



Responsibilities of Notaries in Making Company Deeds of Limited Liability Companies for Communities in Jayapura City

Supriyanto Hadi; James Yoseph Palenewen

Faculty of Law, University Cenderawasih, Papua, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v10i5.4687>

Abstract

Notary is a legal profession that is closely related to the presentation of evidence in the form of authentic deeds, even though it is very important for parties who need evidence for a purpose, and for personal and corporate interests, especially if the deed is drawn up. joint stock company as a whole. The method in this study is normative and empirical, where the normative refers to the literature, laws and regulations, while the empirical is based on the situation and conditions that exist in the field. The results of this study make it clear that the roles and responsibilities of a notary in preparing limited liability company business documents are very important for the people of Jayapura City, if a notary who is authorized to prepare authentic documents can be burdened with responsibilities in his work related to making the deed including the responsibility of the notary for his actions, the notary's criminal responsibility for the material truth of the deed, the notary's responsibility for the material truth of his actions and the notary's responsibility in fulfilling his duties in accordance with the notary's ethical principles based on UUJN.

Keywords: *Role; Notary; Deed Making; Limited Liability Company*

Introduction

Along with economic development, this has affected the development of various businesses initiated by the Indonesian people. Perhaps the fundamental economic problem is increasing people's wealth by increasing the amount of goods and services produced. Various developments in companies led by Indonesia are apparently inseparable from government interference, the goal is only to provide legal protection for the community itself, and it is expected to be able to fulfill the obligation to pay taxes and prevent fraud, that could happen.

A joint stock company is currently the most popular type of business, because apart from a joint stock company, a joint stock company/limited company also allows owners or shareholders to transfer their company to everyone in a way similar to selling all of their shares to the company.¹ Joint stock company/limited company as a legal entity supported by various written regulations, related to state participation in supporting the global economy as the basis for the country's current growth and

¹ Ahmad Yani dan Gunawan Wijaya, *Perseroan Terbatas*, PT. Raja Grafindo Persada, Jakarta, 2003, hlm 1.

development. Government intervention requires registration to establish a company, where registration can be done at an office or institution that has been notified by the state, so that the company's existence is known to the public. Entrepreneurs needed to support national economic development are entrepreneurs who are legal entities or also called joint stock companies or limited liability companies.²

The Limited Liability Company Law states that a joint stock company/limited company is a legal entity, namely. a person who can act as a legal entity in a legal process and has assets that are separate from the personal assets of the management. Therefore, a joint stock company is also a legal entity, i.e. independent legal entity, or personal standi in judicio.³ He can have rights and obligations in legal relations like an ordinary person or a private person or an ordinary person, he can sue or be sued, he can make decisions and he can have rights and obligations, debts, property like people.

According to Article 1 Paragraph 1 of the Limited Liability Company Law No. 40 of 2007 where a limited liability company is a legal entity in the form of a capital company established under a contract that carries out trading activities, the capital is divided into shares and meets the requirements of this law and the requirements stipulated in its implementing regulations. Notary is an official who has the authority to make authentic deeds and has other authorities determined by law based on this law or other laws. Notary is a legal profession that is closely related to the presentation of evidence in the form of letters. Its existence in the archipelago since the Dutch colonial period was based on the Indonesian Het Notar Ambt decree (Stb. 1860, number 3). This Dutch Colonial Regulation was valid until the Notary Law No. 30 of 2004, which has now been amended by Law No. 2 of 2014.⁴

From the provisions of the Notary Law, it can be concluded that the main task of a notary is to make attestation letters, which are indicated in the attestation book according to Article 1870 BW. Acceptance of absolute rights in the sense that what is said in an authentic document is considered to be fundamentally true. This is very important for parties who need proof for a purpose, both for personal gain and for the benefit of the company, namely in the field of business.

The current need for a Notary in business life, especially in the growth and development of a PT as a legal entity, let alone established by the world community, is a great need, because a Notary can obtain rights. protection. achieved in addition to compliance with legal regulations, particularly the Limited Liability Company Law (UUPT). The existence of a legal document made by a notary thus raises the notion of legal certainty which is the precursor of law.

Method

The method in this study is normative and empirical, where the normative refers to the literature, laws and regulations, while the empirical is based on the situation and conditions that exist in the field.

Result and Discussions

Notaries have a very difficult main task because they have to provide the best service to the public. The notary has the responsibility and obligation to guarantee the legal certainty of the parties through letters made by him or previously made. Therefore, individual and social responsibility is required, especially adherence to positive law and willingness to follow the professional code of ethics to strengthen existing positive legal norms. Notaries must carry out their duties and carry them out properly

² *Ibid*

³ Rachmadi Usman, *Dimensi Hukum Perusahaan Perseroan Terbatas*, Alumni, Bandung, 2004, hlm 50

⁴ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia*, cet. 2, UII Press, Yogyakarta, 2010, hlm 101.

and honestly, meaning to act honestly in accordance with the notary's oath of office. In providing his services, a notary must uphold the ideals of his profession in accordance with the demands of conscience.

The conditions that must be met in order for a letter to be called a letter and have the power to prove the existence of a legal action committed by the parties concerned, the letter must meet the following conditions:

- a. The letter must be signed;
- b. The letter must contain the events that form the basis of said right or agreement;
- c. The letter was meant as evidence.

Notary deed or official deed, namely a letter made from the beginning to the completion or signing of the letter, all of which are regulated by law, in this case the notary law. In various business relationships such as banking, land, community and other fields, both at the local, regional and national levels, the need for real deeds as a means of proof is increasing. Article 1868 of the Civil Code states that a deed that has been made by a notary has a very important role in providing legal certainty because a notary deed is the most authentic and strongest and most complete means of evidence in all matters relating to a notary deed.

The authentic deed clearly defines the rights and obligations to bring legal certainty and aims to reduce the occurrence of disputes, although disputes cannot be avoided in the dispute resolution process, the authentic deed is the strongest and strongest. Complete written evidence, promoting truly cost-effective and speedy resolution of cases. The notarial deed is considered as the strongest and most complete written evidence, except where the person concerned can satisfactorily prove otherwise before a hearing. A true document has at least three functions, namely:

- a) There is evidence that the parties agree to make a certain agreement.
- b) There is evidence against the parties what is included in the contract/agreement is the will of the parties.
- c) There is evidence against a third party that an agreement has been made on a certain date/time and the contents of the agreement are in accordance with the wishes of the parties concerned.

Notaries as officials authorized to make validation certificates can be held accountable for their actions related to their activities. The notary's responsibility includes the material truth of the actions he has committed. Regarding the duties of a notary as an official in material truth, then:

- a. The civil notary is responsible for the material truth of the deed he made. In civil liability, the legal interpretation used for the material truth of the actions committed by a notary is the interpretation of an unlawful act. The law of unlawful acts is so broad that any action can be covered as long as it harms another party and the loss is causally related to that action. What is called an unlawful act is either active or passive. Active in the sense of doing actions that harm other parties. Passive in the sense that he does not do the act, but actually it is an obligation for him, or by not doing a certain action that is required, the other party can be harmed.
- b. The notary's criminal responsibility includes material truth in the work he does. Regarding criminal law provisions that are not regulated in UUJN, the criminal responsibility of a notary is determined if the notary commits a crime. UUJN only regulates sanctions for violations committed by a notary against UUJN. The instrument of influence can be a document drawn up by a notary public, which has no evidentiary strength or only has cipher strength. The notary himself may be subject to a warning sanction against dishonorable resignation.
- c. The notary's responsibility must be in accordance with the UUJN for the truth of the actions he has committed. The need for notary services in today's society is unavoidable. The government has appointed a notary as a Public Official for the benefit of the wider community. Notary services are closely related to trust between parties where the state has great trust in notaries.

- d. The notary's obligations in carrying out his duties are guided by the notary's ethical guidelines. The notary profession described can be seen from its overall perspective through this integrated perspective, the notary profession is a profession related to individuals, professional organizations, society and the state. The work of a notary is related to these elements, so mistakes made in a notary's work are not only detrimental to the notary himself, but can also be detrimental to professional organizations, society and the state.

The responsibility of a notary in connection with the establishment of a joint stock company cannot be separated from the role of the notary in the process of establishing a joint stock company. The responsibility of the notary as the editor of the joint venture deed, if an error occurs in the establishment of the company, can be seen from two aspects, namely the error in implementing the deed of establishment of the company and the resulting errors. for fraud committed with malicious intent by the founder of the company.

After the Notary Memorandum of Association, which contains matters regulated in the Limited Liability Company Law 40 of 2007, a request was submitted for a ministerial order regarding electronic legalization of legal entities. In connection with the procedure stipulated in the Stock Law 40 of 2007, the founders submit the application jointly or by providing a power of attorney to a notary by filling out an electronic form containing:

- a) The name and place of residence of the Persero.
- b) Date of establishment of the company.
- c) The aims and objectives of the company's business.
- d) The amount of share capital
- e) As the name of the company there must be the full address of the company first.

A document description proving the completed form must be attached to the electronic application. If the information on the coupon complies with the provisions of the law, a ministerial note is issued. The applicant must physically submit the application letter and its supporting documents within thirty days of the notification being sent, if there are no objections. If the physical documents have been transferred entirely, the Minister will make a decision regarding the legalization of the company's legal entity no later than fourteen days after the transfer.

When a company is legalized as a legal entity, it must observe the principle of transparency, i.e. h. register the company in the trade register kept and maintained by the Minister. Company registration rules are in UUPT No. 40 of 2007 which refers to Law no. 3 of 1982 and Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 12/MPP/kep/1998. regarding mandatory commercial registration. The Minister of Industry and Trade (current Minister of Trade) is in charge of registration. The decree required each municipality to register the municipality based on a document approved by the Minister of Law and Human Rights. The license includes according to the approval of the Minister of Justice, amendments to the Articles of the Constitution and the Minister's Confirmation Letter; or letter of amendment to the Articles of Association and report to the Minister.

Conclusion

The responsibility of the notary to the people of Jayapura City in preparing the deed of establishment of a joint stock company/limited company is very important when the notary as an official authorized to make authentic deeds can be burdened with several responsibilities in it for the actions of his work, namely the civil law obligation of the notary regarding the material truth of his actions, criminal responsibility in the actions he commits is material truth, responsibility for the material correctness of the deed he made based on the UUJN and responsibility for fulfilling his duties in accordance with the rules of notary ethics.

References

Ahmad Yani dan Gunawan Wijaya (2003). *Perseroan Terbatas*, PT. Raja GrafindoPersada, Jakarta.

Abdul Ghofur Anshori (2010). *Lembaga Kenotariatan Indonesia*, cet. 2, UII Press, Yogyakarta.

Palenewen, J. Y. The Role of Land Deed Officials in the Registration of Land Proprietary Rights to Guarantee Legal Certainty for Communities in Jayapura City.

Rachmadi Usman (2004). *Dimensi Hukum Perusahaan Perseroan Terbatas*, Alumni, Bandung.

Republik Indonesia, Undang-Undang Nomor 2 Tahun (2014) tentang Jabatan Notaris (UUJN).

Republik Indonesia, Undang-Undang Nomor 40 Tahun (2007) tentang Perseroan Terbatas.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).