

The Legal Consequences of Limited Company Notary Deeds Made by Directors and Commissioners after the Expired Period

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Abstract. *This study aims to determine the legal consequences of deeds issued by a notary to the directors and board of commissioners of a limited liability company (PT) whose term of office has ended, to find out the responsibilities and solutions of a notary in making a deed when the term of office of the directors and board of commissioners of a limited liability company has ended. The research approach method used in this journal is a combination of the statutory approach and the case approach. The nature of the research used in this study is case research, namely that there is a copy of the notarial deed that neglects the provisions regarding the tenure of members of the board of directors and members of the board of commissioners of a limited liability company when facing notary to make a deed. The type of data used in this study is primary data which includes the 1945 Constitution; Code of Civil law; Act No. 40 of 2007 concerning limited liability companies; Act No. 37 Number 2004 concerning bankruptcy; Act No. 2 of 2014, Act No. 30 of 2004 and secondary data containing books and other supporting documents. Collecting research data by studying documents or library materials. The data analysis method used in this research is qualitative data analysis, this research is based on statutory regulations and notarial deeds so that it can answer the problems of this research. Based on the research it was concluded that the Notary is responsible for all the deeds done before him related to the deed in which members of the board of directors and members of the board of commissioners of a limited liability company have expired or their term of office in the Limited Liability Company has expired. Then the notary in this case is responsible for all losses arising from actions or legal actions against third parties. The deed made by the notary can also be degraded from an authentic deed to a private deed.*

Keywords: Appointment; Commissioners; Responsibilities; Role.

1. Introduction

Limited Liability Company is the most popular form of economic activity business at this time. Almost everyone who has middle and upper capital chooses to invest or do business in the form of a Limited Liability Company legal entity. So far, Limited Liability Companies have been regulated in Act No. 1 of 1995 concerning Limited Liability Companies (Act No. 1 of 1995), which replaced statutory regulations originating from the colonial era, such as the Book of Commercial Law (KUHD) on August 16, 2007, the Government passed Act No. 40 of 2007 concerning Limited Liability Companies (UU Number 40 of 2007 or UUPT) to replace Act No. 1 of 1995. The purpose of amending the provisions of Act No. 40 of 2007 is to create law conducive to national development.

The definition of a Limited Liability Company is a company in the form of a legal entity which is a capital partnership, established based on an agreement of its founders to carry out business activities with authorized capital, where the authorized capital is divided into shares, by fulfilling the requirements stipulated in the relevant law and other laws and regulations.¹The Board of Directors and Board of Commissioners are organs of a limited liability company which are appointed for a certain period of time. According to Article 94 paragraph (3) and Article 111 paragraph (3) of Act No. 40 of 2007 concerning Limited Liability Companies, it is stated that "Members of the Board of Directors and Members of the Board of Commissioners are appointed, for a certain period of time and can be reappointed." However, Act No. 40 of 2007 concerning Limited Liability Companies does not stipulate the term of office of the members of the board of directors and members of the board of commissioners. Many debates have arisen or can be said to vary regarding the determination of the terms of office for members of the board of directors and members of the board of commissioners which are not clearly regulated in Act No. 40 of 2007 concerning Limited Liability Companies. So this must be specified in the articles of association of a limited liability company for a certain amount of time and is not valid for life. For example, a period of 5 (five) years.

The requirements for the appointment of members of the board of directors and members of the board of commissioners for a certain period of time are intended to mean that members of the board of directors and board of commissioners whose terms of office have ended do not automatically resume their positions, except by reappointing based on a decision of the General Meeting of Shareholders (GMS), for example for a period of 5 (five) years from

¹Indonesia (a), Limited Liability Company Law, Number 40 of 2007, LN Number 106 TLN Number.4756, General Explanation (Jakarta: PT. Tatanusa, 2007), p.2

the date of appointment,² then since the expiry of the said period, the former members of the board of directors and former members of the board of commissioners concerned are no longer entitled to act for and on behalf of the company, except after being reappointed by the General Meeting of Shareholders (GMS). Actions or legal actions taken by members of the board of directors and members of the board of commissioners of a limited liability company may deviate from what has been determined by the Articles of Association of a limited liability company, as long as they must be approved by the General Meeting of Shareholders (GMS). With a note, the legal action was carried out in the interests and good of the limited liability company and was not an act against the law or other acts that were punishable by crime.³

Unlawful acts committed by organs of a limited liability company, in this case the General Meeting of Shareholders (GMS), members of the board of directors and members of the board of commissioners, both organizationally (organs of a limited liability company) and individually (members of the board of directors or members of the board of commissioners as organs limited liability company), as a form of deviation in the management of a limited liability company as referred to in Article 138 paragraph (1) of Act No. 40 of 2007 concerning Limited Liability Companies, is an unlawful act (onrechtmatige daad) according to Article 1365 of the Civil Code and Jurisprudence Arrest Lindebaum Cohen of 1919 HR 31 January, i.e. acts that contravene Act No. 40 of 2007 concerning Limited Liability Companies and other positive legal regulations, as well as acts that violate public order and decency. In addition, it also includes acts that are contrary to the articles of association of the limited liability company, which are part of the contents of the deed of establishment of the limited liability company,⁴ which contains positive legal norms that must be obeyed by the General Meeting of Shareholders (GMS), members of the board of directors and members of the board of commissioners, both organizationally (organization of a limited liability company) and individually (members of the board of directors or members of the board of commissioners as organs of a limited liability company).

In practice, it is found that a notary makes a deed regarding an agreement or contract that ignores the provisions of the articles of association of a limited liability company regarding the term of office of members of the board of directors and members of the board of commissioners of a limited liability company that has ended and has not been reappointed by the General Meeting of Shareholders (GMS). The notary in the deed that ignores the provisions of the

²Explanation of Article 94 paragraph (3) of Act No. 40 of 2007 concerning Limited Liability Companies

³Adriana Sutedi, Smart Book of Limited Liability Company Law, Achieving Asa Success, 2015 root, page 7.

⁴Article 8 paragraph (1) Act No. 40 of 2007 Limited Liability Company

articles of association of the limited liability company regarding the term of office of the members of the board of directors and members of the board of commissioners of the limited liability company which has ended and has not been reappointed by the General Meeting of Shareholders (GMS) above in relation to the strength of the evidence as an authentic deed which has strong evidence complete or perfect and having binding force, as well as having fulfilled the minimum limit of legal evidence without the need for other evidence in a civil law dispute, however, the deed may experience a decrease in quality or decline or decline in status, in the sense that its position is lower in strength as evidence, than complete evidence strength and perfect becomes the beginning of proof such as an underhanded deed and can have legal defects that cause the cancellation and invalidity of the deed. A decrease in the status of the strength of this notarial deed can occur if in its making there is a violation of the provisions of the applicable legal requirements.⁵

Act No. 40 of 2007 concerning limited liability companies contains legal arrangements for good corporate governance, which is better known as Good Corporate Governance (abbreviated as GGC). But in practice, there is an opportunity for irregular practices to occur, which can make the management of a limited liability company not good (in the sense that it is not transparent, not accountable, unfair and irresponsible), so that Act No. 40 of 2007 concerning Limited Liability Companies has regulated the examination against limited liability companies, especially in Article 138 to Article 141, as a form and mechanism of external repressive supervision of the management of limited liability companies⁶In practice, it is found that there is a copy of the deed of the minutes of the limited liability company meeting made by a notary, where the resolution of the limited company general meeting of shareholders (GMS) taken by the limited liability company shareholders is the approval of the reappointment of members of the board of directors and members of the board of commissioners of the limited liability company who have ends of his term of office where his appointment is retroactive.

2. Research Methods

The research method used by the authors in this journal is the normative juridical research method. Where in this study the authors collected reading support materials from books, journals, magazine articles both print and online, papers, seminars related to Limited Liability Companies. The specification of this

⁵Sjaifurrachman and Habib Adjie, *Aspects of Notary Liability in Making Deeds*, Mandar Maju, Bandung, 2011. pp 119-120

⁶Muhammad Syaifuddin, *The Idea of Legal Arrangements for Limited Liability Company Examination (A Normative Evaluation of Article 138 Article 141 of Act No. 40 of 2007 concerning Limited Liability Companies)*, *Journal of Legal Dynamics*, Vol. 11 No. 2, May 2011, p. 27

research uses descriptive analysis, namely research that in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the issues discussed. . The data collection technique used is to conduct legal research studies or legal research instructions in the form of library research, namely by collecting and studying and analyzing statutory provisions regarding limited liability companies, other legal entities that support and relate to the object of this research. Source of data in this research is secondary sata. Secondary data can be classified into 3 (three) types, namely: primary legal materials (binding legal materials), secondary legal materials (providing explanations regarding primary legal materials), and tertiary legal materials (materials that provide instructions or explanations of legal materials) primary and secondary law). The primary binding legal material is the Limited Liability Company Law, the Law on the Notary's position and other relevant laws and regulations. Secondary materials that provide an explanation of primary legal materials, namely notarial deeds, research results, works of legal experts, textbooks, legal readings, and other document materials related to the notary public which provide an explanation regarding primary legal materials. Tertiary materials that provide instructions or explanations.

3. Results and Discussion

3.1. Legal Consequences of the Deed issued by a Notary to the Directors and Board of Commissioners of a Limited Liability Company (PT) whose term of office has ended

Notaries as public officials who are authorized to make authentic deeds must be responsible if there are deviations and/or violations of the requirements for making the deed that they make. An authentic deed in its making is legally flawed which is solely caused by a notary's error or negligence and then the deed is declared by the Court to be inauthentic or invalid or becomes null and void or is degraded into a private deed, then the notary concerned must be responsible for the error caused by carelessness to his client.⁷

The responsibility of a notary in the field of civil law arises when a notary has neglected a legal obligation that should have been carried out, or in the event that a notary has defaulted on a client as stipulated in the provisions of Article 1234 of the Civil Code (KUHPerdata) and/or has committed an unlawful act as required in the Article 1365 of the Civil Code (KUHPerdata).

Reimbursement of costs, compensation or interest that can be claimed against a notary must be based on a legal relationship between the notary and the parties who appear before the notary, demands for reimbursement of fees, compensation and interest against a notary are not based on an assessment or position of a piece of evidence that has changed due to a violation of certain

⁷Habib Adjie, Civil and Administrative Sanctions Against Notaries as Public Officials, Refika Aditama, Bandung, August 2017, p.93

provisions according to Article 84 of Act No. 30 of 2004 Concerning the Position of Notary (UUJN) Juncto Act No. 2 of 2004 2014 concerning Amendments to Notary Positions. But it can only be based on existing or existing legal relations between the notary and the appearers.⁸

The position of a notarial deed that has evidence as a private deed or a notarial deed becomes null and void by law is not based on a notarial deed that does not meet the subjective and objective requirements but in the following cases:⁹

- 1.** Act No. 2 of 2014 regarding Amendments to Act No. 30 of 2004 concerning Position of Notary and Act No. 30 of 2004 concerning Position of Notary (UUJN) have determined their own provisions for the requirements for a notary deed that has the power of proof as a deed in under the hand or a notarial deed becomes null and void, that is, does not meet external requirements.
- 2.** The notary has been careless, inaccurate, and inappropriate in applying legal regulations relating to the implementation of the duties of a notary public based on the Law on the Position of Notary Number 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary and Act No. 30 2004 concerning Notary Office (UUJN), and also in applying legal rules relating to the contents of the deed.

The Civil Code (KUHPperdata) details losses in a broad sense into 3 (three) categories, as follows:¹⁰

- a.** Expenses are any costs or money, or anything that can be valued in money that has actually been incurred by the injured party, as a result of default from non-performance of the agreement, for example travel expenses, consumption, notarial deed fees, and others;
- b.** Loss in the narrow sense is a condition where the value of the creditor's assets is reduced or decreased as a result of a default on a contract or as a result of not carrying out the engagement.
- c.** Interest is a profit that should be obtained, but is not obtained by the creditor or client because of default on the part of the debtor or notary. Thus the meaning of interest in Article 1243 of the Civil Code (KUHPperdata) becomes broader and is not only meant as interest in the everyday sense which is only determined by determining the percentage of the principal debt. In making a deed that is legally flawed, it is this form of loss that is most relevant for the client to suffer

Members of the board of directors and members of the board of commissioners of a limited liability company whose term of office has ended in making notarial deeds do not have the authority to act or are not authorized. Those who do not

⁸Habib Adjie, Op City, August 2017, p.91-92

⁹Habib Adjie, Op. cit, 2017, p. 42.

¹⁰Habib Adjie, Op. cit, 2017, p. 42

have the authority to act or are not authorized are people who are not allowed to take certain legal actions or actions¹¹If the notary still draws up a deed where the appearers are parties who do not have the authority to act on behalf of a limited liability company, then the deed will be null and void.

The authority to act must be formally proven, meaning that when making a deed, you must always pay attention to formal data. If the notary neglects to make a deed where the members of the board of directors and members of the limited liability company's board of commissioners have ended their term of office and it is not ratified by the General Meeting of Shareholders (GMS), it means that the notary does not see formal evidence regarding the authority to act and is included in the deed, then the notary is obliged to be responsible for this matter and if there is someone who feels aggrieved over this matter, then the notary can be sued in the District Court.¹²

Regarding administrative sanctions for notaries who make mistakes, it can be seen in Article 85 of Act No. 30 of 2004 concerning the Position of Notary Public (UUJN) that there are 5 (five) types of administrative sanctions, namely in the form of verbal reprimand, written warning, temporary dismissal, dismissal by honor, dishonorable discharge.¹³

Regarding administrative sanctions against notaries who are supervisory instruments, namely the Supervisory Board which takes preventive steps, to enforce compliance, to apply repressive witnesses, and to enforce compliance so that these sanctions can be implemented.¹⁴

3.2. Notary Responsibilities and Solutions in Making Deeds When the Board of Directors and Board of Commissioners of a Limited Liability Company (PT) whose term of office has ended.

Related to the notary's mistake, what is used is *beroepsfout*. *Beroepsfout* is a special term aimed at errors. These mistakes are made by professionals with special positions, namely doctors, advocates, and notaries. In criminal law, a person who is found guilty must fulfill the following elements:

1. Able to be responsible
2. Intentional or negligent
3. No excuses

¹¹Sjaifurrachman and Habib Adjie, Op.cit, p.163

¹²Ibid., p. 196.

¹³Sjaifurrachman and Habib Adjie, Op.cit, p.198

¹⁴Habib Adjie, Op.cit, August 2017, p. 92.

Intentional (*dolus*) according to criminal law is an act that is realized, understood and known as such, so that there is no element of misunderstanding or negligence. Meanwhile, negligence (*culpa*) is the occurrence of an act because he did not even think about the consequence or because he did not pay attention to it, and this is due to being careless, and the act is contrary to his obligations.

A notarial deed is said to be an authentic deed which has the strength of evidentiary value, as follows:¹⁵

1. Outwardly (*uitwendige bewijskracht*), is the ability of the deed itself to prove its validity as an authentic deed (*acta publica probant sese ipsa*). If seen from the outside (its birth) as an authentic deed and in accordance with predetermined legal rules regarding the terms of an authentic deed, then the deed is valid as an authentic deed, until proven otherwise, meaning until someone proves that the deed is not an outwardly authentic deed. In this case the burden of proof is that there are those who deny the authenticity of the notarial deed. Parameters for determining a notarial deed as an authentic deed, namely the signature of the notary concerned, both on the minutes and copies and the beginning of the deed (starting from the title) up to the end of the deed.
2. Formal (*formele bewijskracht*), intended that the Notary Deed must provide certainty that an event and fact mentioned in the deed was actually carried out by the Notary or explained by the parties who appeared at the time stated in the deed in accordance with the procedures specified in making the deed . Formally to prove the truth and certainty regarding the day, date, month, year, time of day facing, and the parties appearing, the initials and signatures of the parties/appearing parties, witnesses, and Notaries, as well as proving what was seen, witnessed, heard by the Notary (in the official deed/minutes), and recorded the statements or statements of the parties/appearers (in the parties' deed).
3. Material (*materiele bewijskracht*), is a certainty about the material of a deed, that what is stated in the deed is valid evidence against the parties making the deed or those who have rights and applies to the public, unless there is evidence to the contrary (*tegenbewijs*). Information or statements set forth/loaded in the official deed (or minutes), or statements or parties given/submitted before a Notary (deed of parties) and the parties must be judged to be true said which is then stated/loaded in the deed applies as true or every person who comes before the Notary and whose statement is then stated/loaded in the deed must be judged to have said the truth. If it turns out that the statements/statements of the appearers are incorrect, say: then it is the responsibility of the parties themselves. Notary apart from that kind of thing. Thus the contents of the

¹⁵Habib Adjie, Cancellation and Cancellation of Notary Deed, Refika Aditama, Bandung, June 2011, p. 18-20.

Notary deed have certainty as the truth, become valid evidence for or between the parties and their heirs and recipients of their rights.

The factors causing the degradation of notarial deeds as strong and complete evidence, as well as the cancellation of notarial deeds, can basically be caused by several things, one of which is regulated in the provisions of Article 1868 of the Civil Code (KUHPerdata), which states that " An authentic deed is a deed which, in the form determined by law, is made by or before public officials who are in charge for that at the place where the deed is made. This article only formulates the meaning of the word authentic and does not mention who the public official is, how the form of the deed is and when the public official is authorized, implicitly Article 1868 of the Civil Code (KUHPerdata) requires a law governing public and private positions the form of the deed.¹⁶

Article 1869 of the Civil Code (KUHPerdata) stipulates that a notarial deed that has the power of proof as a private deed can occur if it does not comply with the provisions, because:¹⁷

1. . The incompetence of the relevant public official, or
2. The incompetence of the public official concerned, or
3. Defective in shape.

According to Article 38 of the Notary Office Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary, it is stated that:

- 1) Each deed consists of:
 - a. Initial deed or head of deed;
 - b. deed body; and
 - c. End or closing deed.
- 2) The beginning of the deed or the head of the deed contains:
 - a. Deed title;
 - b. Deed number;
 - c. Hours, days, dates, months, and years; and
 - d. Full name and domicile of the notary.
- 3) The body of the deed contains:
 - a. Full name, place and date of birth, nationality, occupation, position, position, place of residence of the appearers and/or the person they represent;
 - b. Information regarding the position of acting as appearers;
 - c. The contents of the deed which are the wishes and desires of the parties concerned; and

¹⁶Sjaifurrachman and Habib Adjie, Op.cit, p. 123

¹⁷Habib Adjie, Op.cit, June 2011, p. 81.

d. Full name, place and date of birth, as well as occupation, position, position and place of residence of each identifying witness.

4) End or closing deed contains:

a. Description of the reading of the deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);

b. Description of the signing and place of signing or translation of the deed, if any;

c. Full name, place and date of birth, occupation, position, position and place of residence of each deed witness; and

d. A description of the absence of changes that occur in the making of the deed or a description of changes that may be in the form of additions, deletions or replacements and the amount of changes.

5) The Deed of Substitute Notary and Temporary Notary Officials, in addition to containing the provisions referred to in paragraph (2), paragraph (3), and paragraph (4), also contains the number and date of appointment determination, as well as the official who appointed him.

According to Article 84 of Act No. 30 of 2004 concerning the Office of a Notary (UUJN) it is stated that: "An act of violation committed by a Notary against the provisions 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 results in a deed only having the power of proof as a private deed or a deed being null and void by law can be a reason for the party who suffers a loss to sue reimbursement of costs, compensation and interest to the Notary."

This article contains civil sanctions for violations of certain articles which it mentions, namely the deed only has the strength of private evidence or the deed becomes null and void. There are criteria and limitations in which to distinguish which articles subject to deed sanctions only have the strength of underhanded evidence and deed sanctions are null and void, namely¹⁸:

1. Sanctions for the deed have the power of underhanded evidence, explicitly stated in these articles and violation of the form or formal requirements of the Notary's deed;

2. Witness deed becomes null and void, subject to violations that are not related to the form or formal requirements of the Notary deed and in these articles no sanctions are explicitly stated for violations.

A notarial deed is null and void or null and void or has the power of proof as a private deed occurs because the conditions determined by law are not fulfilled, without the need for certain legal actions from those concerned. The status of

¹⁸Sjaifurrachman and Habib Adjie, Op.cit, p. 144

the deed drawn up by a notary in the case of members of the board of directors and members of the board of commissioners whose term of office has ended even though they are not authorized to act for the benefit of the limited liability company remains an authentic deed that fulfills the physical, material and formal elements, unless it can be proven otherwise. If there are parties who can prove otherwise, the deed is null and void or has the power of proof as a private deed.¹⁹

4. Conclusion

The notary is responsible for all deeds done before him. If the notary neglects to draw up a deed in which the members of the board of directors and the board of commissioners of the limited liability company have expired or their term of office in the limited liability company has expired, then the notary in this case is responsible for all losses arising from actions or legal actions against third parties. The deed made by the notary can also be degraded from an authentic deed to a private deed. For each company will have responsibility for the composition of the board of directors, so Members of the Board of Directors and members of the board of commissioners of Limited Liability Companies should always strictly control the term of office for the composition of the directors in the Company, so as to avoid legal problems in the future if there is an agreement with a Third Party, especially lawsuits and / or lawsuits by parties who feel aggrieved. Notaries as public officials are required to be professional, obliged to carry out their duties carefully (Article 16 paragraph (1) letter a of the Notary Office Act No. 2 of 2014 concerning Amendments to 89 of Act No. 30 of 2004 concerning Notary Offices).

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¹⁹Habib Adjie & Muhammad Hafid, Op. cit, p. 65

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