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Establishment of Plantation Companies in Juridic Study

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Abstract:- This study aims to analyze the legal basis of companies, especially private companies established by foreigners, who want to engage in plantations such as oil palm plantations or rubber plantations. With this research it is hoped that everyone, both Indonesians and foreigners, can find out about how to establish a plantation company in Indonesia. This research is normative juridical, namely research originating from the rule of law in force in the Republic of Indonesia such as Law Number 40 of 2007, and Regulation of the Minister of Agriculture. The results showed that based on Law No. 40 of 2007 concerning Limited Liability Companies and also Law No. 5 of 1960 concerning basic regulations on Agrarian matters, is a legal basis for establishing a company engaged in plantations, so that the basis for the establishment of a company is regulated as stipulated in the Limited Liability Company Law and Article 28 of the Basic Agrarian Law. While licensing oil palm plantations are regulated in Regulation of the Minister of Agriculture Number 98 / PERMENTAN / OT.140 / 9/2013 concerning Guidelines for Plantation Business Licensing ("Regulation 98/2013") as amended by Regulation of the Minister of Agriculture Number 29 / PERMENTAN / KB.410 / 5/2016 2016 concerning Amendment to the Regulation of the Minister of Agriculture Number 98 / PERMENTAN / OT.140 / 9/2013 concerning Guidelines for Plantation Business Licensing ("Permentan 29/2016") and last amended with Regulation of the Minister of Agriculture Number 21 / PERMENTAN / KB.410 / 6/2017 2017 concerning Second Amendment to the Regulation of the Minister of Agriculture Number 98 / PERMENTAN / OT.140 / 9/2013 concerning Guidelines for Plantation Business Licensing ("Ministry of Agriculture 21/2017").

Keywords:- Establishment, Company, Juridical.

I. INTRODUCTION

According to Article 1 letter b of Law Number 3 of 2002 concerning Obligatory Registration of Companies, a company is any form of business that is permanent and continuous and is established, working and domiciled within the territory of the Republic of Indonesia for the purpose of obtaining profits or profits [1]. Whereas according to article 1 point 1 of Law Number 8 of 1997 concerning Company Documents which reads the Company is any form of business that carries out activities permanently and continuously with the aim of obtaining profits or profits, both which is organized by individuals or business entities in the form of legal entities or not

incorporated entities, which are established and domiciled within the territory of the Republic of Indonesia [2]. In the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 5 / 2015 Regarding Location Permits [3], the Company is an individual or legal entity that has obtained a license to invest in Indonesia in accordance with the provisions of the legislation (Article 1 point 2) and article 1 point 6 of land rights are land rights as referred to in article 16 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles [4]. In Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 2 of 1993 concerning Procedures for Obtaining Location Permits and Land Rights for Companies in the context of Investment [5]. Article 1 point (4) definition of a company is a company incorporated in Indonesia and an individual company of Indonesian citizens, and item (2) business title is the right to cultivate land that is directly controlled by the state for the purpose of agriculture, plantation, fisheries or animal husbandry as regulated in article 28 paragraph (1) of Law Number 5 of 1960. And in the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 98 / Permentan / OT [6].

Indonesia has a fairly large area and has millions of hectares of forest, so it is still possible to be given permission for companies that will engage in plantations [7]. Likewise with the existing rules so that investors have the opportunity to establish a company in Indonesia. With so many laws and other implementing regulations that become a reference, it is very important to do further research to provide knowledge and understanding to prospective investors both domestically and abroad to invest in Indonesia in the plantation sector.

II. LITERATURE REVIEW

According to Law Number 3 of 1982 concerning Obligatory Registration of Companies, namely Article 1 point b, the Company is every form of business that runs any type of business that is permanent and continuous and which is established, working and domiciled within the territory of the Republic of Indonesia, for the purpose of obtaining profits and / or profit. According to Law No. 8 of 1997 concerning Company Documents, Article 1 paragraph (1) reads that the Company is any form of business that carries out permanent and continuous activities with the aim of obtaining profits and / or profits, whether organized by individuals or entities business in the form of legal entity or non-legal entity, established and domiciled in the territory of the Republic of Indonesia. In the regulation of the Minister of Agrarian / Head of the National Land Agency

Number 5 of 2015 concerning Location Permit, article 1 point (2) of the company is an individual or legal entity that has obtained a license to invest in Indonesia in accordance with statutory provisions. Article 1 point (6) reads land rights are land rights as referred to in article 16 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. And in article 1 point (4) of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 2 of 1993 concerning Procedures for obtaining location permits and land rights for companies in the context of investment reads Companies are companies incorporated in Indonesia and individual companies of citizens Indonesia. The definition of the company from each law is a major requirement, of course in this case a company will be said to have a company if it has evidence of the company exists or form.

The company in the commercial law or KUHD does not have a definition from the company, this certainly makes a company will develop and have meaning according to the law which is an authentic definition, of course the meaning is in accordance with the form of the company [8]. And this company is synonymous with the name of a Limited Liability Company (PT), so that every time there is a plank or brand name of the company begins with PT, people will be limited to knowing it is a company, and not necessarily we know which company is running what line of business. Most people think PT is owned by a rich person or foreign property, so when dealing with PT most people avoid it more and do not want to know how and what exactly the company is [9]. In this case the authors take the definition according to the law to be more focused and not tell about the definition of the company in the opinion of experts. And for that according to the title of this journal the writer will describe about the company which in this case is about a company which is a private-owned legal entity in the plantation sector namely a Limited Liability Company or PT. according to article 1 point (1) of Law Number 40 of 2007 concerning Limited Liability Companies, which reads Limited Liability Companies, hereinafter referred to as Companies, are Legal Entities which are capital alliances, established based on agreements

III. MATERIAL AND METHODS

The research method used in this study is to use the normative juridical method that is referring the provisions of positive legislation in Indonesia. The laws and regulations used in this study as a form of solving the problems that occur are:

1. Law Number 39 of 2014 concerning Plantations
2. Law Number 5 of 1960 concerning Basic Principles of Agrarian Affairs
3. Law Number 3 of 1982 concerning Company Register
4. Law Number 8 of 1997 concerning Company Documents
5. Regulation of the Minister of Agriculture of the Republic of Indonesia Number 98 / PERMENTAN / OT.140 / 9/2013 concerning Guidelines for Plantation Business Licensing as amended by Regulation of the Minister of Agriculture Number 29 / PERMENTAN / KB.410 / 5/2016 2016 concerning Amendment to the

Regulation of the Minister of Agriculture Number 98 / PERMENTAN / OT.140 / 9/2013 concerning Guidelines for Plantation Business Licensing and lastly amended by Regulation of the Minister of Agriculture Number 21 / PERMENTAN / KB.410 / 6/2017 2017 concerning Second Amendment to the Regulation of the Minister of Agriculture Number 98 / PERMENTAN / OT.140 / 9/2013 concerning Guidelines for Plantation Business Licensing.

6. Minister of Agrarian Regulation / Head of National Land Agency Number 5 Year 2015 Regarding Location Permit
7. Minister of Agrarian Regulation / Head of National Land Office Number 2 of 1993 concerning Procedures for Obtaining Location Permits and Land Rights for Companies in the Framework of Investment.

In this study the data obtained from secondary data. Thus there are the main activities that will be carried out in carrying out this research, namely library research, which is obtained through the literature, by studying, examining, and managing the literature of statutory regulations by examining through articles relating to problems to be examined..

IV. RESULT AND DISCUSSION

A. Procedure of Establishing a Limited Liability Company Limited

To establish a company in this case a Limited Liability Company (PT) must see Law No. 40 of 2007. In Article 7-14 of the Company Law concerning Establishment of limited liability companies, Article 7 which reads:

- (1) The Company was founded by 2 (two) or more people with a notarial deed drawn up in Indonesian.
- (2) Every founder of the Company is required to take part of the shares when the Company was founded.
- (3) The provisions referred to in paragraph (2) do not apply in the context of Smeltin
- (4) The Company obtained legal entity status on the date of issuance of a Ministerial Decree concerning the ratification of the Company's legal entity.
- (5) After the Company has obtained the status of a legal entity and shareholders of less than 2 (two) people, within a period of no later than 6 (six) months from the date the said relevant shareholders are required to transfer a portion of their shares to another person or the Company issues new shares to people other.
- (6) In the event that the period as referred to in paragraph (5) has been exceeded, the permanent shareholders are less than 2 (two) people, the permanent shareholders are less than 2 (two) people. Shareholders are personally responsible for all company commitments and losses, and at the request of interested parties, the district court can dissolve the company.
- (7) Provisions that require the Company to be established by 2 (two) or more people as referred to in paragraph (1), and the provisions in paragraph (5), and paragraph (6) do not apply to:
 - a. Persero whose shares are all owned by the state; or
 - b. The company that manages stock exchanges, clearing and guarantee institutions, deposit and settlement

institutions, and other institutions as regulated in the Capital Market Law.

By fulfilling these requirements in Law Number 40 of 2007 the company has been established and has a legal entity and is a legal subject. Then the main requirement is the legality of the establishment of a legal entity already exists. And the company must also pay attention to its Directors and Commissioners because only husband and wife who do not have a marriage agreement can be dissolved by a third party because a husband and wife who are not otherwise party to it are a party and there may be a legal conflict in the company's assets. So this company also needs to be examined more specifically. Included in terms of skills or parties in the company. Then the companies that have been disowned must pay attention to those who can be analyzed that a company is run by professionals. Until the name of the company must also be in accordance with the main purpose of the company. And the capital and assets of the company. Therefore in the case of plantations this is of course a broad matter of ownership.

In the case of establishing a company, the requirements stipulated in Law Number 40 of 2004 concerning Limited Liability Companies are a reference, and the purpose and objectives must be in accordance with KBLI or be adjusted to the Head of Statistic Agency Regulation Number 19 of 2017 concerning Amendments to the Head of Central Board Regulation Statistics Number 95 of 2015 concerning the Standard Classification of Indonesian Business Fields. And must get approval from the Minister of Law and Human Rights about a corporate legal entity, then a company is legally established. For this reason, a company will carry out its aims and objectives in accordance with the articles of association of a company, in this case the authors discuss about private companies. If a company has a legal entity, then it must coordinate with the Government where the company wants to open a plantation land, that is by observing the Regulation of the Minister of Agrarian Affairs / Head of the National Defense Agency Number 5 Year 2015 regarding Location Permit, and if the local government does not have a regulation regarding location permit which is a then the regional regulations that become the reference are the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 2 of 1993 concerning Procedures for Obtaining Location Permits and Land Rights for Companies in the context of Investment [10].

In this case the Company requests a location permit from the Regent / Mayor where the plantation object that the Company wishes to own is copied to: i.e. by taking into account the Regulation of the Minister of Agrarian Affairs / Head of the National Defense Agency Number 5 of 2015 concerning Location Permits, and if the local government does not have any regulations on location permits which are local regulations then the reference is the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 2 of 1993 concerning Procedures for Obtaining Location Permits and Land Rights for Companies in the Framework of Investment [10].

In this case the Company requests a location permit from the Regent / Mayor where the plantation object that the Company wishes to own is copied to: and if the local government does not have a regulation regarding location permit which is a local regulation then the reference is the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 2 of 1993 concerning Procedures for Obtaining Location Permits and Land Rights for Companies in the Framework of Investment [10] In this case the Company requests a location permit from the Regent / Mayor where the plantation object that the Company wishes to own is copied to: and if the local government does not have a regulation regarding location permit which is a local regulation then the reference is the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 2 of 1993 concerning Procedures for Obtaining Location Permits and Land Rights for Companies in the Framework of Investment [10] In this case the Company requests a location permit from the Regent / Mayor where the plantation object that the Company wishes to own is copied to:

1. Head of District / City Land Office
2. Head of Regency / City Regional Planning and Development Agency
3. Head of Regency / City Investment Coordinating Board
4. Head of Regency / City Plantation Service
5. Head of Regency / City Forestry Service

B. Companies in Plantation Business

From the description above we have learned that to establish a company with a legal entity must be in accordance with the law, namely Law No. 40 of 2007 concerning Limited Liability Companies. However, the establishment of a company does not mean that whatever the purpose and objectives of the company can be carried out immediately, of course there are requirements that must be met by every company to be able to carry out the aims and objectives and activities or businesses that will be run by a company [11]. And the intent and purpose of each Business Entity must be in accordance with KBLI or adjusted to the Head of Statistic Agency Regulation Number 19 of 2017 concerning Amendment to the Regulation of the Head of Statistic Agency Number 95 of 2015 concerning the Standard Classification of Indonesian Business Fields. In the case that the company wants to get a permit to run company activities in the intent and purpose as well as the location where the company wants to establish oil palm plantations, the company must obtain the permit, of course we want to know the permit is regulated where and what must be provided by the company.

The requirements and procedures for applying for plantation business permits are regulated in Plantation Law Number 24 of 2014 in conjunction with PERMENTAN RI Number 98 / Permentan / OT.140 / 9/2013 concerning guidelines for plantation business licensing, in the case of plantation cultivation which permit must be owned by the company is IUP-B because of the cultivation business of the estate, To obtain IUP-B as referred to in article 8, the Plantation Company submits an application in writing and sufficiently stamped to the Governor or Regent / Mayor.

- a. Company Profile includes the deed of Establishment and the latest amendments that have been registered in the Ministry of Law and Human Rights, the composition of share ownership, the composition of the management and the company's business fields;
- b. Tax ID number;
- c. Business Place Permit;
- d. Recommended conformity with district / city Plantation Development Planning from the Regent / Mayor for IUP-B issued by the Governor;
- e. Recommendation about conformity with Provincial Plantation Development Planning from the Governor for IUP-B issued by the Regent / Mayor [12];
- f. Location permit from the Regent / Mayor which is equipped with a digital map of prospective locations with a scale of 1: 100,000 or 1: 50,000 (printed maps and electronic files) in accordance with statutory regulations and no permission is given to other parties;
- g. Technical considerations of land availability from the department in charge of forestry, if the requested area comes from a forest area;
- h. Work plans for estate development including facilitation plans for the construction of neighboring community gardens, plans for the production of processed products;
- i. Environmental Permit from the Governor or Regent / Mayor in accordance with the authority;
- j. Statement of ability:
 - 1) have human resources, facilities, infrastructure and system control plant pests (OPT);
 - 2) have human resources, facilities, infrastructure and systems to conduct land clearing without burning and fire control;
 - 3) facilitate the development of surrounding community gardens in accordance with Article 15 which is equipped with a work plan and financing plan; and
 - 4) carry out partnerships with planters, community employees around the plantation;
- k. Statement from the Applicant that the status of the Plantation Company as an independent business or as part of a Group of Plantation Companies has not controlled the land beyond the broadest extent as referred to in Article 17.

For point f of article 21, namely regarding location permits, this is regulated in articles 9 and 10 concerning procedures for granting location permits as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 5 of 2015 concerning location permits, reads article 9 that is:

- (1) Location permits are granted based on land engineering considerations which include aspects of land tenure and land use techniques which include the rights and rights of the land concerned, physical assessment of the area, land use, and land capability.
- (2) location permit and land technical considerations as referred to in paragraph (1) as a condition of the application for land rights.
- (3) Decree on the granting of location permit is signed by the Regent / Mayor or specifically for the special area of the Capital City of Jakarta after a coordination meeting is held between the relevant agencies, led by the

37
Governor of the Special Capital Region of Jakarta, or by appointed officials.

- (4) for the issuance of cross-regency / city location permits in 1 (one) province signed by the Governor
- (5) for the issuance of cross-province location permits, it is signed by the Minister of Agrarian Affairs and spatial planning / head of the national land agency. 33
- (6) the format of the decision to grant a location permit as referred to in paragraph (1) shall be made according to the sample as listed in annex III which is an integral part of this regulation.
- (7) in the event that the decision to issue a location permit as referred to in paragraph (6) has been prohibited from issuing a new location permit for a different subject on the same land.
- (8) In the case of the issuance of a new location permit as referred to in paragraph (7), the said new location permit is null and void. And with regard to article 15 that further provisions regarding the procedure for granting location permits shall be determined by the Governor, Regent / Mayor in accordance with their authority.

Location permit / decree of rights is a permit granted to the Company to obtain land needed for investment purposes which also applies as a transfer right, and to use the land for capital investment purposes [13]. So in this case the Land Agency has the role to pay attention to the spatial layout of the area, because companies are prohibited from carrying out land acquisition activities before the location permit is determined, because land acquisition and use plans must be notified to the Land Office where the land object is located. While other requirements such as Taxpayer Identification Number in the Primary Tax Service Office and others are in accordance with the institution. So with the fulfillment of these requirements, a company can carry out its activities [14].

V. CONCLUSION

39
The company is a business entity that is a legal entity or not a legal entity, and each company has a different rule, and for a legal entity in the case of a Limited Liability Company (PT) regulated in Act Number 40 of 2007 concerning Limited Liability Companies. In the case of a company to be able to run its business it must be in accordance with the aims and objectives of the company in terms of plantation, it must meet the requirements to be able to run its business and the numerous requirements and forms of permits and different authorized agencies really make the company overwhelmed.

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