



Juridical Consequences of Amendments to the Articles of Association of a Limited Liability Company that are not recorded at the Ministry of Law and Human Rights In Indonesia

Novi Eriza; Busyra Azheri; Wetría Fauzi

Faculty of Law, Andalas University, Padang, Indonesia

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Abstract

Limited Liability Company is the most preferred form of economic activity business today, because in addition to its limited liability, the Limited Liability Company also makes it easy for owners (shareholders) to transfer their company (to everyone) by selling all their shares in the company, and other benefits. The Limited Liability Company Law stipulates that directors are authorized organs of the company and are fully responsible for the management of the company for the interests of the company in accordance with the aims and objectives of the company, and represent the company, both inside and outside the court in accordance with the provisions of the articles of association called directors are all directors. In reality, submission of amendments to this statute may occur beyond the time period stipulated in the Limited Liability Company Law. One of them is PT. Rowinda Tiara Abadi, where the PT wants to make changes to the Articles of Association of the Limited Liability Company regarding changes in capital increment that were placed only when the Deed was to be registered at Ministry of Law and Human Rights, the previous Deed of Amendment did not exist because the previous amendment was only with a notarial deed but the amendment to the Articles of Association was not recorded by Ministry of Law and Human Rights. As a result, changes in the articles of association of the PT are not recorded in Ministry of Law and Human Rights, this is a problem for the PT which subsequently wants to make amendments to the articles of association back while when wanting to register Ministry of Law and Human Rights the Deed is no longer accessible because it has passed the specified deadline. Therefore, what is the legal consequence for a limited company whose amendments to the statutes were not previously recorded and how to resolve them so that changes to the articles of association previously can be recorded again at SABH.

Keywords: Juridical Consequences; Article of Association; Limited Liability; Ministry of Law and Human Right

Introduction

Limited Liability Company is the most preferred form of economic activity business today, because in addition to its limited liability, the Limited Liability Company also makes it easy for owners (shareholders) to transfer their company (to everyone) by selling all their shares in the company, and other benefits. Limited liability companies as in accordance with Article 1 paragraph (1) of Law Number 40 Year 2007 are:

"A legal entity which is a capital alliance, is established based on an agreement, conducts business activities with authorized capital which is entirely divided into shares, and fulfills the requirements stipulated in the law and its implementing regulations. Thus, it is clear that every limited liability company is a legal entity of capital partnership that runs the company."¹

If someone has established a Limited Liability Company for a business that will run it usually requires adjustments ranging from capital increase, changes in shareholders, intentions and objectives, arrangement of management and others, then changes relating to company identity or information, whatever its form, must pay attention to the rules applicable.

The information referred to is written in the company's articles of association if the information changes, meaning that the Limited Liability Company must make changes to the articles of association. Amendments to the Limited Liability Company are required to make a Deed of amendment to the articles of association in which the articles of association are made before a Notary. As is the case in Article 19 of Law Number 40 Year 2007 concerning Limited Liability Companies, hereinafter referred to as UUPT, stipulates that, "amendments to the articles of association are determined by the General Meeting of Shareholders (hereinafter referred to as General Meeting of Shareholders) and the agenda regarding amendments to the articles of association must be clearly stated in the General Meeting of Shareholders summons.

Matters discussed at the General Meeting of Shareholders are if there are several articles of association in the company that must be changed as a legal entity, a Limited Liability Company must have a statute. When amendments to the articles of association are made, these changes must be published or stated in the Notary Deed in Indonesian. As stated in Article 21 paragraph (4) and paragraph (5) of the Company Law, "If the amendment to the articles of association is not contained in the minutes of meeting made by a Notary, the amendment to the articles of association must be stated in a notarial Deed no later than 30 (thirty) days from the date of the GMS decision. "Amendments to the articles of association may no longer be stated in a Notarial Deed if the deadline is 30 (thirty) days from the date of the General Meeting of Shareholders decision. So, if the amendment to the articles of association is not included in the minutes of the minutes of meeting made by a notary, the GMS decision on that change must be "stated" in the Notarial Deed.

Based on the Notarial Deed's statement, the Notary submits the application for approval of certain amendments to the Minister or the Director General of General Legal Administration for Submitting Requests for Legal Entity Approval and Approval of Amendments to the Articles of Association and Submission of Notification of Amendments to Articles of Association and Amendments to Limited Company Data. So, any changes to a change in the articles of association in a company must be made Deed of amendments to the articles of association by the Notary. This deed is a new deed containing changes from the previous Articles of Association.

Article 15 of the Company Law states that the articles of association constitute a part of the Deed of incorporation which contains rules on the Limited Liability Company that determines every right and

¹ Abdulkadir Muhammad, Indonesian Corporate Law, PT Citra Aditya Bakti, Bandung 2010, p. 105.

obligation of the parties in the articles of association, both the Limited Liability Company itself, shareholders and management. Amendments to the articles of association which require Ministry of Law and Human Rights approval and registration as mentioned earlier are related to the discussion of:

- a. Name of company and / or domicile of the company;
- b. The purpose and objectives and business activities of the company;
- c. The period of the company's establishment;
- d. The amount of authorized capital;
- e. Reduction of issued and paid up capital; and / or
- f. The status of a company that is closed is a public company or vice versa. Changes to the articles of association come into force from the date of issue.²

Ministerial Decree regarding approval of amendments to the articles of association. Changes to the articles of association other than those referred to above are sufficiently notified to the Minister. Amendments to the articles of association come into force as of the date of issuance of the letter of receipt of notification of amendments to the articles of association by the Minister. Article 12 (2) PERMEN No. M-01 HT 01-10 / 2007 has described changes in the Company's "data" which must be notified to the Minister, including:

- a. a. Change in the name of the shareholders and the number of shares owned by him,
- b. b. Change of names of members of the Board of Directors and Board of Commissioners,
- c. c. Change of address of the Company,
- d. d. Dissolution of the Company,
- e. e. The legal status of a legal entity has ended because of a merger, consolidation, pure separation, and
- f. f. The liquidation process has ended.³

The deadline for requesting amendments to the articles of association has a time limit set in Article 21 paragraph (5), (6), (7), and (9) UUPT. To be able to make amendments to the articles of association constitute a specificity by means stipulated by the GMS, this is regulated in Article 19 paragraph (1) of the UUPT amendments to the articles of association stipulated by the General Meeting of Shareholders. Limited Liability Companies must meet the requirements specified in the Law if they want to make amendments to the articles of association. Amendments to the articles of association are determined by the GMS and the proposal for changes to the articles of association is stated in a summons or announcement to hold a GMS. Fundamental changes must be approved by Ministry of Law and Human Rights made in the Indonesian-language Notary Deed.

². Gatot Supramono, Limited Liability Company Law (New Edition), Djambat, 2004, Jakarta, p.25.

³ M. YahyaHarahap, Limited Liability Company Law, Sinar Grafika, Jakarta, 2009, p. 217

In reality, submission of amendments to this statute may occur beyond the time period stipulated in the Limited Liability Company Law. One of them is PT. Rowinda Tiara Abadi, where the PT wants to make changes to the Articles of Association of the Limited Liability Company regarding changes in capital increment that were placed only when the Deed was to be registered at Ministry of Law and Human Rights, the previous Deed of Amendment did not exist because the previous amendment was only with a notarial deed but the amendment to the Articles of Association was not recorded by Ministry of Law and Human Rights.

As a result, changes in the articles of association of the PT are not recorded in Ministry of Law and Human Rights, this is a problem for the PT which subsequently wants to make amendments to the articles of association back while when wanting to register Ministry of Law and Human Rights the Deed is no longer accessible because it has passed the specified deadline. Therefore, what is the legal consequence for a limited company whose amendments to the statutes were not previously recorded and how to resolve them so that changes to the articles of association previously can be recorded again at SABH. Based on the background of the problem above, the writer is interested in doing research for writing a thesis with the title :“ Juridical Consequences of Amendments to the Articles of Association of a Limited Liability Company that are not recorded at the Ministry of Law and Human Rights”. Based on the explanation above, the main issues in this thesis are:1. What are the juridical consequences for Limited Liability Companies whose amendments to the Articles of Association are not recorded at the Ministry of Law and Human Rights?2. What is the process for resolving basic changes that are not registered with the Ministry of Law and Human Rights?

Research Method

In accordance with the formulation of the problem and research objectives, the type of thesis research used to study this research is normative juridical research. The selection of this type of research is in view of the review of this problem stemming from the material legislation, theories, and concepts relating to aspects of corporate law. Moving on from this type of research, it is hoped that a clear principle can be obtained by providing legal certainty for the Directors, so that a balanced relationship occurs in the directors' responsibility for the ultra vires action.

The nature of this research is descriptive analysis. Descriptive means that from this research it is expected to obtain a detailed and systematic description of the problem under study. This research generally aims to describe systematically, factually, and accurately on a particular population or area, regarding certain characteristics, characteristics or factors. The analysis is intended based on the description of the facts obtained will be carried out a careful analysis of how to answer the problem.⁴

Juridical Consequences for Limited Liability Companies Whose Amendments to the Articles of Association Are Not Recorded at the Ministry of Law and Human Rights

1. Regulations Regarding Amendments to Articles of Association of Limited Liability Companies

In principle, the Articles of Association of a Limited Liability Company can be changed and based on the provisions of Article 19 of the Company Law such changes can only be made based on a GMS decision. In every GMS that aims to change the articles of association, the agenda or agenda on changes to the articles of association must be clearly stated in the GMS summons.

⁴ Sunaryati Hartono, Indonesian Legal Research at the End of the 20th Century, Alumni, Bandung, 1994, p.101

Based on the description above, the requirements for amendment to the Articles of Association mean that changes can be made by a Company, but must be made in accordance with the specified conditions. From the various requirements that must be met, it can be concluded that the essence of the amendment to the articles of association must be approved by most holders Shares because the company was established with an agreement to ensure that these changes are actually made at the will of the shareholders.

All amendments to the articles of association must be contained or stated in a notarial deed in Indonesian. Amendments to the articles of association that are not included in the minutes of the meeting made by a notary must be stated in the notarial deed no later than 30 (thirty) days from the date of the GMS decision. Amendments to the articles of association may not be stated in a notarial deed after a 30 (thirty) day deadline. Deed of Decree of the General Meeting of Shareholders, hereinafter referred to as PKR, which has been made by a Notary Public, is then submitted an application for approval or application to the minister through an electronic system or SABH. The application is submitted no later than 30 days from the notary deed or PKR was made.

Then the Notary does the data collection for submitting an application for amendment to the articles of association other than as referred to in Article 18, it is sufficient to be notified by the Applicant to the Minister. (2) Application for notification of amendments to the articles of association as referred to in paragraph (1), shall be submitted by the Applicant through SABH by filling in the Format of Amendment accompanied by supporting documents. There are several requirements that must be completed by companies according to Article 25 of the Minister of Law and Human Rights Regulation No. 1 of 2016 concerning Amendments to the Minister of Law and Human Rights Regulation No. 4 of 2014 concerning Procedures for Filing Requests for Legalization of Legal Entities and Approval of Amendments to the Articles of Association and Submission of Notification of Amendment to Articles of Association and Amendment of Limited Company Data.

2. Legality of Limited Liability Companies whose amendments to the Articles of Association are not recorded at the Ministry of Law and Human Rights

Companies whose amendments to the articles of association are not recorded to the minister more than 30 (thirty) days after the notary deed which contains the contents of the amendments of PT certainly do not have a decree or letter of notification from the minister, then such changes are considered to be non-existent or the changes that apply are still previous changes. According to article 23 of the Company Law, which can be classified as follows:

- a. Amendments to certain articles of association which "must obtain Ministerial approval, shall come into force as from the date" Ministerial Decree "is issued regarding approval of amendments to the Articles of Association.
- b. Other changes other than changes in certain basic budget that are "sufficiently notified" to the Minister, come into force since the "acceptance letter" was issued by the Minister of change.

From the description above, the amendment to the articles of association can be said to be "valid" and comes into force legally binding on the parties to the amendment when the letter from the minister has been issued but if the amendment has not been stated then the deed made by the notary public remains authentic deed as long as the deed is made in accordance with statutory provisions.

The changes articles of association claims that are not recorded to the minister who have passed the specified deadline for the amendment can no longer be accessed by the SABH system. This means that things that have been changed in the deed of amendment to the company's articles of association become invalid by not recording the deed of amendment to the company's articles of association in Ministry of Law and Human Rights even though it has been applied in accordance with the applicable laws and regulations, so that the said statute is the previous budget which has been recorded by Ministry of Law and Human Rights. Meanwhile, regarding the strength of the deed of amendment to the articles of association made before a notary public if examined, the deed remains an authentic deed. This is due to the deed of amendment to the company's articles of association made in accordance with the form stipulated by the law, made by or in front of the authorized official and made in the jurisdiction.⁵

The status of the deed of amendment to the articles of association which is not submitted an application for approval to the Minister, still has the position as an authentic deed, the authentic deed guarantees legal certainty, guarantees protection of the rights and obligations of legal subjects, thus the engagement that was born with the agreement contained in the authentic deed is still valid, and is not canceled because the Minister does not have the approval of the deed, and also the deed cannot be canceled because the request for approval of the Minister is not submitted.

The cancellation of an authentic deed is only caused by two things, the first, the deed is canceled by the parties who made it, and the second is canceled by a court decision that has permanent legal force, because there are defects in the deed, both defective from the official maker or flawed due to not fulfilling the legal requirements for an agreement so that the amended deed which does not obtain the Minister's approval, is still an authentic deed that guarantees legal certainty, and the amendment deed is a form of an agreement, the agreement is the law for those who bind themselves in the agreement . Although the legality of the Minister's approval has been ignored, or not fulfilled, in the event of a dispute or conflict or problem in the future due to the lack of approval of the Minister for the deed of amendment to the limited company, the amendment deed is an authentic deed which guarantees legal certainty of the rights and obligations agreed in the agreement.

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⁵ The Civil Code (Burgerlijk Wetboek), translated by R. Subekti and R. Tjitrosudibio, (Jakarta: Pradnya Paramita, 2006), Article 1868

Process For Resolving Basic Changes That Are Not Registered With the Ministry of Law and Human Rights

Limited company born as a legal entity begins with the process of its establishment, a limited company born as a legal entity is based on agreements made by several business actors to enter into cooperation in the field of business determined by the business actor, with that agreement the business actors jointly establish their business there there are also managers as investors or shares to get profits and make agreements to establish a business entity that has a legal entity so that the business undertaken by business actors runs well, and the agreement is recognized and protected by the state because of the existence of clear legal provisions governing that matter.

Article 1 number 1 of the Company Law firmly states that a PT is a legal entity established based on an agreement, this provision implies that the establishment of a PT must meet the provisions stipulated in the agreement law, so in the establishment of a PT other than subject to the Limited Liability Company Law, it is also subject to legal agreement. Agreement in the deed of establishment is an initial agreement that binds the parties, which regulates the obligation that must be made / done or not made / not done, because in it there are legal subjects that regulate the rights and obligations of the parties, so as to change the deed of establishment (changing the initial agreement) there must be an agreement from the parties involved in the initial agreement.

The deed of establishment is evidence of legal certainty, regarding the rights and obligations of the parties within it. In accordance with the provisions of the articles of association Article 1 number 5, Article 92 paragraph (1) and Article 97 paragraph (1) UUPT Directors are corporate organs that are authorized and responsible for the management of the company for the interests of the company in accordance with the aims and objectives of the company and represent the company, both inside and outside the court.

According to Munir Fuady, in principle there are 2 (two) main functions of the directors of a company, namely as follows:⁶

1. Management function, in the sense that directors perform the task of leading the company.
2. The function of presentation, in the sense of self-representation, represents the company inside and outside the court. The principle of representing the company out of court, causes the company as a legal entity will be bound by transactions or contracts made by directors on behalf of and for the benefit of the company.

The duties of the directors include:⁷

- a) Registering and announcing after the deed of establishment is approved by the Minister
- b) Caring for the Company for the interests and objectives of the company
- c) Representing the company inside and outside the court
- d) Making and selecting the list of shareholders, minutes of the GMS and minutes of the directors meeting.

⁶ Munir Fuadi, *Modern Doctrines in Corporate Law, Their Existence in Indonesian Law*, Op.Cit, p. 32.

⁷ C.S.T. kansil & Chistine S.T. kansil. *Op.cit*.hlm. 14

- e) Organizing the company's bookkeeping.
- f) Give permission to shareholders to check and obtain a copy of the list of shareholders, minutes and bookkeeping with the written request of the shareholders.

Report to the company about the ownership of shares and or their families in the company and other companies. According to Anisitus Amanat, the directors' obligations related to the company, among others:⁸

- a. Seek the registration deed of establishment on the deed of amendment to the company's articles of association in full.
- b. Establish and maintain a register of shareholders and a special list that contains information about the share ownership of members of the board of directors or commissioners and their families in the company over other companies.
- c. Register or record each transfer of rights to shares accompanied by the date and day of the transfer of rights in the register of shareholders or special lists.
- d. In good faith and full responsibility of carrying out the company's management duties for the interests and business of the company.
- e. Organizing the company's bookkeeping.
- f. Make annual reports and corporate financial documents.
- g. Maintaining the entire list, minutes, and financial documents of the company.
- h. Directors or directors are required to report to the company regarding ownership of shares and their families in the company and other companies.

Factors for Amendment to the Articles of Association are not Recorded to the Minister Amendments to the articles of association that do not have a letter of notification from the minister due to several obstacles that cause changes to the articles of association cannot be inputted in the SABH system to obtain a letter of notification from the Minister. These constraints include: Factors of Human Negligence Not fulfilled the provisions of Article 21 of the Company Law, namely the requirement to obtain the Minister's approval for changes to the articles of association of a limited liability company, could be due to several factors, one of the biggest causes was due to the negligence factor of the human beings themselves.

Negligence Legal entity, can be divided as negligence of its management, deed of amendment to the articles of association that does not have the approval of the Minister of Justice and Human Rights is a mistake or negligence by the directors of a limited liability company. Therefore, it is very important to control the behavior of Directors who have a large position and power in managing the company, including setting standards of conduct to protect parties who will be harmed if the director behaves in a

⁸ Anisitus Amanat, Discussion of the 1995 Limited Liability Company Law and Its Application in Notarial Deed, Rajawali Press, Jakarta, 1996, p. 130

manner not in accordance with his authority or dishonest behavior.⁹

And then cancellation of the deed of amendment to the budget that does not have the approval of the Minister, without the mechanism of the GMS, is invalid, because the previous deed has legal force, and is binding on the parties, all agreements made legally apply as a law for those who make it¹⁰.

Suggestion

1. Amendments to the articles of association are made by the General Meeting of Shareholders, and these changes must be contained or stated in a Notarial Deed in Indonesian. The strength of proof of the deed of amendment to the articles of association which is not recorded by the Minister after the amendment is made, the said deed of amendment remains an authentic deed as long as it complies with applicable laws and regulations and in accordance with established procedures. However, the deed of amendment to the articles of association is not accessible in the Legal Entity Administration System (SABH) because it has passed the determined time limit, the amendment is not recorded to the Minister so the deed applicable to the company is the statute before the amendment is made.
2. Settlement Changes to the budgetary fee not recorded at Ministry of Law and Human Rights, namely the Board of Directors as Organs of a Limited Liability Company, represent in the Recording of Amendments to the Articles of Association that do not carry out their mandated duties so as to cause harm to the company, the directors must be responsible for the losses, and the Notary in the amendment to the articles of association is the directors' representative in submitting an application for amendment to the articles of association according to article 16 of the Law Notary, namely providing services in accordance with the provisions in this Law, unless there is a reason to reject it, however, the notary must submit a request to the Minister. The things that the Notary can do so that Recording can be done again, namely by making a new deed or making a deed of confirmation based on the results of the General Meeting of Shareholders decision which reaffirms all the decisions of the GMS that have been agreed upon by consensus and agreement at the previous General Meeting of Shareholders.

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⁹ Gunawan Wijaya, Legal Risk as Directors, Commissioners and Owners of PT, Forum Sahabat, Jakarta, 2008, p. 41

¹⁰R. Subekti & Tjitrosudibio, *Op.Cit.*, hlm. 342.

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