is as follows:

In Exception:

- a. Refuse the Defendant's exception;
In Principal Case:
- a. Declare the Plaintiff's claim was rejected in full;
- b. Sentencing the Plaintiff to pay the estimated court fee of Rp. 571,000,000.00 (five hundred seventy-one thousand rupiah);
- b. Pekanbaru High Court Decision Number 10 / PDT / 2014 / PT PTR

Based on the decision of the Batam District Court, the Plaintiffs submitted an appeal to the High Court whose application was as follows:

- a. Receive an appeal from the Appellant;
- b. Canceling the decision of the Batam District Court dated July 4, 2013 Number 82 / Pdt.G / 2012 / PN Btm., Which was appealed;

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In Exception:

Reject the Defendant's Exception

In Principal Case:

- a. Grant the Plaintiff's claim in part;
- b. Declares legal according to the law of the Comanditaire Comanditaire Vennotschap Company Deed. Prima Number 14 dated 3 November 1994;
- c. Declare by law the Defendant has broken a promise / breach of contract;
- d. Punish Defendant to pay 40 (forty) percent of the profit of the Comanditaire Vennotschap Comanditer Company. Prima counted from 1994 to 2012 and capital amounting to Rp40,000,000.00 (forty million rupiah) submitted by the Plaintiff to Comnitaire Vennotschap Prima to the Plaintiff;
- e. Punish the Defendant to pay the court fee incurred in the two court levels, which for the court of appeal is Rp150,000.00 (one hundred and fifty thousand);
- f. Refuse the petition of the Plaintiff's claim in addition to the rest;

The Defendant objected and then filed an appeal to the Supreme Court, then the reasons presented by the Cassation Appellant (Hoi Fat) as evidenced from the Deed of Appeal Declaration of Appeal Number 17 / Deed / Pdt.G / 2014 / PN Btm., Jo Number 82 / Pdt.G / 2012 / PN Btm., Which application was followed by a cassation memory containing the reasons received at the Registrar's Office of the District Court on September 1, 2014, the cassation memory of the Applicant / Defendant or Comparable was notified to the Respondent of Cassation / Plaintiff / Comparator on September 11, 2014;

Whereas then the Respondent of Cassation / Plaintiff / Appellant submitted an answer to the cassation memory received at the Registrar of Batam District Court on November 10, 2014;

The reasons presented by the Cassation Appellant were previously Defendant / Comparable in the cassation memory as follows:

- I. *Judex Facti* at the Appeal level, it was wrong to apply the law without paying attention to the provisions of Article 1320 of the Civil Code jo. Law Number 25 of 2007 concerning Investment; as referred to in Article 1320 of the Civil Code, it is invalid, and can therefore be canceled due to a defect in the will (wilsgebreke). Whereas the facts of the trial of the *Judex Facti* of the Batam District Court, the Respondent of Cassation / Plaintiff could not prove that he had paid in capital when the establishment of the *Comanditaire Vennotschap*. Prima so that it is appropriate in a quo case to be rejected. Whereas because the Cassation Appellant / Defendant (previously as Comparable / Defendant) as the owner of material shares or the real owner and legal owner. Because the Defendant's Cassation Applicant is in principle only a "loan name" or known as a nominee agreement. The fact is that the Respondent Kasasai / Plaintiff has never deposited Rp 40,000,000 (forty million rupiah) as stated in the deed of establishment of the *Vennotschap Comanditaire*. Prima. Whereas the facts of the *Judex Facti* trial of the Batam District Court Respondent for Cassation / Plaintiff could not prove that they had paid in capital when the establishment of the *Comnitaire Vennotschap*. Prima. Then the position of the Respondent of Cassation / Plaintiff as the nominee is only a beneficial owner, therefore the Respondent's Cassation / plaintiff is not entitled to claim rights to shares and profits on *Comanditaire Vennotschap* shares. Prima. 00 (forty million rupiah) as stated in the deed of establishment of the *Vennotschap Comanditaire*. Prima. Whereas the facts of the *Judex Facti* trial of the Batam District Court Respondent for Cassation / Plaintiff could not prove that they had paid in capital when the establishment of the *Comnitaire Vennotschap*. Prima. Then the position of the Respondent's Cassation / Plaintiff as the nominee is only a beneficial owner, therefore the Respondent's Cassation / plaintiff is not entitled to claim rights to shares and profits on *Comnitaire Vennotschap* shares. Prima. 00 (forty million rupiah) as stated in the deed of establishment of the *Vennotschap Comanditaire*. Prima. Whereas the facts of the *Judex Facti* trial of the Batam District Court Respondent for Cassation / Plaintiff could not prove that they had paid in capital when the establishment of the *Comnitaire Vennotschap*. Prima. Then the position of the Respondent of Cassation / Plaintiff as the nominee is only a beneficial owner, therefore the Respondent's Cassation / plaintiff is not entitled to claim rights to shares and profits on *Comanditaire Vennotschap* shares. Prima. Then the position of the Respondent of Cassation / Plaintiff as the nominee is only a beneficial owner, therefore the Respondent's Cassation / plaintiff is not entitled to claim rights to shares and profits on *Comanditaire Vennotschap* shares. Prima. Then the position of the Respondent of Cassation / Plaintiff as the nominee is only a beneficial owner, therefore the Respondent's Cassation / plaintiff is not entitled to claim rights to shares and profits on *Comanditaire Vennotschap* shares. Prima.
- II. *Judex Facti* at the Complaint Level, negligent in fulfilling the requirements required by statutory regulations concerning proof;
 - 1) The party who wants to postulate something, is obliged to prove it, it is not the other way around but it is the burden of proof on the Defendant's side, but the Plaintiff must / must prove the argument;
 - 2) Whereas *Judex Facti* on the Appeal Level even considers that the Cassation Appellant / Defendant must prove their arguments. Thus *Judex Facti* Level One has properly applied the law and its proof;
 - 3) That agreed with the consideration of *Judex Facti* in the First Court which stated the deed was invalid and could be canceled.
 - 4) There has never been any evidence or witnesses corroborating or knowing that the Respondent's Cassation / Plaintiff handed over Rp40,000,000.00 (forty million rupiah) as initial capital in the establishment of *Comnitaire Vennotschap* Prima to the Petitioner / Defendant.
- III. *Judex Facti* at the level of appeal negligent for not giving enough consideration (niet voldoende gemotiveerd);

Judex Facti at the comparative level in examining and deciding a quo case does not provide sufficient and thorough consideration, then it is negligence that causes *Judex Facti* decision on a quo case must be canceled.

Considering whereas in view of these reasons the Supreme Court is of the opinion:

Whereas the reasons for the cassation of the Petitioners for the Cassation cannot be justified, because the *Judex Facti* / Pekanbaru High Court who annulled the decision of the Batam District Court was not wrong to apply the law because the decision and judgment were correct;

Whereas according to the deed of establishment of *Comanditaire Vennotschap Prima*, it was proven that the Plaintiff's participation in providing capital amounted to 40 (forty) percent of shares;

That the authentic deed is not contradicted by solid evidence, the contents of the authentic deed must be considered true

Considering whereas based on the above considerations, it turns out that the *Judex Facti* decision in this case does not violate the law and / or law, the appeal for cassation filed by the HOI FAT Cassation Applicant aka PATRICK PANGESTU must be rejected;

PUNISH

Refuse an appeal request from the HOI FAT cassation alias PATRICK PANGESTU, said;

Punishing the Cassation Appellant / Defendant / Compared to pay the court fee in this cassation rate of Rp. 500,000.00 (five hundred thousand rupiah).

3. Case Analysis

The case that occurred between Hoi Fat and Kinning was a breach of contract against the agreement at the time of the founding of the *Comanditaire Vennotschap. Prima* and that Kinning shares ownership in *Comanditaire Vennotschap. Prima* is just borrowing the name, while in the deed of establishment *Vennotschap Comanditaire. Prima*, the defendant (Hoi Fat) paid 60 (sixty) percent of the capital and the plaintiff (Kinning) 40 (forty) percent. This problem arises when Kinning demands financial statements and income statements of the company. The Kinning statement was always rejected by Hoi Fat.

Furthermore, over the rejection, Kinning sued Hoi Fat for breach of contract or breaking the promise of Hoi Fat's obligations. Default according to subekti, default (negligence or negligence) of a debtor can be in four types:⁵

1. Not doing what can be done;
2. Carry out what was promised but not as promised;
3. Doing what was promised but too late;
4. Do something that according to the agreement cannot be done;

Based on this, according to the writer Hoi Fat, who never submitted his financial statements and income statement annually to Kinning as a limited partnership from the first year the company was established from 1994 to 2012 when the lawsuit was filed as an act of default.

Upon the lawsuit filed by Kinning, the Batam District Court has taken a ruling, namely the ruling Number 82 / Pdt.G / 2012 / PN Btm., The Batam District Court has taken its decision to reject the plaintiff's claim in its entirety, the judges' consideration of the verdict is essentially:

- a. *Judex Facti* The First Level considers the deed of establishment of *Comanditaire Vennotschap. Prima* is invalid, and therefore can be canceled due to a disability of the will (*wilsgebreke*), which initially only on behalf of the company, has requested 40 (forty) percent even though it never entered the capital, so it is no longer in accordance with agreement when making the deed of establishment *Vennotschap Comanditaire. The Prima*. And therefore the deed is invalid and null and void. And the contents no longer have binding legal force for the defendant to fulfill in order to hand over the assets of *Comanditaire Vennotschap. Prima* is 40 (forty) percent.
- b. The First Level in its consideration is that the agreement made before a Notary or Authorized Officer is not always considered correct, but is considered authentic, so that the deed is invalid and can be canceled. Due to the fact that the deed is not in accordance with the facts that occurred when the deed was made. In civil

⁵Subekti, Agreement Law, (Jakarta: Intermasa, 2001), p. 128

cases, the evidence which is considered the most acceptable is the letter or written evidence. Because the civil procedural law sought is formal truth. In the case of a quo, the written evidence referred to is the deed of establishment of the Vennotschap Comanditaire. Prima is considered illegitimate by the judge, because in fact Kinning never paid in capital of 40 (forty) percent. Indirectly Hoi Fat admitted that the capital came from Kinning. So that the deed of establishment of the Vennotschap Comanditaire.

Furthermore, in the decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR dated June 10, 2014 which canceled the decision of the Batam District Court number 82 / Pdt.G / 2012 / PN Btm.

PAY IT OWN

In Exception:

- a. Refuse the Defendant's Exception;
In Principal Case:
- a. Grant the Plaintiff's claim in part;
- b. Declare legal according to the Deed of Establishment of the Comanditaire Vennotschap. Prima Number 14 dated 3 November 1994;
- c. Stating that the Defendant has legally broken a promise or achievement;
- d. To punish the defendant for submitting a profit and loss statement for the Comanditaire Company Vennotschap. Prima counted since the beginning of the founding of the Vennotschap Comanditaire. Prima from 1994 to 2012 and a capital of Rp. 40,000,000.00 (forty million rupiah) submitted by the Plaintiff to the Comnitaire Vennotschap. Prime to the plaintiff;
- e. Punish the defendant to pay the court fee incurred in the two court proceedings, which for the court of appeals is Rp. 150,000.00 (one hundred and fifty thousand rupiah);
- f. Refuse the petition of the Plaintiff's claim in addition to the rest;

In the decision of the Pekanbaru High Court number 10 / PDT / 2014 / PT PTR dated June 10, 2014 which canceled the decision of the Batam District Court number 82 / Pdt.G / 2012 / PN Btm, in this decision the judge declared valid according to the law of the Deed of the Comanditaire Vennotschap. Prima Number 14 dated November 3, 1994. Declares that the law of the Tegugat has broken or broken promises and subsequently sentenced the Defendant to submit the Comanditaire Vennotschap income statement. Prima counted from 1999 to 2012 to the Plaintiff, and paid 40 (forty) percent of the profits of the Comanditaire Vennotschap Company. Prime to the Plaintiff. Paying the appellate court case fee of Rp150,000.00 (one hundred and fifty thousand rupiah).

The decision of the Court of Appeal above stated that it was legal according to the Deed of the Company Comanditaire Vennotschap. Prima Number 14 dated November 3, 1994, so Kinning has the right to obtain his rights as a limited partnership. The author is of the opinion that the appellate judge has decided to cancel the first instance verdict, this indicates that the appellate judge did not recognize the existence of the nominee and continued to refer to the Comanditaire Vennotschap Comandita Company Deed. Prima. And the verdict of the appeal level gives legal certainty to what is promised by the parties contained in the Articles of Association of the Comanditaire Vennotschap. Prima.

Whereas then the Cassation Respondent / Plaintiff / Appellant, the reasons submitted by the Cassation Appellant were concluded that:

- I. *Judex Factiat* the Appeal level, it was wrong to apply the law without paying attention to the provisions of Article 1320 of the Civil Code jo. Law Number 25 of 2007 concerning Investment; as referred to in Article 1320 of the Civil Code, is invalid, and can therefore be canceled due to a defect in the will (wilsgebreke). Whereas the facts of the trial of the *Judex Facti* of the Batam District Court, the Respondent of Cassation / Plaintiff could not prove that he had paid in capital when the establishment of the Comanditaire Vennotschap. Prima so that it is appropriate in a quo case to be rejected. Whereas because the Cassation Appellant / Defendant (previously as Comparable / Defendant) as the owner of material shares or the real owner and legal owner. Then the position of the Respondent of Cassation / Plaintiff as the nominee is only a beneficial owner, thus the Respondent's Cassation / plaintiff is not entitled to claim rights to shares and profits on the shares of Comanditaire Vennotschap. Prima.

- II. *Judex Facti* at the Complaint Level, negligent in fulfilling the requirements required by statutory regulations concerning proof;
- 5) The party who wants to postulate something, is obliged to prove it, it is not the other way around but it is the burden of proof on the Defendant's side, but the Plaintiff must / must prove the argument;
 - 6) Whereas *Judex Facti* on the Appeal Level even considers that the Cassation Appellant / Defendant must prove their arguments. Thus *Judex Facti* Level One has properly applied the law and its proof;
 - 7) That agreed with the consideration of *Judex Facti* in the First Court which stated the deed was invalid and could be canceled.
 - 8) There has never been any evidence or witnesses corroborating or knowing that the Respondent's Cassation / Plaintiff handed over Rp40,000,000.00 (forty million rupiah) as initial capital in the establishment of Comnitaire Vennotschap Prima to the Petitioner / Defendant.
1. *Judex Facti* at the level of appeal negligent for not giving enough consideration (niet voldoende gemotiveerd);

Then at the level of cassation in the Supreme Court the appeal of the Defendant's appeal (Hoi Fat) was rejected by the judge and sentenced the Cassation / Defendant / Compared Petitioner to pay the court fee in this appeal amounting to Rp500,000.00 (five hundred thousand rupiah).

As a result of the legal allies who committed the act of default, the Batam District Court Decision number 82 / Pdt.G / 2012 / PN Btm which rejected all of the Plaintiff's claims, stated the Comanditaire Vennotschap's Establishment Deed. The Prima is invalid and can be canceled due to a disability of the will which was originally only in the name of the company, and has requested 40 (forty) percent of shares even though it has never entered its capital, so it is no longer in accordance with the agreement, therefore the deed These are invalid and can be canceled.

The issuance of the decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR which canceled the decision of the Batam District Court which declared legal according to the company deed of the Comanditaire Vennotschap Comanditer Company. Prima, stated legally the Defendant (Hoi Fat) had broken the promise / default, punished the defendant for submitting the profit and loss statement of the Comanditaire Vennotschap Comanditer Company. Prima counted from 1999 to 2012 to the Plaintiff (Kinning) and sentenced the Defendant (Hoi Fat) to pay 40 (forty) percent of the profit of the Comanditaire Vennotschap Commanditer Company. Prima counted from 1994 to 2012 and a capital of Rp. 40,000,000.00 (forty million rupiah) which was submitted by the Plaintiff (Kinning) to the Vennotschap Comanditaire. Prima.

At the level of cassation in the Supreme Court with the issuance of the Supreme Court Decree Number 3007 K / Pdt. / 2014 the appeal of the Defendant's appeal (Hoi Fat) was rejected and sentenced the Cassation Applicant to pay the court fee in this appeal rate of Rp. 500,000.00 (five hundred thousand rupiah).

The Decision of the Pekanbaru High Court No. 10 / PDT / 2014 / PT PTR gave legal certainty to what the parties promised in the deed of Comanditaire Vennotschap's limited partnership. Prima. Each party who feels aggrieved due to default by another party has the right to sue in court to sue for compensation set forth in Article 1243 and Article 1244 of the Civil Code. In the Decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR stated that the defendant legally broke the promise or default which the defendant was responsible for due to the legal consequences arising from the default.

The author is of the opinion that the appellate judge has decided to cancel the first instance because in the first instance, the author is of the opinion that there is no legal certainty for each of the allied parties and concludes that the existence of a nominee is not recognized and still refers to the Deed of the Comanditaire Vennotschap. Prima. That the deed of establishment of Comanditaire Vennotschap. The prime actions of the defendant to the plaintiff can be qualified as an act of default. The existence of this legal certainty means the exact law, the subject, the object, and the threat of punishment. Because with the legal certainty of allied members will know the clarity of their respective rights and obligations in running the company.

4. Responsibilities of Allied Members in the event of Default

Article 18 The Commercial Code (Commercial Code) states that each partner is personally responsible for all partnership agreements as well as losses arising from management or management in accordance with the objectives of limited partnership or complementary allies taking action on behalf of the partnership limited partnership. Every ally in Comanditaire Vennotschap has different responsibilities from each other namely:

- a. Complementary allies / active allies are personally responsible for the whole. Regulated in Article 18 of the Commercial Law Law.
- b. Allied partnerships / passive allies are responsible only to the amount of paid-up capital. Regulated in Article 20 paragraph (3) of the Commercial Law Law.

Provisions in Article 20 paragraph (3) The Commercial Law Code regulates the responsibilities of limited allied partners who are only responsible for the amount of capital that is deposited or will be deposited into a limited partnership. There are exceptions to the responsibility of limited allies if the limited allies violate the provisions of Article 20 paragraph (2) of the Commercial Law Code which reads: "limited allies do not participate in the management or control of allied partnerships or interfere with the affairs of the work partners."

Sanctions for violating Article 20 paragraph (2) The Book of Commercial Law then the limited partner is personally responsible for the whole of all debts or commitments made by the limited partnership, meaning that the responsibility is the same as an active ally or working partner (Article 21 of the Code of Commercial Law). Responsibility that applies to complementary allies is the same as allies in a firm alliance. Responsibility to bear responsibility is also known as joint responsibility, in that the complementary allies are responsible to the personal wealth of the agreement made by one of the allies with a third party for the whole.

Provisions of Article 20 The Commercial Law Code regulates the responsibility for the amount of capital deposited or will be deposited into the Military Alliance, provided that the limited allies do not participate in the management of the Military Alliance and its existence is unknown to third parties. Article 20 of the Commercial Code in its provisions has consequences for limited allies. Sanctions for limited allies who violate the provisions of Article 20 of the Commercial Law Code are extended responsibilities so that they are the same as complementary allies, namely personal for the whole.⁶

The responsibility that applies to complementary allies is the same as allies in the Alliance with the firm. Responsibility to bear responsibility is also known as joint responsibility, that is, the complementary allies are responsible to the personal wealth of agreements made by an ally with a third party for the whole.

According to the theory of legal liability states that a person is legally responsible for a certain act or that someone bears legal responsibility for a sanction in the event of a conflicting act. The use of this theory answers how the responsibility of allies in the act of default or breaking promises to the deed of establishment of the limited partnership.

The Batam District Court rejected the plaintiff's claim in full because of a disability that initially only borrowed the name but still demanded his right as much as 40 (forty) percent, if related to the legality of the agreement as referred to in Article 1320 of the Civil Code which results in a deed these are invalid and can therefore be canceled.

Pekanbaru High Court Decision Number 10 / PDT / 2014 / PT PTR which canceled the Batam District Court's decision and granted the plaintiff's claim that was legally valid. Comanditaire Vennotschap Prima Number 14 Date 3 November 1994 because if it is seen in Article 1338 of the Civil Code which states that all treaties that have been made legally apply to those who make them, all agreements cannot be withdrawn except by agreement of both parties or by the reasons for the Law are stated as sufficient for that.

In the trial, there was also no fact that the existence of Deed No. 14 dated November 3, 1994 was canceled or deleted by both parties who made it. Based on the evidence above, namely Deed Number 14 dated

⁶HMN Purwosutjipto, Basic Understanding of Indonesian Trade Law 2, Company Forms (Jakarta: Djambat, 2005), p. 9

November 3, 1994 whose existence cannot be proven otherwise by the defendant, then the Deed of the Limited Partnership Company Comanditaire Vennotschap Prima Number 14 dated 3 November 1994 is valid.

The Establishment Company Deed Number 14 dated November 3, 1994 is a deed made by Notary Suhendro Gautama, SH is a notarial deed is an authentic deed which means that what is contained in the deed must be considered true unless it can be proven otherwise by another party. Based on the definition of the authentic deed mentioned above then Deed Number 14 dated November 3, 1994 must be considered correct. Therefore, the defendant's rights cannot be granted for a long time by the defendant to be qualified as a default.

Due to the above legal consequences, a person must be legally responsible for a certain act or that person must be responsible for a sanction in the event of a conflicting act, while in the case above the form of directors' responsibility for the act of default is to punish the directors for submitting an income statement limited partnership, punishes directors to pay 40 (forty) percent of the profit of limited partnership from 1994 to 2012 and capital of Rp. 40,000,000.00 (forty million rupiah) submitted by the plaintiff into Comanditaire Vennotschap. Prima, sentencing the plaintiff or directors to pay the costs of the case and declare it legally according to the law of the Comanditaire Vennotschap Comanditer Company. Prima Number 14 dated 3 November 1994.

The act of default by the directors against allies whose rights were impaired resulted in the issuance of a decision of the Batam District Court No. 82 / Pdt.G / 2012 / PN Btm which refused the plaintiff's request, the issuance of the decision of the Pekanbaru High Court Number 10 / PDT / 2014 / PT PTR which invalidated the Court's ruling The State of Batam granted the plaintiff's claim, and in the level of cassation the issuance of the Supreme Court's Decree Number 3007 K / Pdt. / 2014 which rejected the appeal request from the defendant.

The defendant's responsibility as Director Comanditaire Vennotschap. Prime against the breach of contract or broken promise made by the defendant with the issuance of the Pekanbaru District Court Decision stating that the Defendant (Hoi Fat) had broken the promise / default, namely, punishing the Defendant for submitting an income statement from 1999 to 2012 to the Plaintiff (Kinning), sentence the Defendant to pay 40 (forty) percent of the profits of Comanditaire Vennotschap. Prima and capital amounting to Rp.40,000,000.00 (forty million rupiah) submitted by the plaintiff to the Comnitaire Vennotschap. Prima, and sentenced the defendant to pay a case fee of Rp150,000.00 (one hundred fifty thousand rupiah).

Conclusion

1. The rights of limited partnership members to the company assets as agreed by the plaintiff and the defendant, where the plaintiff is agreed as a limited partner who has the right to supervise the work of the defendant as a management or active ally and also has the right to inspect books, company finances and get 40 (forty)) percent profit according to the agreement stated in the Deed of Comanditaire Vennotschap Prima. Defendants' actions that appear to terminate the plaintiff's rights constitute an act of default. If seen in the provisions of Article 1633 of the Civil Code, the profits and losses of each partner are calculated according to the ratio of the amount of capital contribution entered.
2. The responsibility of an active ally in a limited partnership of acts of default as stated in Articles 1243 and 1244 of the Civil Code then the defendant as an active ally is responsible for reimbursing the costs, losses and interest of the injured ally.

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