

The Juridical Implications of Making the Deed of Statement of Meeting Resolutions Made by a Notary as the Basis for Amendments to the Articles of Association of a Limited Liability Company

Satyananda Adhi Saksena^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: satyananda.std@unissula.ac.id

Abstract. *Notaries as public officials have a very important position in helping to create certainty, order and legal protection for the community. As a public official, a Notary is presented with the intention of helping and serving the public who need evidence with authentic written evidence regarding circumstances, events or legal actions. The research method used is a normative juridical approach and the specifications in this study include descriptive analysis. The sources and types of data in this study are secondary data obtained from literature studies. Based on the results of the research that (1) the legal position of the presence of a notary who gave birth to a decision at a company meeting can be examined through the deed made by the notary. The deed of amendment to the articles of association is made based on an authentic deed which has a perfect proof, especially in the amendment to the articles of association itself which is an agreement whose legal relationship is regulated and recognized by law; (2) Notaries have a fairly dominant role in limited liability companies which are required by UUPT 2007 in relation to the use of certain deeds which are required to be authentic. So it is required for Notaries to provide legal certainty for public order that requires their services.*

Keywords: Amendments; Associationl; Decisions; Notary.

1. Introduction

The rapid development of technology and information today has made changes in all aspects of business behavior and the world economy. With these developments, especially in Indonesian law, for example: we are required to be able to align ourselves with phenomena in international cooperation, the aim of which is to create mutual prosperity. Indonesian Economic Law must also be able

to anticipate the effects of new developments, such as global unification, due to the increasingly thinning of boundaries between countries due to the development of information liberalization, and various other new arrangements that are currently moving in changes, so that professional responsibilities are needed in work.

The presence of a Limited Liability Company as a form of business entity in everyday life can no longer be ignored. PT as a means to carry out economic activities has become something that cannot be avoided by entrepreneurs. Business practices carried out by business actors, be they traders, industrialists, contractors, investors, bankers, insurers, brokers, and others cannot be separated by the presence of a Limited Liability Company, and it must be recognized that a Limited Liability Company is a legal entity of interest. At the moment.

Notaries as public officials have a very important position in helping to create certainty, order and legal protection for the community. As a public official, a Notary is presented with the intention of helping and serving the public who need evidence with authentic written evidence regarding circumstances, events or legal actions. Thus the Notary is given the authority in carrying out his position to serve the needs of the community.

Authentic deed essentially contains formal truths in accordance with what the parties notify the Notary. However, the Notary has the obligation to include information from the parties that what is contained in the Notary Deed has really been understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the Notary Deed become clear, as well as providing access to information, including access to applicable laws and regulations related to the parties signing the deed. Thus, the parties can freely determine whether to agree or disagree with the contents of the Notary Deed to be signed and with that agreement it is hoped that they can avoid disputes. Stability and capability are prerequisites for the functioning of the economic system.

Based on Article 1 paragraph of Act No. 40 of 2007 stipulates that the organs of the company consist of a General Meeting of Shareholders, the Board of Directors and the Board of Commissioners. These organs have their respective functions and duties, in accordance with the provisions of the Limited Liability Company Law, as well as the company's articles of association. Between the organs of the company with each other, has an organic and functional relationship. Organic relationships are relationships related to the existence of these organs, while functional relationships are relationships related to the implementation of the functions of each organ as policy makers, policy implementers, supervisors of policy implementation and others, so the Company

absolutely needs a Board of Directors, Commissioner and held General Meeting of Shareholders.

2. Research Methods

The research method used is Normative Juridical through a statute approach with documentary study techniques to obtain primary, secondary and tertiary data then analyzed by descriptive analytical description¹

3. Results and Discussion

3.1. Legal Position Presence of a Notary in a Meeting which Produces a Decision as the Basis for Amending the Articles of Association of a Limited Liability Company

The legal position of the presence of a notary in the decision of the meeting of the articles of association of a company is closely related to the duties and responsibilities of a notary as a public official. An Openbaar Ambtenaar or what is commonly referred to as a Notary is a position that because of its authority in law can issue a legal product called a Notary Deed. In relation to the notarial deed in a limited liability company, the deed that was made by Act No. 40 of 2007 is made with a notarial deed, namely the deed of establishment and the deed of amendment to the articles of association.

The deed of establishment of a limited liability company in which there are articles of association which are the Company's internal regulations that apply as law for all parties is expected to be able to anticipate future conditions when problems arise related to a limited liability company. In this case the role of a Notary in company law is necessary because the Notary as an official has a role in the birth of a limited liability company and makes deeds in connection with the Company's activities including changes to the articles of association which are expected to be able to formulate the results of the Company's meetings which do not conflict with laws, decency and public order. With the development of time, all the things that will be experienced by the Company can all be anticipated. Regarding the notarial deed in a meeting of the articles of association of a company, then to assess the validity of the deed of the decision of the meeting, its validity must be tested based on article 1320 of the Civil Code, namely the agreement of the parties to bind themselves, the ability to act in law, the existence of certain matters and the existence of a cause lawful. Apart from that, in the Meeting of the Limited Liability Company Articles of Association, the requirements in Act No. 40 of 2007. In practice, limited liability companies are

¹H. Halim HS & Erlies S. Nurbani. (2013). application of legal theory to thesis and dissertation research. Jakarta: Raja Grafindo Persada. p. 17-18

categorized based on share income, number of shareholders and the amount of capital, namely: PT. Open and PT. Closed . Company is a business entity that is regulated in Act No. 40 of 2007 concerning Limited Liability Companies. A company is a business entity that is described in the law as a company that has a legal entity. This position makes the limited liability company a legal subject that gives birth to supporters of authority and obligations as a legal entity and has an independent position, meaning it does not depend on its shareholders. In a limited liability company, there are only instruments that can represent the company running the company, which means that PT can carry out legal actions like individuals and is able to own wealth or debt. The management's actions that behave on behalf of the Persero, the responsibility lies with the PT with all of its assets. Article 1 point 1 UUPT, which is defined as a limited liability company, which is then referred to as a company, is a legal entity which is also a capital partnership, established on the basis of an agreement, carries out business activities through authorized capital, which is entirely divided into shares and fulfills the requirements stipulated in the law and its implementing regulations. Preparation of deed of establishment and deed of amendment of a limited liability company, including the duties of a notary. Drawing up of deed of establishment and amendment of limited liability company by a Notary is based on Article 21 of Act No. 40 of 2007 concerning Limited Liability Companies.

Regarding these provisions apply and relate to the legality of the statement of amendments to the articles of association to the Minister. If the deed of amendment is not made a request for registration or notification to the Minister more than the time specified, then the amendment to the articles of association cannot be submitted to the Minister. So that makes the deed of amendment to the limited liability company have legal records in it and the legal consequences caused by a notary deed that contains legal defects because the content and procedures do not comply with statutory regulations, both the UUJN and the Civil Code, causing the deed to become private, can be canceled, or null and void. The notary's negligence which resulted in losses to the limited liability company needs to be held accountable. If after the deadline or more than 30 days from the date of the Notary deed containing the AD, the company does not apply for a revision of the articles of association to the Minister, the consequence is not obtaining the Minister's approval. Then, how can the position of the deed of amendment be null and void with time after the expiration of the application deadline for approval from the Minister or the deed of amendment to the limited liability company becomes invalid because it does not have the approval of the Minister.

The General Meeting of Shareholders as an instrument that has authority that is not owned by other organs in PT. This GMS is the place for shareholders to obtain information regarding the company in accordance with the agenda of the

GMS and in line with the interests of the PT and to make decisions on other agenda items if the agenda is approved by the shareholders who attend and/or are represented by their proxies regarding the addition. 18 Because the GMS which is said to be the highest organ in the company, then its implementation is so important to implement. Because the GMS is a means for management and shareholders to evaluate performance so that the company can run well towards sustainable improvement. The GMS as an organ authorized to make decisions, in every decision taken, it is necessary to pay close attention to the provisions in the articles of association and laws and regulations. First, because the articles of association are the will of shareholders and stakeholders who are delegated in the articles of association. Second, because the essence of a limited liability company is an agreement, and the implementation of the GMS is the implementation of the agreement as outlined in the company's articles of association. The application of the *pacta sunt servanda* principle which states that agreements are binding like laws for the parties who make them, then at the same time carry out the articles of association and the task of carrying out laws both materially and formally. Each GMS needs clarification on the provisions for the place of implementation, therefore Article 76 UUPT already regulates the area where the GMS can be held at the domicile of the company. According to Article 5 paragraph Being able to participate directly in meetings is mandatory in nature if the GMS is held through the media mentioned in Article 77 of the Company Law and the holding of a GMS starts from the type, the request for submitting a GMS.

3.2. Juridical implications according to the making of the Deed of Statement of Meeting Resolutions made by a Notary as the basis for amendments to the Articles of Association of a Limited Liability Company

This Act No. 30 of 2004 is a replacement regulation for the Regulation of the Position of Notary and Reglement op Het Notary Ambt In Indonesie. Must be honest with clients and oneself. Even if a person's expertise can be used as a straightforward effort to earn money, in carrying out his professional duties he is not driven solely by monetary considerations. A notary who is *pancasilais* must stick to an essential sense of justice, not be affected by the amount of money, and not merely create formal evidence to pursue legal certainty but ignore the sense of justice. Which is good and upholds the dignity and honor of a notary both inside and outside of his/her duties. One office in accordance with what is stipulated by law. Using mass media that is promotional. Providing services to people who need their services as well as possible. Provide legal counseling to achieve high legal awareness, so that community members are aware of their rights and obligations. Must provide services to underprivileged communities.

Doing acts or competition that harm others. With this position, the notary is expected to be a party that is very instrumental in guaranteeing legal certainty for the public interest in order to ensure justice and order. The role of the notary in preparing the minutes of meetings on amendments to the articles of association can be seen from the public opinion adopted in each authentic deed, where the notary has responsibility for the correctness of the contents contained in a deed, for what was seen and witnessed regarding an event concerning a legal act. Thus so that the deed made has evidentiary value as an authentic deed.

The position of the deed made by a notary related to the General Meeting of Shareholders can be seen in two forms, namely as a *relaas* deed, which is made by a notary, and in the form of a *partij* deed, namely a deed drawn up before a notary. According to article 1 number 7 of Act No. 30 of 2004 concerning the Office of a Notary Public, it determines that a notary deed is a deed drawn up by or before a notary, according to the form and procedure stipulated in the law. In the event that the Notary is present at the time of the Amendment to the Articles of Association meeting, the deed made by the notary is in the form of a *relaas* deed which is referred to as Minutes of the General Meeting of Shareholders and if only the decision of the meeting is submitted to the Notary to be included in a deed.

The two forms of deed containing the minutes of meetings carry evidentiary value, insofar as the procedures and requirements comply with statutory provisions. The deed of Minutes of the General Meeting of Shareholders is included in the deed of *relaas*, where in the deed the Notary explains/provides in his position as a public official the testimony of all that has been seen, witnessed and experienced by other parties. There are 3 evidentiary powers contained in an authentic deed, namely outward evidentiary strength, formal evidentiary strength and material evidentiary strength. If a deed appears to be an authentic deed, meaning that it indicates itself from the outside, from the words it says as coming from a public official, then that deed is considered to be an authentic deed to everyone, until it can be proven that the deed is not authentic.

As far as the strength of this outward proof is concerned, which is complete proof -without reducing the evidence to the contrary-, "*partij* deed" and "*officer* deed" in this case are the same. So in this case, what is at issue is not the contents of the deed or the authority of the official, but solely regarding the signature of the official. Who does not challenge the legitimacy of the official's signature, but challenges his competence, not accuses the deed of being fake, so in this case the "*valsheids* procedure" cannot be followed. As described above, this external evidentiary power does not exist in a deed made privately.

As far as proof is concerned, this is the only difference between an authentic deed and a deed made privately. Even if there are other differences that

distinguish an authentic deed from an underhanded deed, such as having executorial power, the requirement for an authentic deed for certain legal actions and other differences, none of this has anything to do with the law of evidence. With the strength of this formal proof by means of an authentic deed it is proven that the official in question has stated in his writing, as stated in the deed and apart from that the truth of what is described by the official in the deed is what was granted and witnessed by him while carrying out his position. In a formal sense, as far as official deed is concerned.

In a private deed, the strength of this proof only includes the fact that the statement was given, if the signature is acknowledged by the person who signed it or is deemed to have been recognized as such according to law. In a formal sense, the correctness/certainty of the date of the deed is guaranteed, the correctness of the signature contained in the deed, the identities of the people present, as well as the place where the deed was drawn up and as far as the partij deed is concerned, that the parties have explained as described in the deed, while the truth of the statements themselves is only certain between the parties themselves. As far as the strength of this formal proof is concerned - also without reducing the evidence to the contrary - which is a complete proof, the partij deed and official deed in this case are the same, with the understanding that the official statement contained in the two classes of deed or the statement from the parties in the deed, both contained in the partij deed and in the official deed has formal evidentiary power and applies to everyone, namely what is, and is contained above their signature. Whoever states that the deed contains information that does not appear to have come from the notary, means alleging that there was falsification in the material of the deed, for example, words were deleted or replaced with something else or added.

In the meantime, whoever accuses that the deed contains a «statement» which he did not provide, then there are two possibilities. As far as the strength of material proof of an authentic deed is concerned, there are differences in the information from the notary listed in the deed and the statements from the parties listed therein. decide in a case of falsification, that the notary deed regarding sale and purchase is to prove and indeed prove based on Article 1907 N.Bw., that the parties explained something about it before a notary, but also proves that the parties have reached an agreement regarding an agreement that contained in the deed,

Thus, based on the strength of external evidence, formal evidence and material evidence as stated above, it appears that the notary is indeed protected from prosecution from the deed of the minutes of meeting which he legalized. So that in carrying out his professional duties, a notary must have solid moral integrity.

4. Conclusion

The legal position of the presence of a notary who makes a decision at a company meeting can be examined through the deed drawn up by the notary. The deed of amendment to the articles of association is made based on an authentic deed which has perfect evidence, especially in the amendment to the articles of association itself which is an agreement whose legal relationship is regulated and recognized by law. Hans Kelsen's Theory of Legitimacy argues that law also has basic norms, which are considered a necessity for the rule of law. Grundnorm (basic norm) that each must adapt himself to what is determined. This theory interprets law in its formal sense as a legally valid rule.

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