

LEGAL ANALYSIS OF THE RESPONSIBILITY OF NOTARIES IN THE PREPARATION OF SHAREHOLDERS' DEEDS BASED ON THE LIMITED LIABILITY PARTNERSHIP LAW

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ABSTRACT

The notary's responsibilities in drafting a shareholder deed include ensuring the formal validity of the deed, verifying the identity and agreement of the parties, and ensuring there are no conflicts with applicable laws and regulations. legal regulations notary's responsibility in making shareholder deeds regulated in Notary Law and its code of ethics. The notary's responsibility in making the deed of decision of the General Meeting of Shareholders made by a notary or a deed of release or a deed of an official. Minutes of the GMS made by a Notary and an authorized official are called a form of deed of minutes of a general meeting of shareholders. Deeds made before a notary or a partij deed (partij akten) Minutes of the GMS prepared before a Notary and are a partij deed when a Limited Liability Company has first held a GMS at the domicile of the Limited Liability Company

1. Introduction

A limited liability company established based on an agreement is contained in a deed of establishment, the format and contents of which are based on Law Number 40 of 2007 concerning Limited Liability Companies, so that the legal entity of a limited liability company contains the agreed promises contained in the deed of establishment of the limited liability company.

Article 7 Paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, expressly stipulates that a limited liability company is established by 2 (two) or more people with a notarial deed made in Indonesian. The above precludes the possibility of a company established by 2 (two) or more people being made with a deed other than a notarial deed, so that the notary has absolute authority in making the company's deed of establishment.

Notarial deeds play a crucial role in creating legal certainty due to their authentic nature and their ability to serve as strong and complete evidence in

the event of any issues related to the deed. The need for authentic deeds as proof is increasing today, as business relationships across various sectors, from local to international, expand.

Notary is an institution that exists and was born from the need for social relations between humans to fulfill evidence in the field of civil legal relations as authentic written evidence. Based on this, a notary in making a deed is always required to be professional and accurate, precise and careful because an authentic deed which is the strongest and most complete evidence, has an important role in every legal relationship in the life of society including in the making of a deed of amendment to the articles of association of a Limited Liability Company before the share issuance process, namely an activity of issuing or publishing a certain type of share for the first time and distributing it to the public through a public offering with the intention of raising capital.

The role of a notary is crucial in proving the certainty of a person's legal rights and obligations, namely by issuing an authentic deed drawn up in their presence. An authentic deed serves as the strongest, most complete, and perfect evidence. A notary's deed must meet the necessary requirements to achieve authenticity. In addition to fulfilling Article 1868 of the Civil Code, it must also fulfill the elements contained in Article 1320 of the Civil Code. Notaries are required to fulfill these requirements to ensure their deed is free from legal defects. It cannot be denied that there are times when a notary makes an error or negligence in drawing up a deed, which can result in the notarial deed being annulled by the court.

Limited liability companies in carrying out their business activities are always guided by their aims and objectives, so that the goal of achieving profits (profits) of limited liability companies can be realized. To achieve profits (profits) of limited liability companies, steps are needed to be taken so that business activities can increase, these steps are, namely by improving the performance of limited liability companies in the form of increasing production, distribution, and sales, and the need for business relations and partners who can add and expand the business movement of limited liability companies, as well as the need for capital injections or fresh funds that can improve the quality and quantity of limited liability company business, all of these steps require binding and strong legality in the eyes of the law, the legality is stated in the deed of amendment to the limited liability company, which is made by a notary.

2. Research Method

The nature of this research is descriptive research, namely a research method aimed at describing existing phenomena, which are taking place at present or in the past. This research will describe...notary's responsibility in making shareholder deeds based on the Limited Liability Company Law. The type of research used in this paper is normative juridical legal research, namely research that refers to legal norms, namely examining library materials or secondary materials. This research is descriptive and analytical, which reveals laws and regulations related to the legal theories that are the object of the research

3. Results And Discussion

Notary arises from the need in human interaction, which requires evidence for them regarding the civil legal relationships that exist and/or occur between them. The servants of this institution are assigned by the general authority (openbaar gezaag) whenever the community wishes or when the law requires them to create written evidence that has authentic force.

A notary is a public official who is authorized to make authentic deeds and has other powers as referred to in Law Number 2 of 2014 concerning the Position of Notary. Notaries are given the authority and obligation to serve the public, therefore notaries participate in carrying out the authority of the government.

The notary oath of office also states that a notary will maintain a professional attitude and conduct and fulfill his/her obligations in accordance with the Code of Professional Ethics, as well as uphold the honor, dignity, and responsibilities of a notary. Therefore, a Notary Code of Ethics is essential for notaries in carrying out their duties. Therefore, it needs to be written down and widely known by all notaries. In fact, the Notary Code of Ethics is one of the requirements for graduation to become a notary.

The primary duty of a notary is to serve and authenticate books, pamphlets, private wills or codicils, trade contracts, marriage agreements, wills or testaments, and other deeds. The first regulation for Indonesian notaries was dated June 16, 1635, which at that time was still in the form of instructions or guidelines for the requirements of the position.

article 1 Law Number 2 of 2014 concerning the Position of Notary that a notary is a public official who is solely authorized to make authentic deeds. All other officials only have certain powers, meaning that their powers do not exceed those of making deeds expressly assigned to them by law.

Notaries, apart from making authentic deeds, are also required by law to register private documents and to validate private documents. Validation of private

documents is based on the provisions of Article 1874 a and Article 1874 b of the Civil Code.

Article 1874 a of the Civil Code states that private writings are considered to be deeds signed privately, letters, registers, household documents and other writings made without the intermediary of a public official. By signing a private writing, it is equated with a thumbprint, affixed with a dated statement from a notary or other official appointed by law from which it is clear that he knows the person who affixed the thumbprint, or that this person has been introduced to him, that the contents of the deed have been explained to that person, and that after that the thumbprint was affixed in the presence of the official. This official must record the writing. By law, further regulations can be made regarding the statements and bookkeeping in question.

Article 1874 b of the Civil Code states that if the interested parties wish, they may also, outside of the matters referred to in the second paragraph of the previous article, provide a statement on the private writings that are signed from a notary or by another official appointed by law, from which it is clear that he knows the signatory or that this person has been introduced to him, that the contents of the deed have been explained to the signatory and have been carried out in the presence of said official. Hereby the provisions in the third and fourth paragraphs of the previous article apply.

The authority of a notary is "regular" or general in nature, while the authority of other officials is exceptional. The authority of these other officials to make such deeds only exists if it is expressly stated by law that, in addition to the notary, they also have the authority to make them, or if they are declared by law to be the only ones authorized to make a particular deed.

In carrying out the duties entrusted to him, a notary must be truly careful and responsible for his position in determining and qualifying what deeds are needed, and it cannot be denied that there are various possible violations committed by notaries against the code of ethics, including clients not signing before the notary, there being a reduction in fees, not reading the deed, making mistakes in providing legal action and carrying out duties outside the work area. Legal regulations regarding the responsibilities of notaries in drafting shareholder deeds refer to Law Number 2 of 2014 concerning the Office of Notaries, Law Number 40 of 2007 concerning Limited Liability Companies, and the Notary Code of Ethics. Notaries are responsible for the administrative, civil, ethical, and criminal aspects of the authenticity of the deeds they draft, including ensuring that the deeds comply with laws and regulations, verifying the agreements of the parties, and providing legal counseling. These responsibilities

encompass both formal and material aspects to provide legal certainty and protection.

The main responsibilities of a notary

1. Ensuring legality and validity: Notaries are required to ensure that the deeds they make do not conflict with applicable laws and regulations, such as checking the agreements in the shareholders' deeds (for example, the deed of establishment of a PT or the deed of the GMS).
2. Verifying the agreement of the parties: The notary must verify the agreement made by the parties to ensure there are no violations of the law.
3. Providing legal counseling: Notaries have an obligation to provide legal advice to the parties regarding the deeds they will make, to protect their interests.
4. Maintaining authenticity and legal certainty: Notaries must pay attention to external, formal and material aspects to guarantee the authenticity of the deed and provide legal certainty and protection for the parties.

Obligations related to the preparation of shareholders' deeds

1. Notaries are required to comply with the UUJN and its implementing regulations as guidelines in carrying out their duties.
2. Notaries must comply with the provisions of Law No. 40 of 2007, such as the notary's obligations in making a deed of amendment to the Articles of Association of the GMS.
3. A notary can refuse to make a deed if it violates applicable laws and regulations.

A notary is a public official authorized to make authentic deeds. A notary is authorized to make authentic deeds concerning all acts, agreements, and determinations required by law and/or desired by the interested party to be stated in an authentic deed.

The responsibility of a Notary as a public official, according to GHS. Lumban Tobing, a Notary must be responsible for the deeds he makes, if there are the following reasons:

1. In cases expressly determined by the Notary Regulations.
2. If a deed due to not fulfilling the requirements regarding its form (gebrek in the vorm), is cancelled in court, or is considered only valid as a private deed. In all cases, where according to the provisions contained in Article 1365 of the Civil Code regarding responsibility with elements of error (intentional and negligence), Article 1366 of the Civil Code regarding responsibility with elements of error, especially negligence, and Article 1367 of the Civil Code regarding absolute responsibility (without error) there is an obligation to pay

compensation, meaning that all of these matters must go through a balanced proof process.

Basically, all notary actions have responsibilities, whether in the context of making a deed of establishment of a limited liability company or an authentic deed related to credit agreements, debts, sales, leases, establishment of foundations, organizations or other matters, the notary is responsible both civilly, criminally and administratively.

If a Notary commits a violation of the provisions stipulated in Law Number 2 of 2014 concerning the Position of Notary in carrying out his/her duties, the Notary shall be held accountable by being subject to sanctions or being subject to sanctions in the form of civil sanctions, administrative sanctions, criminal sanctions, the Notary's code of ethics, or a combination of sanctions. Therefore, the Notary shall be held responsible for the deeds he/she has made.

Notaries are solely responsible for the deeds they make, so that notaries can also be sued in civil court according to Article 1365 of the Civil Code, which states, "every unlawful act that causes loss to another person, requires the person whose fault it is that causes the loss to compensate for the loss."

Propriety, accuracy, and caution require everyone to consider the interests of others in fulfilling their interests. In carrying out these interests, a notary must observe the norms of propriety, accuracy, and caution, so that his actions may not endanger or harm others. Losses suffered by the parties are the result of the notary's actions, so it can be said that the notary's actions are unlawful. Normally, a notary's actions result in losses because the notary is considered to know or should know the conditions and regulations of the deed he is making.

In carrying out their duties, notaries have a moral responsibility towards their profession. According to Paul F. Camanisch, a profession is a moral community that shares ideals and values. Professional groups have a reference called the Code of Professional Ethics. Violations of the notary's position will ultimately result in accountability for the profession holder, both administrative responsibility and compensation for civil damages. Furthermore, a notary can be held criminally responsible if a notary violates the Criminal Code in carrying out their duties and position.

Sanctions are a form of accountability for a notary. Sanctions are punitive measures to compel people to fulfill agreements or comply with statutory provisions. Civil liability for deeds drawn up by a notary, in this case, refers to the responsibility for the material truth of the deed. Therefore, civil sanctions are imposed for errors occurring in the construction of unlawful acts. Unlawful acts in this case can be active or passive.



Civil liability is closely related to unlawful acts and compensation for losses resulting from acts committed by a person. In addition to the Civil Code, other civil liability is regulated in Article 84 of Law Number 2 of 2014 concerning the Position of Notary which states that violations committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which result in a deed only having evidentiary power as a private deed or a deed being null and void by law can be a reason for the party suffering losses to demand costs, compensation, and interest from the Notary.

Sanctions in civil law are a form of accountability for notaries. Sanctions are punitive measures to compel people to fulfill agreements or comply with statutory provisions. Sanctions imposed on notaries serve as a reminder that they have violated the provisions regarding the implementation of notarial duties, as stipulated in the Law Number 2 of 2014 concerning the Position of Notary and to return the actions of Notaries in carrying out their official duties to be orderly in accordance with Law Number 2 of 2014 concerning the Position of Notary.

Civil liability for a deed drawn up by a notary, in this case, is the responsibility for the material truth of the deed. Therefore, civil sanctions are imposed for errors that occur in the construction of the unlawful act. The unlawful act in this case can be active or passive.

As a form of responsibility of the Notary in the field of civil law, sanctions are imposed in the form of reimbursement of costs, compensation and interest as a result of what the Notary will receive from the lawsuit of the parties if the deed in question only has evidence as a private deed or the deed is void by law

4. Conclusion

Plegal regulations notary's responsibility in making shareholder deeds regulated in Notary Law and its code of ethics. This responsibility includes verifying the parties' agreements, ensuring that the deed complies with the law, providing legal advice and guaranteeing the deed's authenticity. If errors or negligence occur, a notary can be held administratively, civilly, ethically, and even criminally liable.

The notary's responsibility in making the deed of decision of the General Meeting of Shareholders made by a notary or deed of release or official deed. Minutes of the GMS made by a Notary and authorized officials is called a deed of minutes of the general meeting of shareholders.



Notary obstacles in connection within making a shareholder deed includes physical presence, validity of data and documents, and conflicts of interest. in the implementation of electronic GMS (e-GMS) or teleconference, where shareholders may be in different locations. The difference of views of legal experts regarding the meaning of "face to face with a notary" in the context of e-GMS raises legal issues regarding the validity of the deed made, the meeting quorum or the summons mechanism, is not met, the deed made by the notary can be considered invalid or its value decreases to a deed underhand

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