

Roles and Responsibilities of a Notary in Drawing up a Deed of Amendment to the Articles of Association of a Limited Liability Company

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Abstract. *This study aims to analyze: 1) The role of a notary in making a notarial deed regarding for amending the articles of association of a limited liability company. 2) The responsibility of a notary in making a notarial deed regarding the procedure for amending the articles of association of a limited liability company. The approach method in this research is a sociological juridical approach. The research specifications used are analytical descriptive research. Types of data using primary data and secondary data. Data collection by interview method and literature study. The data analysis method used is qualitative analysis. The results of the study concluded: 1) The role of the notary in making a notarial deed regarding the procedure for amending the articles of association of a limited liability company, namely making an application for amending the articles of association electronically through SABH by completing supporting documents obtained from the General Meeting of Shareholders (GMS). The procedure for amending the articles of association must be carried out in accordance with the provisions in Act No. 40 of 2007 concerning Limited Liability Companies and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Change and Dissolution of Limited Liability Company Legal Entities. 2). The responsibility of a notary in making a notarial deed regarding the procedure for amending the articles of association of a limited liability company is to be responsible for reporting to the Minister as stated in Article 10 Jo. Article 12 Permenkumham Number 21 of 2021. A Notary who is negligent or intentionally does not report changes to company data to the Minister and or does not submit related documents to appearers for the benefit of the PT, can cause harm to the PT so that the Notary concerned can be deemed to have committed an unlawful act and violated the code Notary ethics.*

Keywords: Amendments; Associations; Company.

1. Introduction

Notaries who incidentally are one of the law enforcers in Indonesia play an important role in protecting and providing legal certainty assistance to the public, especially regarding anything related to authentic deeds. Civil law and notaries are closely related so that in carrying out their work, notaries are entrusted with taking care of some work related to the community and this branch of law.¹

Today the need for authentic deeds as evidence is increasing along with increasing business relations in various business fields, both on a local and international scale.² Of the many needs for authentic deeds in the business sector, one of them is the deed of a Limited Liability Company. The presence of a Limited Liability Company as a form of business entity in everyday life can no longer be ignored. It is no exaggeration to say that the presence of a Limited Liability Company as a means of carrying out economic activities has become a necessity that cannot be bargained for.³ Limited Liability Company (PT) is the most popular form of economic activity today. This is because a Limited Liability Company (PT) has limited liability, but it also makes it easy for owners (shareholders) to transfer their company by selling all of the shares they own in the company.⁴

Limited Liability Company (PT) is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations.⁵ A Limited Liability Company (PT) is established based on an agreement, as stated in Article 1313 of the Civil Code, an agreement is an act in which one or more people bind themselves to one or more other people. Article 7 Paragraph (1) of Act No. 40 of 2007 requires that a Limited Liability Company be established by 2 (two) people or more with a Notary Deed drawn up in the Indonesian language, in this case what is meant by persons are individuals, both Indonesian citizens and foreign or Indonesian or foreign legal entity.

¹Dewi Ajeng Wulansari and Anis Mashdurohatun. Peran Notaris Dalam Pembuatan Akta Badan Hukum Perkumpulan Nelayan. *Prosiding KONSTELASI ILMIAH MAHASISWA UNISSULA (KIMU) 7*. Universitas Islam Sultan Agung Semarang. January 19, 2022. p. 140

²Sjaifurahman & Habi Adjie. (2011). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Bandung: Mandar Maju. p. 8

³Binoto Nadapdap. (2016). *Hukum Perseroan Terbatas (Berdasarkan Undang-Undang No.40 Tahun 2007)*. Jakarta: Jala Permata. p.1.

⁴Ahmad Yani and Gunawan Widjaja. (1999). *Seri Hukum Bisnis. Perseroan Terbatas*. Jakarta: Raja Grafindo Persada. p. 1

⁵Article 1 Act No. 40 of 2007 concerning Limited Liability Companies (PT).

A Limited Liability Company can also be interpreted as an association of shareholders created by law and enforced as an artificial person by the court, which is a legal entity and therefore completely separate from the people who founded it by having the capacity for continuous existence and as a legal entity, a limited liability company has the authority to receive, hold and transfer assets, sue or be sued and exercise other authorities granted by applicable law.⁶

Along with the development of the era of globalization, the use of modern technology occurs in all aspects of life, including the use of the internet network in the business world. Even in the legal world, the internet network is also applied to facilitate registration services for a legal entity/company such as a Limited Liability Company in its administrative system.

Article 5 of Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities states that the establishment of a capital partnership company is carried out by the applicant through a notary by filling out the form of establishment electronically via SABH. The change from a manual system to an electronic or online system is expected so that the registration or validation can run more efficiently and more effectively. Not unlike the previous provisions, this new provision still requires the role of a notary in its implementation.⁷ On the basis of this background, the author is interested in researching "The Role and Responsibilities of a Notary in Making a Notary Deed Regarding Amendments to the Articles of Association of a Limited Liability Company in Rembang Regency".

2. Research Methods

The approach method used in this research is a sociological juridical approach, namely legal research that uses secondary data as initial data, which is then followed by primary data or field data, in the form of interviews with PPAT to find relationships (correlations) between various symptoms or variables as a tool. Data collectors consist of document studies, observations (observations), and interviews (interviews).⁸ The specification of the research conducted by the writer belongs to the analytical descriptive research. Methods of data collection using techniques of literature study and interviews. The method of data analysis is descriptive qualitative analysis.

⁶Munir Fuady. (2003). *Perseroan Terbatas Paradigma Baru*. Bandung: Citra Aditya Bakti. p. 2.

⁷Ibid. p. 403

⁸Bambang Sunggono. (2006). *Metode Penelitian Hukum*. Jakarta: Rajawali pers. p.75

3. Results and Discussion

3.1. The Role of a Notary in Drawing up a Notary Deed Concerning Procedures for Amending the Articles of Association of a Limited Liability Company

The establishment of a Limited Liability Company (PT) cannot be separated from the role of the Notary in preparing the deed of establishment and amendments to the articles of association. The deed is related to proving legal certainty including the rights and obligations of a person requiring the role of a notary.⁹ Amendment to the articles of association of Limited Liability Companies in Rembang Regency was carried out based on Act No. 40 of 2007 concerning Limited Liability Companies (UUPT) and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Change and Dissolution of Entities Limited Liability Company Law.

The role of the notary in making the deed of Amendment to the Articles of Association of a Limited Liability Company in Rembang Regency is to translate the resolutions of the General Meeting of Shareholders (GMS) into an authentic deed and to apply for amendments to the articles of association electronically through SABH by completing supporting documents obtained from the General Meeting of Shareholders (GMS). In more detail, changes to the articles of association of Limited Liability Companies (PT) in Rembang Regency are as follows:¹⁰

1. Shareholders hold a GMS (General Meeting of Shareholders) to amend the company's articles of association. Several provisions in the GMS are:
 - a. The GMS has powers that are not granted to the Board of Directors and the Board of Commissioners.
 - b. The GMS in other agendas cannot make decisions, unless all shareholders are present and agree to the addition of the meeting agenda.
 - c. GMS can be held at the place of domicile of the company / where the company carries out its main business activities.

⁹Sjaifurahman & Habi Adjie. (2011). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Bandung: Mandar Maju. 7-8

¹⁰Mulyoto. (2016). *Kriminalisasi Notaris dalam Pembuatan Akta Perseroan Terbatas (PT)*. Yogyakarta: Cakrawala Media. p. 11

d. GMS can be held anywhere within the territory of the Republic of Indonesia on the condition that all shareholders are present and agree with a certain agenda and can make decisions if agreed unanimously.

e. It is possible for the GMS to be held via teleconference, video conference / other electronic media facilities that allow all GMS participants to see and hear each other directly and participate in meetings with a quorum and decision-making requirements as stipulated in the Law / Articles of Association.

Implementation of the GMS, namely:

a. The summons is made within 15 days after the request for the GMS is received by the Board of Directors.

b. If at the request of the shareholders, the Board of Directors of the Board of Commissioners does not make a summons, then he can submit a request to the Chairman of the PN where the company is domiciled.

c. The two PNs based on the application can issue a stipulation.

d. Summons are made by registered letter / advertisement in a newspaper.

e. A GMS summons is not required if all shares with voting rights are present.¹¹

2. After the GMS, the person authorized at the GMS comes to the Notary with the minutes of the Minutes of the GMS.

3. The notary as the authorized person fills out the format for amending the articles of association in the Legal Entity Administration System (SABH) accompanied by supporting documents submitted electronically in the form of an electronic statement letter regarding the company's supporting documents being complete.

4. Documents that must be kept by a notary are:

a. Deed of amendment to the articles of association drawn up by a notary.

b. Minutes of GMS changes to the articles of association or resolutions of shareholders outside the GMS.

c. Deed of merger, consolidation, acquisition and separation drawn up by a notary, if the amendment to the articles of association is in the context of a

¹¹Ibid. p. 23

merger, by attaching:

- 1) Deed of approval for merger, consolidation, acquisition and separation of the company.
 - 2) Photocopy of financial statements covering the last 3 (three) financial years of each company that will carry out the merger, consolidation, acquisition and separation.
 - 3) Proof of announcement in 1 (one) newspaper regarding the summary of plans for the merger, consolidation, acquisition and separation of the company.
 - 4) Proof of payment for announcements in additional State Gazette of the Republic of Indonesia.
 - 5) Evidence of depositing the Company's capital from the bank on behalf of the company, the company's balance sheet for the current financial year, or proof of deposit in other forms, if the amendment to the articles of association concerns an increase in the company's deposited capital.
 - 6) Photocopies of supporting documents from related agencies in accordance with statutory provisions, which the Notary knows are in accordance with the originals (legalized by the notary).
 - 7) Copy of balance sheet and income statement for the relevant financial year for companies that are required to be audited.
 - 8) Photocopy of NPWP and report on receiving the company's annual tax return.
5. Technically regarding the use of SABH access for amendments to the PT's Articles of Association are as follows:
- a. The notary accesses the SABH of the Director General of AHU Kemenkumham
 - b. Click Limited Liability Company then select Changes
 - c. Enter the name of the company, the number of the notary deed, the number of the last decree, the name of the last notary.
 - d. Click search.
 - e. Check all the requirements that must exist then select continue.
 - f. Fill in the data entry format regarding changes to the Company's Articles of

Association.

g. If all the fields regarding changes to the articles of association have been completed, click continue.

h. Enter the preview page, if you are sure, click continue.

i. The system will go to the upload/upload deed page, upload the deed of amendment to the PT's articles of association, then click continue.

j. The system will go to the PT transaction list page, look for the PT that was processed, then click print SK, then a Decree on Amendments to PT's articles of association is issued.

Changing the identity or information of a PT cannot be done unilaterally because it requires the role of a notary and the Ministry of Law and Human Rights.

This is because, in addition to changes that must be made in a notarial deed, there are changes to company information that require the approval of the Minister and notification is sufficient.¹² The role of the Notary does not only extend to making the authentic deed, but also must notify the Minister as stated in Article 10 Jo. Article 12 Permenkumham Number 21 of 2021. After the issuance of the letter of acceptance of the change notification from the Minister, the Notary must submit the document to the appearer concerned to take care of permits and other matters for the benefit of PT.¹³

Based on Philipus M. Hadjon's theory of authority, authority is obtained through three sources, namely attribution, delegation, and mandate. Attributional authority is usually outlined through the distribution of state power by the Constitution. Based on this theory, the authority of a notary in making authentic deeds of establishment and amendment to the articles of association of a Limited Liability Company (PT) is an attributional authority, where this authority is granted by law, namely Act No. 40 of 2007 concerning Limited Liability Companies and Regulations of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities.

¹²<https://pdb-lawfirm.id/perubahan-anggaran-dasar-dalam-perseroan-terbatas/>. accessed on 18 November 2020. at 12.30 WIB

¹³Shania Puttie Syabilla. Arman Nefi. Tanggung Jawab Notaris Terhadap Pemberitahuan Perubahan Data Perseroan Kepada Menteri Dan Penyerahan Dokumen Terkait Pada Penghadap. *Journal: PALAR (Pakuan Law Review)*. Volume 07. Number 02. July-December 2021. p. 463

The role of a notary against a PT is not only limited to making a deed, but is also obliged to provide legal advice regarding the deed that will be made by / before him. The advice in question is things that need to be corrected or avoided so as not to cause problems for both the client / appearer, as well as security for the notary himself.¹⁴The role of a notary regarding assistance in providing legal certainty and legal protection for the community is very important. The role of this notary is more preventive or preventive for future legal problems by making authentic deeds related to legal status, rights and obligations of a person in law, and so on which functions as the most perfect evidence in court, namely in the event of a rights dispute and that obligation.

3.2. Responsibilities of a Notary in Drawing up a Notary Deed Concerning Procedures for Amending the Articles of Association of a Limited Liability Company

The notary has an important responsibility and role in making the deed of amendment to the articles of association. A notary who makes a deed not in accordance with the provisions of the applicable laws and regulations can be subject to strict sanctions by the Notary Supervisory Board so that in the future it can be minimized the making of a notary deed that is not in accordance with the provisions of the laws and regulations in the field of notary law.

The notary's responsibility is not only for himself and his professional colleagues, but also for clients and the public who need his services.

Notaries are required to always uphold the law and principles of the state and act in accordance with the meaning of the oath of office and prioritize their service to the interests of society and the state. Therefore, in carrying out their duties and obligations, a notary is required to provide guarantees of legal certainty and professional services. To realize the 2 (two) sides of the work which contain a lot of risks, sufficient legal knowledge, thoroughness and high responsibility are required.

Based on the theory of legal liability, Hans Kelsen divides accountability into 4 (four) types, namely:

1. Individual responsibility, namely accountability that must be carried out for violations committed by themselves.
2. Collective accountability means that an individual is responsible for a violation committed by another person.

¹⁴Mulyoto. (2016.) *Kriminalisasi Notaris dalam Pembuatan Akta Perseroan Terbatas (PT)*. Yogyakarta: Cakrawala Media, p. 11

3. Liability by fault means that an individual is liable for an offense he committed because it was intentionally estimated with the aim of causing harm.

4. Absolute liability means that an individual is responsible for a violation he committed accidentally or unexpectedly.¹⁵

The responsibility of a Notary in relation to a Limited Liability Company begins with the preparation of the deed of incorporation of the Limited Liability Company before a notary which includes among other things the formulation of the aims and objectives of the company, therefore the notary is responsible for being as thorough as possible regarding the matters contained in the Deed of Establishment. The responsibility of the notary in registering with the online system is that if the error is on the part of the notary's office, the notary will correct it at the expense of the notary. But there is still cooperation with the applicant, for example in the repair/change process requiring GMS data and meeting invitations, a notary and the applicant make it. Meanwhile, if the notary makes a mistake, it becomes the full responsibility of the notary, and the notary corrects the wrong deed at the notary's own expense.

The legal consequence of an error in data entry that applies to the role and responsibilities of a notary is that the deed remains valid, but is accompanied by a deed of amendment made by the notary accompanied by new data which is sent back to the Ministry of Law and Human Rights with an online system, which will be followed by the issuance of a new decree. If an error results in a risk that must be borne by the notary, then the legal consequence is that the deed is corrected and must be repeated and corrected again, but the deed number remains the same.¹⁶ The notary in making the deed of amendment to the articles of association also has the responsibility to notify the Minister as stated in Article 10 Jo. Article 12 Permenkumham Number 21 of 2021. A Notary who is negligent or intentionally does not report changes to company data to the Minister and or does not submit related documents to appearers for the benefit of the PT, can cause losses for the PT so that the Notary concerned can be deemed to have committed an unlawful act and violated the code Notary ethics. Based on Hans Kelsen's legal liability theory, the notary's liability in this case can be categorized as liability based on fault.

Article 1365 of the Civil Code, states that an unlawful act is any unlawful act that causes harm to another person, obliging the person who because of the mistake

¹⁵Shidarta. (2006). *Hukum Perlindungan Konsumen Indonesia*. Edisi Revisi. Jakarta: Gramedia Widiasarana Indonesia. p. 79

¹⁶Erina Permatasari, Lathifah Hanim, Peran Dan Tanggung Jawab Notaris Terhadap Pelaksanaan Pendaftaran Badan Hukum Perseroan Terbatas Melalui Sistem Online, *Jurnal Akta*, Volume 4 Number 3 September 2017. p. 405

of issuing the loss to compensate for the loss.¹⁷ The element of an unlawful act, namely the existence of an action or deed, referred to in this action or deed is positive or negative in nature, related to doing or not doing, the action or deed is against the law, there is loss or loss, there is a causal relationship to the unlawful act itself by causing losses, errors or mistakes. In legal science, there are 3 (three) categories of unlawful acts, namely as follows:¹⁸

1. Unlawful acts on purpose.
2. Unlawful acts without fault (without intention or negligence).
3. Unlawful acts due to negligence.

Unlawful acts must meet the requirements, namely first, the act is contrary to the legal obligations of the perpetrator, second, the act is contrary to the subjective rights of others, third, contrary to decency, fourth, contrary to decency, thoroughness and prudence. In an unlawful act or action, a claim for compensation complies with the provisions of Article 1365 of the Civil Code. Forms of compensation for unlawful acts, namely compensation in the form of money for shrinking assets and assets due to acts/actions against the law (material compensation), repairs in their original state, return of costs for recovery in their original state,

Based on Hans Kelsen's theory of responsibility, Notary Responsibilities as a general official who makes the deed of amendment to the articles of association of a Limited Liability Company, if an error occurs in the establishment of a Limited Liability Company, it can be seen from two aspects, namely an error in making the deed of amendment to the articles of association and an error in inputting data at SABH, an error due to noncompliance with laws and regulations invitations and errors in terms of data suitability. It must be understood that a Notary in carrying out his position must be based on responsibility and morals. In the process of making a deed, a notary is responsible if it can be proven that the notary is guilty and violates the provisions. This responsibility in Hans Kelsen's theory of legal liability is called individual responsibility.

4. Conclusion

The role of the notary in making a notarial deed regarding the procedure for amending the articles of association of a limited liability company, namely

¹⁷R Subekti dan R Tjitrosudibio. (2017). *Kitab Undang-undang Hukum Perdata (KUH Perdata)*. Jakarta: Balai Pustaka (Persero), p. 379.

¹⁸Munir Fuady. (2005). *Perbuatan Melawan Hukum Pendekatan Kontemporer*. Bandung: Citra Aditya Bakti. p. 3

making an application for amending the articles of association electronically through SABH by completing supporting documents obtained from the General Meeting of Shareholders (GMS). The procedure for amending the articles of association must be carried out in accordance with the provisions in Act No. 40 of 2007 concerning Limited Liability Companies and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Change and Dissolution of Limited Liability Company Legal Entities. In carrying out its role to submit an application electronically through SABH, a Notary must be thorough and careful, because the notarial deed functions as an authentic deed to provide certainty and legal protection for the community and serves as the most perfect means of evidence in court. 2). The responsibility of the notary in making a notary deed regarding the procedure for amending the articles of association of a limited liability company is that if the error is on the part of the notary's office, the notary will correct it at the expense of the notary. The notary in making the deed of amendment to the articles of association also has the responsibility to report to the Minister as stated in Article 10 Jo. Article 12 Permenkumham Number 21 of 2021. Notaries who are negligent or deliberately do not report changes to company data to the Minister and or do not submit related documents to appearers for the benefit of company.

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