

Juridical Analysis Of The Responsibilities Of Notaries In Making Deeds Of Statement Of General Meeting Decisions Shareholders Of Limited Liability Companies

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Juridical Analysis Of The Responsibilities Of Notaries In Making Deeds Of Statement Of General Meeting Decisions Shareholders Of Limited Liability Companies

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Abstract. Notaries must pay attention in detail that the recipient of the power of attorney is indeed a representative of the Limited Liability Company (PT) concerned who is authorized and has the ability to make the deed.⁹ The form of the PKR is a notarial deed, but the deed is the result of a meeting decision made by the minutes under hand. Based on Article 21 Paragraph (4) of the UUPT which states that it is permissible for a PKR deed to be made by a notary in the form of an authentic deed. If there is a formal defect in the deed, the deed only has the force of evidence like a private deed if the parties sign the deed. In accordance with Article 21 Paragraph (4) of the UUPT. The conclusion is a limited liability company, hereinafter referred to as a company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in the law and its implementing regulations. This definition is based on the provisions of Article 1 number (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Verification of Authority, Notary must ensure that the limited company meeting is attended by parties authorized to represent the company. This includes checking the validity of the power of attorney or other documents showing the authority of the parties present at the meeting. Parties' Lack of Understanding of Legal Procedures and Obligations.

Keywords: Esponsibilities, General Meeting Decisions, Limited Liability Companies.

1. INTRODUCTION

A limited liability company, hereinafter referred to as a company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in the law and its implementing regulations. This definition is based on the provisions of Article 1 number (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Limited Liability Company is a partnership in the form of a legal entity, where this legal entity is called a "company". The term company in a limited liability company refers to the method of determining the capital of the legal entity, which consists of shares or stocks, while the term limited refers to the limits of the liability of the shareholders or shareholders, which is only limited to the nominal value of all shares owned. Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UUPT) places notaries in a high position, this is because to establish a Limited Liability Company and make changes to the articles of association must be made with a Notarial deed as the main requirement. These requirements are in accordance with the provisions of Article 7 Paragraph (1) of the UUPT and Article 21 Paragraph (4) of the UUPT. Based on the text of the Article, a notarial deed is an absolute requirement and must be fulfilled to establish a company, an authentic deed

is a deed that is required to be made in the establishment of a company.

Unlike individuals (humans), limited liability companies, although they are independent legal subjects, are artificial persons, which cannot carry out their own duties. Therefore, companies need their organs to run their businesses, manage their assets and represent the company in court and outside the court. Based on Article 1 paragraph (2) of Law Number 40 of 2007, it is determined that the organs of a company consist of the General Meeting of Shareholders (GMS), the Board of Directors and the Board of Commissioners. Companies that wish to make changes to their Articles of Association as stipulated in the UUPT require a notary to participate by being involved in the process of making the deed and submitting the change data to the Minister. Based on the author's observations, more notaries use the *partij acte* type in the process of changing the company's Articles of Association. Notaries base their deeds on the minutes of the General Meeting of Shareholders (GMS). The deed made is based on a private letter of the results of the statements of the shareholders in the GMS which is then restated by the notary in the form of an authentic deed. Based on the minutes, a deed can be issued which is known as the Deed of Statement of Meeting Decisions.

Notaries must pay attention in detail that the recipient of the power of attorney is indeed a representative of the Limited Liability Company (PT) concerned who is authorized and has the ability to make the deed.⁹ The form of the PKR is a notarial deed, but the deed is the result of a meeting decision made by the minutes under hand. Based on Article 21 Paragraph (4) of the UUPT which states that it is permissible for a PKR deed to be made by a notary in the form of an authentic deed. If there is a formal defect in the deed, the deed only has the force of evidence like a private deed if the parties sign the deed. In accordance with Article 21 Paragraph (4) of the UUPT, the Notary's responsibility is limited to the data entered or brought by the minutes of the GMS. Regarding the extent of the notary's responsibility if the minutes providing the deed of the GMS meeting are not in accordance with the original because the notary does not know the truth of the contents of the deed, considering that the PKR is not purely notarial minutes of meetings but rather private minutes of meetings, where the Notary is not present or involved in making them. GMS decisions are made privately, but the meeting decisions are made by the parties to the agreement based on their agreement and then the agreement is brought before a notary to be written down in a notarial deed.

Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

- 1) How are the legal regulations related to the Notary's Responsibility in Making Deeds of Statement of Limited Liability Company Meeting Decisions (Research Study in Batam City)?
- 2) How are the implementation related to the Notary's Responsibility in Making Deeds of Statement of Limited Liability Company Meeting Decisions (Research Study in Batam City)?
- 3) What factors are the obstacles/constraints and solutions related to the Notary's Responsibility in Making Deeds of Statement of Limited Liability Company Meeting Decisions (Research Study in Batam City)?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

- 1) To find out the legal regulations related to the Notary's Responsibility in Making a Deed of Statement of Limited Liability Company Meeting Decisions (Research Study in Batam City)
- 2) To find out the implementation related to the Notary's Responsibility in Making a Deed of Statement of Limited Liability Company Meeting Decisions (Research Study in Batam City)
- 3) To find out what factors are obstacles/constraints and solutions related to the Notary's Responsibility in Making a Deed of Statement of Limited Liability Company Meeting Decisions (Research Study in Batam City)

2. LITERATURE REVIEW

According to Komaruddin, the definition of analysis is the activity of thinking to break down a whole into small components so that one can recognize the signs of the components, the relationship of each component, and the function of each component in an integrated whole. Juridical is something that is recognized by law, based on law and something that forms order and has an effect on its violation, juridical is a rule that is considered legal or in the eyes of the law is justified in its validity, whether in the form of regulations, customs, ethics, even morals that are the basis for its assessment. Widagdho said that Responsibility is human awareness of their behavior or actions, whether intentional or unintentional. Responsibility also means actions as a form of awareness of one's obligations. Responsibility is closely related to obligations. Obligations are

something that is imposed on someone. Obligations are a comparison to rights and may not refer to rights. So responsibility in this case is responsibility for one's obligations. A notary is a public official who is authorized to make authentic deeds for almost all legal acts as long as the law does not grant such authority to other officials. Notaries obtain the title of public official because Notaries are appointed and dismissed by the State (in this case represented by the Government through the Minister whose field of duties and responsibilities includes the field of notary, for the current cabinet the Minister of Law and Human Rights).

The General Meeting of Shareholders (GMS) is the highest organ in a Limited Liability Company. Based on Law No. 40 of 2007 concerning Limited Liability Companies, the GMS is an organ or part of the company that has authority that is not given to the board of directors or the board of commissioners within the limits determined by the Law or Articles of Association. The power in the GMS is in a higher strata than the directors and commissioners. All important decisions are decided through the GMS along with all its authorities. Referring to the Law on Limited Liability Companies, GMS is divided into two types, namely Annual GMS and Extraordinary GMS. Annual GMS must be held once a year before the end of June, while Extraordinary GMS can be held at any time by the board of directors through a written request.

3. RESEARCH METHOD

This type of research is normative legal research supported by empirical research. Normative legal research is also called library research. It is called library research because this research is only aimed at written regulations so that this research requires secondary data. The empirical legal approach in this study means that in analyzing the problem, it is done by combining legal materials (which are secondary data) with primary data obtained from Notaries/PPAT. The specification or type of research in this thesis is to combine normative legal research (doctrinal) with empirical legal research (sociological). Where in this research will compare between the regulation of ideal norms (das Sollen) of law with the reality that occurs in society (das Sein). The population in this study is Notaries/PPAT in the Batam City area, Riau Islands. The sample used by the researcher is a Random Technique consisting of 3 Notaries/PPAT.

10 4. RESULTS AND DISCUSSION

A. Legal Regulations relating to the Responsibilities of Notaries in Making Deeds of Statements of Limited Liability Company Meeting Decisions

A limited liability company, hereinafter referred to as a company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in the law and its implementing regulations. This definition is based on the provisions of Article 1 number (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). As a legal entity based on an agreement, of course the role of a Notary in a Company is very large. Article 7 paragraph (1) states, "A Company is established by 2 (two) or more persons with a notarial deed made in Indonesian." Article 8 paragraph (1) of the UUPT also states that, "The deed of establishment contains the articles of association and other information relating to the establishment of the Company". The articles of association are the basis for the procedures for the Company itself. This means that the basis for the establishment of a Limited Liability Company must be made before a Notary.

Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UU PT) places notaries in a high position, this is because to establish a Limited Liability Company and make changes to the articles of association must be made with a Notarial deed as the main requirement. These requirements are in accordance with the provisions of Article 7 Paragraph (1) of the UUPT and Article 21 Paragraph (4) of the UUPT. Based on the text of the Article, a notarial deed is an absolute requirement and must be fulfilled to establish a company, an authentic deed is a deed that is required to be made in the establishment of a company. Based on Article 21 Paragraph (4) of the UUPT which states that it is permissible for a PKR deed to be made by a notary in the form of an authentic deed. If there is a formal defect in the deed, the deed only has the force of evidence like a private deed if the parties sign the deed. In accordance with Article 21 Paragraph (4) of the UUPT, the Notary's responsibility is limited to the data entered or brought by the minutes of the GMS.

In Indonesia, the responsibility of a notary in making a deed of statement of decisions of a limited liability company meeting is regulated by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary ("Notary Position Law"). The notary's responsibility is within the scope of the material truth of the deed that has been made by the notary. Regarding the responsibility of a

notary as a public official related to material truth, it is divided into four things consisting of: Responsibility for his position in this case is in the position of the notary itself, in other words the notary's responsibility for the deed made is personal, this responsibility is attached to the notary concerned personally, wherever or wherever the notary is. This is true, considering that the notary concerned is the only public official who is stated in the deed in the format desired and agreed upon by the parties

B. Implementation Related to Notary's Responsibilities in Making Deeds of Statements of Decisions of Limited Liability Company Meetings

Basically, a Notary will be heavily involved in the private sector of the economy. This is because the role of the Notary profession as a maker of written evidence in the form of authentic deeds as stated in Article 1868 of the Civil Code relating to agreements made by the parties. 28 A Notary as a public official authorized to make authentic deeds only concludes the wishes of the parties so that their actions can be stated in the form of authentic deeds, without being a party to the deed. A deed is made not because of a Notary's request, but must come from the wishes of the parties. 29 Due to its very large role in society, of course a Notary has limitations in the form of obligations that must be prioritized in carrying out his/her position. This obligation is stated in Article 16 of the UUJN and Article 3 of the Notary Code of Ethics of 2015. From this obligation also arises a form of responsibility that must be considered by the Notary.

However, the role of a Notary does not stop at the establishment of the Company. The definition of PT in the UUPT states that as a legal entity, PT will carry out business activities. These business activities do not run in isolation. As a legal entity, PT will be able to make agreements with other parties, either with fellow legal entities or with an individual. Although not always made before a Notary, for the agreement to be based on an authentic deed, a Notary will still be involved. There are still agreements under hand which must then be brought before a notary to be strengthened into an authentic deed. Along with the development of economic dynamics and the increasing number of legal entities in Indonesia, this will result in an increased possibility of unlawful actions being taken, in order to fulfill the personal interests of each party. Economists even hypothesize that better economic times increase crime. Of course, due to the large role of Notaries in activities carried out by Limited Liability Companies, Notaries can also be involved in events that are not in line with the law. Crimes that can occur in connection with this Company are crimes related to agreements or activities of

the Company that require an authentic deed. A deed can be legally void if an error occurs when making the deed, so if this can be proven, the deed can be considered no longer authentic.

Notarial deeds are made only for the parties, not for the benefit of the notary, if there is a dispute from the agreement contained in the notarial deed, then those who are bound are those who made the agreement themselves, while the notary is not bound to fulfill any obligations as stated in the notarial deed. The responsibility of a notary comes from the law as stated in Article 65 of the UUJN. Notaries must be responsible for every deed they make, as long as the deed is made based on the provisions regarding the making of deeds, the requirements and contents are met and do not conflict with general provisions and can fulfill the sense of justice of all related parties, then the Notary cannot be held responsible for the deed

C. Factors that become obstacles/constraints and solutions related to the Notary's Responsibility in Making Deeds of Statements of Limited Liability Company Meeting Decisions

Research studies at Notary in Batam City regarding the factors of obstacles/constraints and solutions related to the responsibility of notaries in making deeds of statements of decisions of limited liability company meetings can cover several relevant aspects. The following are some of the factors of obstacles that notaries may face along with solutions that can be applied:

1) Difficulty in Ensuring the Authority of the Parties:

Careful Document Verification: Notaries must verify documents that show the authority of the parties present at the meeting, such as power of attorney or other official documents.

2) Implementation of High Professional Standards:

Training and Strengthening of Professionalism: Notaries need to continuously update their legal knowledge and attend related training to ensure the implementation of high standards of professionalism in their notarial practice.

3) Limited Resources and Infrastructure:

Investment in Technology and Human Resources: Notary offices need to invest in adequate technology to facilitate the administrative process and ensure the security of documents as well as trained human resources to manage the process.

4) Involvement of Unauthorized Parties or Potential Conflicts of Interest:

5) Background Checks of the Parties: Notaries must conduct careful background checks

on the parties involved in the limited liability company meeting to ensure there is no potential conflict of interest or illegitimacy.

The solutions that can be provided are as follows:

a. Improved Communication and Education:

Notaries can improve communication with the parties and provide education on legal procedures that must be followed in limited liability company meetings.

b. Technology Implementation:

Using technology to improve efficiency and security in document storage and administrative processes.

c. Strengthening Verification of Authority:

Strengthening the verification process of documents that show the authority of the parties involved in limited liability company meetings.

d. Improving Professional Standards:

Continue to update legal knowledge and attend training to improve professionalism in notarial practice.

e. Cooperation with Authorities:

Collaborate with authorities such as notary supervisory institutions or related legal entities to ensure compliance with applicable regulations and procedures.

5. CONCLUSION AND SUGGESTION

A. Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn:

- 1) A limited liability company, hereinafter referred to as a ¹company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in the law and its implementing regulations. This definition is based on the provisions of Article 1 number (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT).³
- 2) Verification of Authority, Notary must ensure that the limited company meeting is attended by parties authorized to represent the company. This includes checking the validity of the power of attorney or other documents showing the authority of the parties present at the meeting.
- 3) Parties' Lack of Understanding of Legal Procedures and Obligations

B. Suggestion

From this conclusion, the author can provide several suggestions, namely:

For legal regulations related to the responsibility of notaries in making deeds of statements of decisions of limited liability company meetings, several suggestions for improvement or refinement can be considered:

1) Clarification of Notary Authority:

A clearer explanation of the authority of notaries in verifying the validity of documents showing the authority of participants in limited liability company meetings. This can reduce ambiguity and ensure that notaries only accept legitimate representatives from the parties involved.

2) Strengthening Document Verification:

Encourage notaries to verify documents more carefully and thoroughly, including powers of attorney and other documents showing the authority of meeting participants. This regulation can help prevent problems related to the validity of decisions taken at meetings.

3) Improvement of Education and Training:

Establish stricter education and training requirements for prospective notaries in terms of knowledge of limited liability company law and notary obligations in making deeds. This will help ensure that notaries have a deep understanding of the procedures to be followed and their legal obligations.

4) Use of Technology for Transparency:

Encourage notaries to use technology to increase transparency in the process of preparing deeds of statements of decisions of limited liability company meetings. For example, by using a digital system for more accurate and secure documentation.

5) Strengthening Supervision and Sanctions:

Strengthening supervision of notarial practices and imposing stricter sanctions on notaries who violate their obligations or engage in unethical practices. This may include a more active oversight mechanism from the competent authorities.

6) Provision of Guidelines or Practice Guidelines:

Developing clear guidelines or practice guidelines for notaries in preparing deeds of statements of decisions of limited liability company meetings. This guideline may include standard procedures, deed formats, and notary obligations in detail.

7) Strengthening Cooperation with Authorities:

Encouraging closer cooperation between notaries and authorities, such as the Ministry of Law and Human Rights or notary supervisory institutions, to improve supervision and provide guidance to notaries in carrying out their duties.

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