

The Role of Notaries in Agreements Made by Individual Companies with Other Parties

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Abstract. *Agreements made between individual companies and other parties require the role of a notary so that the parties are protected from legal problems in the future. This study aims to determine the role of a notary in agreements made by individual companies with other parties and to determine the obstacles faced by notaries in agreements made by individual companies with other parties. The research approach method used in this thesis is an empirical legal research method, The specifications of this research are descriptive analytical, The type of data used in this study uses primary data which includes: the 1945 Constitution, the Civil Code, Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 11 of 2020 concerning Job Creation, Government Regulation No. 8 of 2021 concerning the Authorized Capital of Companies and Registration of the Establishment, Amendments, and Dissolution of Companies That Meet the Criteria for Micro and Small Businesses. As well as secondary data containing books and other supporting documents. Collection of research data using interview techniques, observation and literature studies. The data analysis method uses qualitative data analysis techniques. The results of the study show that: First, in an agreement between a sole proprietorship and another party, the role of a notary cannot be ignored. A notary has roles such as: Providing legal advice and considerations, Ensuring that the agreement document is correct and complete, Formulating the will of the parties, Issuing a copy of the agreement deed to all parties involved, Safely storing the authentic agreement deed that has been made. Second, the constraints of a notary in an agreement made by a sole proprietorship with another party: Lack of understanding of the parties about the law, Incomplete documents, Lack of information from the parties, Disagreement of the parties.*

Keywords: Agreement; Notary; Proprietorship; Sole.

1. Introduction

The influence of globalization has penetrated almost all aspects of life, including

the economy around the world. Indonesia is no exception, and this country has recognized the importance of adapting to the demands of globalization in various fields, including the economy, through the existing legal framework. The provisions of Article 33 of the 1945 Constitution are an important constitutional basis in directing Indonesia's economic policy.

This constitutional provision then becomes the legal basis for the existence of various forms of business entities in Indonesia, which function as a platform for business operators to engage in legal transactions and activities. The presence of these business entities is further regulated by various regulations in Indonesia. Corporate law distinguishes business entities into two main categories, namely legal entities and non-legal entities. Legal entities include Limited Liability Companies, foundations, and cooperatives, while non-legal entities include civil partnerships, CVs, and Companies.

Subekti defines a legal entity as an organization or association that has legal rights and is able to perform actions comparable to humans. It also has its own wealth and can be sued or file a lawsuit before a judge.¹The main characteristic of a legal entity is the separation between the assets of the legal entity and the personal assets of the shareholders.²Consequently, shareholders are not personally liable for commitments made on behalf of the legal entity, nor are they liable for losses exceeding the value of their shares.

The law explicitly designates a PT as a legal entity, giving it the ability to engage in legal transactions as a legal subject and to have assets separate from the personal assets of its directors. A PT also holds the status of an independent legal entity or *personastandi in iudicio* (independent in the eyes of the law).³PT has rights and obligations in legal relations similar to ordinary individuals or natural persons (*naturlijk persoon*). Thus, it can bring or face legal action, make decisions, have rights and obligations, debt receivables, and accumulate wealth like humans. Some of the reasons why business actors choose PT as their preferred form of business entity in Indonesian economic activities are because of its limited liability and the ease with which owners (shareholders) can transfer their companies by selling all or part of their shares in PT, among other advantages.⁴

In 2020, the government enacted Law No. 11 of 2020 concerning Job Creation (hereinafter referred to as "UUCK"). This law is an effort by the government to

¹Christina Bagenda, Nanda Dwi Rizkia, et al., 2023, *Civil Law*, Widina Publisher, Bandung. Page 68

²Ridwan Khairandy, 2013, *Legal Character of Limited Liability Companies and the Legal Status of the Assets They Own*, *Ius Quia Iustum Law Journal*, Vol. 20, No.1, p. 82. <https://doi.org/10.20885/iustum.vol20.iss1.art5>. Accessed November 27, 2023 at 09.10 WIB

³Suwardi, 2015, *Commercial Law: An Introduction*, Deepublish, Yogyakarta. Page 64

⁴M. Yahya Harahap, 2016, *Limited Liability Company Law*, Sinar Grafika, Jakarta. Page 244

encourage economic development and facilitate investment in Indonesia. The presence of UUCK in the investment sector is an effort to streamline provisions in various laws into one law, having cross-sector regulatory capabilities that cover the responsibilities of various agencies or ministries.⁵This approach, known as an omnibus law, aims to accelerate the consolidation of conflicting rules and serve as a comprehensive reference for related sectors.

The concept or method of omnibus law through UUCK aims to accelerate the simultaneous consolidation of conflicting regulations and become a reference for all regulations relating to related sectors.⁶The main target of UUCK is to increase the effectiveness of regulations related to investment and economic activities. UUCK consists of eleven clusters, namely improving the investment ecosystem, business licensing, employment, MSME support, ease of doing business, research and innovation, land acquisition, economic zones, central government investment and acceleration of PSN, government administration, and imposition of sanctions.⁷UUCK also brought many changes. One of the updates made by UUCK has an impact on the provisions in UUPT, namely the recognition of the legal entity of a Limited Liability Company Individual that meets the criteria for micro and small businesses. "PT Perorangan" is another name for this legal entity. This is regulated in UUCK which adds the substance of Article 153A of UUPT which reads:

- (1) A company that meets the criteria for a micro and small business can be established by 1 (one) person;
- (2) The establishment of a Company for micro and small businesses as referred to in paragraph (1) is carried out based on a statement of establishment made in Indonesian; and
- (3) Further provisions regarding the establishment of a Company for micro businesses

Further provisions related to Individual PTs are then regulated through implementing regulations, namely Government Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and Registration of the

⁵Dewi Sukma Kristianti, 2021, The Principle of Togetherness in Investment Law Law Number 11 of 2020 concerning Job Creation: Legal Politics of Investment Interests or Public Welfare, PAMALI Journal: Pattimura Magister Law Review, Vol. 1, No. 2, p. 92. <https://doi.org/10.47268/pamali.v1i2.619>. Accessed November 27, 2023 at 10.30 WIB

⁶Jaja Ahmad Jayus, 2015, The Concept of Investment Legal System in Ensuring Legal Certainty, Litigation Journal, Vol 16, No. 2, p. 38. <https://doi.org/10.23969/litigation.v16i2.38>. Accessed November 27, 2023 at 10:45

⁷Iwan Setiabudi, Moh. Taufik, et.al., 2022, Quo Vadis Indonesian Labor Law Post Constitutional Court Decision, Tanah Air Beta, Yogyakarta. Page 64

Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses (hereinafter referred to as "PP No. 8/2021").

PP No. 8/2021 details the provisions contained in the UUCK regarding the existence of PT Perorangan. The government regulates the form of legal entity in the form of PT Perorangan with limited liability (sole proprietorship with limited liability)⁸. This individual PT has one-tier, meaning that a single shareholder can act as a director without a commissioner. If examined further, the concept of a Limited Liability Company is a new concept. Consisting of two words, "Company" and "Limited". "Company" refers to the capital of a PT consisting of shares or shares, while "Limited" refers to the liability of shareholders whose scope is limited to the number of shares they own.⁹

Article 6 paragraph (1) of PP No. 8/2021 emphasizes that an Individual PT is established by an Indonesian citizen by filling out a Statement of Establishment in Indonesian. This Statement of Establishment is then registered electronically with the Minister of Law and Human Rights by filling in the form. The format for the Statement of Establishment must include: the name and domicile of the Individual PT; the period of establishment of the Individual PT; the intent and purpose and business activities of the Individual PT; the amount of authorized capital, issued capital, and paid-up capital; the nominal value and number of shares; the address of the Individual PT; and the full name, place and date of birth, occupation, place of residence, population registration number, and taxpayer identification number of the founder, director and shareholder of the Individual PT.

Everyone has the freedom to enter into an agreement with anyone, including PT Perorangan. Over time, PT Perorangan determines the form, content, and terms of the agreement. However, many laypeople do not understand whether an agreement must meet the requirements as a valid agreement, as stated in Article 1320 of the Civil Code. Regarding this, if one party to the contract is harmed, the contract becomes invalid and it will be very difficult to file a lawsuit. The role of a notary is very important in making a Notarial Agreement Deed to ensure that both parties achieve their goals and prevent future mistakes. The parties must

⁸Shinta Pangesti, 2021, Strengthening Regulations for Micro and Small Business Individual Limited Liability Companies in Supporting Economic Recovery During the Covid-19 Pandemic, *Jurnal RechtsVinding*, Vol. 10 Number 1, p. 119.<http://dx.doi.org/10.33331/rechtsvinding.v10i1.650>. Accessed November 27, 2023 at 11.00 WIB

⁹Rudhi Prasetya, 2011, *Limited Liability Companies: Theory and Practice*, Sinar Grafika, Jakarta. Page 202

comply with the articles of the agreement that they agree to until the agreement ends. The stages in making a contract can be divided into 3 (three), namely:¹⁰

- 1) Precontractual Stage, which is the stage before the agreement is made, where there is acceptance and offer. At this stage, the principle of freedom of contract and the principle of good faith which are subjective in nature apply;
- 2) Contractual Stage, which is the stage when the agreement is made, here there is a conformity of the statement of will between the parties. At this stage the principle of consensualism applies, the principle of *pacta sunt servanda*;
- 3) Past Contractual Stage, namely the implementation of the agreement, here the principle of objective good faith applies.

The agreement must be based on consensus or agreement from the parties making it. According to the principle of consensualism, an agreement is considered to have been born if there is an agreement or conformity of will between the parties making it.¹¹The agreement referred to is that the parties who entered into an agreement have agreed or are of one mind regarding the matters of the agreement they entered into. This principle can be seen in Article 1320 of the Civil Code which states that for an agreement to be valid, four conditions are required, namely:

- 1) Agreed those who bind themselves;
- 2) Capable of making an agreement;
- 3) A certain thing, and
- 4) A lawful cause.

An agreement is made after two or more parties reach an agreement. The legal result of the agreement is the rights and obligations of the parties. The parties have the right to receive their rights and the parties are required to carry out their obligations.

As regulated in Law No. 2 of 2014 concerning the Position of Notary, hereinafter referred to as UUJN, notaries must understand agreements and deed-making

¹⁰Salim HS, 2019, *Contract Law: Theory and Techniques of Contract Drafting*, Sinar Grafika, Jakarta, p. 126.

¹¹Roulinta Y Sinaga, Sang Ayu Putu Rahayu, et al., 2023, *Contract Law*, CV. Gita Lentera, Padang. Page 107

techniques because their work is very important and has perfect evidentiary power, both formal and material. A notarial deed of agreement is written and authentic evidence that can be used by the parties to the agreement as strong evidence.¹²As long as it is not proven otherwise, the judge must consider it as complete evidence that does not require additional evidence. In a notarial deed agreement, a notary is a public official who makes an agreement between two or more parties into a notarial deed that is not private. The deed of agreement contains the wishes of the parties who appear before the Notary, not the wishes of the Notary.¹³

Notaries, which in English are called notary and in Dutch are called van notaris, have an important role in the legal process, especially in the field of civil law, because they are public officials who have the authority to make authentic deeds and other authorities.

The definition of a notary itself is contained in the provisions of Article 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Regulation of the Notary Office (hereinafter referred to as UUJN), which states that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. As stated in Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Notary Office, a notary is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the Deed, store the Deed, provide grosse, copies and extracts of the Deed, all of which as long as the making of the Deed is not also assigned or excluded to another official or other person determined by law.

One of the main duties of a notary is to regulate legal relations in writing and authentically between parties who mutually request the services of a notary. The authority granted by law to a notary shows that a notary is a job that requires special skills that require extensive knowledge and great responsibility to serve the public interest. So, it is not uncommon for regulations to require certain actions in the original deed, such as the establishment of a cooperative, limited liability company, fiduciary guarantee, and so on, in addition to being made at the request of the party.

¹²I Ketut Oka Setiawan, 2015, *Contract Law*, Sinar Grafika, Jakarta. Page 55

¹³Sumini, (2017), *The Role of Notaries in Making Notarial Deeds*, *Jurnal Akta*, Vol. 4 No. 4. <https://jurnal.unissula.ac.id/index.php/akta/article/view/2498/1862>. Accessed November 28, 2023 at 11.48 WIB

Considering that the state places notaries as public officials who are authorized to make authentic deeds for the purposes of proof or evidence in private or civil legal areas, notaries and their deed products can be considered as the state's efforts to create legal certainty and legal protection for the community.

2. Research Methods

The research approach method used in this thesis is an empirical legal research method, The specifications of this research are descriptive analytical, The type of data used in this study uses primary data which includes: the 1945 Constitution, the Civil Code, Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 11 of 2020 concerning Job Creation, Government Regulation No. 8 of 2021 concerning the Authorized Capital of Companies and Registration of the Establishment, Amendments, and Dissolution of Companies That Meet the Criteria for Micro and Small Businesses. As well as secondary data containing books and other supporting documents. Collection of research data using interview techniques, observation and literature studies. The data analysis method uses qualitative data analysis techniques.

3. Results and Discussion

3.1. The role of a notary in agreements made by a individual company with other parties

Based on an interview conducted on Friday, September 5, 2023 at 10.00 WIB with Mrs. Dina Novalia Trisnaningtias, SH, 81 M.Kn, she explained that the role of a Notary in a personal company agreement with another party is:

Notaries have important duties and responsibilities in the process of making individual company agreements. The major responsibility of a notary is to ensure that all processes and documents related to individual companies have been carried out correctly and in accordance with applicable laws and do not harm either party. Notaries are also tasked with providing appropriate advice and guidance to the parties involved in the agreement, so as to avoid misunderstandings or disputes in the future. Notaries act as independent and neutral parties in arranging and drafting the agreement. Therefore, the role of a notary is very important in maintaining the validity, stability, justice and security of individual company agreements.

In an agreement between a sole proprietorship and another party, the role of a notary cannot be ignored. The presence of a notary is very important so that the agreement made is in accordance with applicable legal provisions and does not harm either party. The notary has the following roles:

1. Providing legal advice and considerations to help the parties reach mutually beneficial agreements and in accordance with applicable law. With extensive knowledge of the law, Notaries can provide valuable insight to all parties involved in the agreement.
2. Ensure that the documents related to the agreement have been prepared correctly and completely, so that there are no deficiencies or errors that can cause problems in the future. This deed of agreement is valid evidence and can be used as evidence in court if a dispute occurs in the future. Therefore, in order for an agreement to be considered valid, all the requirements for the validity of the agreement must be met in accordance with applicable legal provisions.
3. Formulate the will of the parties into a notarial deed which will then become an agreement that binds the parties who made it. This is done to ensure that the agreement made covers all the needs and desires of the parties in writing, is fair and does not provide unequal benefits to one party. The process of recording this will also shows the commitment and responsibility of both parties to carry out the agreement as well as possible.
4. Issue a copy of the deed of agreement to all parties involved. After completing the process of making the deed of agreement, the notary then issues a copy of the deed to all parties involved in the agreement. The copy of the deed contains the agreement and obligations that have been agreed upon by all parties involved, which are officially and legally stated in the deed of agreement. With this copy of the deed of agreement, it is hoped that all parties can clearly understand the contents of the agreement that has been made and can comply with the obligations that have been mutually agreed upon.
5. Safely store authentic deeds of agreements that have been made, with the aim of maintaining the confidentiality and security of documents and information contained in the agreement, and providing secure access if needed in the future.

3.2. Notary Obstacles In Individual Company Agreements With Other Parties

Although an agreement has been made between a sole proprietorship and another party, there are several obstacles faced by the notary in the process. Based on an interview conducted on Friday, September 5, 2023 at 10:00 WIB with Mrs. Dina Novalia Trisnaningtias, SH, M.Kn128, she explained the obstacles experienced by notaries in agreements made by sole proprietorships and other parties. The obstacles faced by notaries in making lease agreements are the many requirements that must be met by both parties involved in the agreement. In addition, notaries must also ensure that all provisions contained in the agreement are in accordance with applicable regulations and do not violate the

law. This requires a lot of time and precision from the notary in checking every detail contained in the agreement. In addition, notaries must also ensure that both parties have agreed and understood the contents of the agreement before it is finally signed. In addition, notaries must also ensure that all required documents are complete and valid before the agreement can be made. All of these obstacles can slow down the process of making a lease agreement deed and require good cooperation between the notary and both parties to complete it properly.

Often there are obstacles that become complex in making a deed of agreement. The process of making a deed of agreement requires precision and clarity in regulating the rights and obligations of both parties involved. The obstacles faced by Notaries in agreements between individual companies and other parties are:

1. Lack of understanding of the law by the parties. The parties to an agreement often lack adequate understanding of the law. This can cause the agreement to be invalid or not in accordance with the law. The notary needs to provide an explanation to the parties regarding the legal provisions applicable in the agreement. The parties also need to understand their rights and obligations in the agreement so that there are no misunderstandings in the future. Lack of understanding of the law can also cause legal problems in the future, such as disputes and disagreements between the parties, which will ultimately harm all parties involved.
2. Incomplete documents. Incomplete supporting documents required to make a deed of agreement can be a serious obstacle in the process of making the deed. Incomplete documents or documents that do not comply with applicable provisions can make it difficult for a notary to prepare a valid deed of agreement and can be rejected by the authorities. It is very important for the parties who will make a deed of agreement to ensure that all necessary supporting documents have been prepared completely and in accordance with the requirements set. That way, the process of making a deed of agreement can run smoothly and without unnecessary obstacles.
3. Lack of information from the parties. The parties often do not provide complete information to the Notary. If there are parties who do not provide complete and clear information to the Notary, this can cause the Notary to be unable to provide legal advice and record the wishes of the parties properly. Often the parties do not provide complete information because they do not want to reveal things that could harm them. As a result, the Notary often has to rely on limited and incomplete information which can lead to errors in the deed-making process.

4. Disagreement between the parties. The parties often cannot agree on some of the terms of the agreement. The absence of agreement between the parties can cause the agreement-making process to be hampered. The notary needs to act as a mediator to help the parties reach an agreement. However, sometimes such disagreements cannot be avoided due to differences in interests and views between the parties. Thus, a long process of negotiation and discussion is often needed to reach an agreement that is mutually beneficial for all parties involved.

There are several solutions that can be implemented to overcome obstacles that may occur in the agreement process carried out between a sole proprietorship and another party, especially those involving a notary. These solutions include:

1. Prepare Complete Documents.

Before making an agreement, make sure to prepare complete documents and in accordance with applicable provisions. The notary needs to conduct a thorough examination of the agreement documents, including the completeness of the documents, the validity of the signature, and legal certainty. This is important to ensure that the document is valid and can be used as strong evidence in any case. Complete and accurate documents will also minimize the risk of errors or discrepancies in the agreement. Therefore, no detail should be missed in this examination process, it is expected that the parties involved can provide complete and legally valid documents. After the examination is complete, the notary can sign the document and provide legal certainty to both parties involved.

2. Following the Specified Procedures.

Notaries have procedures that must be followed in the agreement process. Make sure to follow the procedures carefully and do not ignore the steps that have been set. Notaries need to provide an explanation to the parties regarding the legal provisions that apply in the agreement. This aims to ensure that the parties understand their rights and obligations in the agreement and can also prevent misunderstandings or disputes in the future. Notaries must also ensure that the explanation provided covers all relevant aspects and is easily understood by the parties, and the explanation is in accordance with applicable legal provisions and does not cause doubt or uncertainty for the parties. By providing a clear explanation, notaries can ensure that the agreement made is valid and can be run smoothly by all parties involved.

3. Provide clear information to the Notary.

During the agreement process, it is important to provide clear information to the

Notary. Explain in detail the purpose of the agreement to be made, and provide all relevant information required by the Notary. It is important to provide clear information so that there is no misunderstanding or discrepancy in the deed-making process. Based on this, the notary must ensure that all parties involved have provided accurate and complete information regarding the identity, status, and purpose of the agreement to be made so that the legal process can run smoothly and in accordance with applicable provisions. That way, it will help the notary understand the agreement to be made and ensure that all necessary matters are covered in the agreement document and the parties can make the right decisions and avoid unwanted legal risks.

4. Avoiding Conflicts of Interest.

Ensure that all parties involved in the agreement have agreed and understand the contents of the agreement. Ensure that all agreement processes are carried out transparently and in accordance with applicable provisions. This can minimize the possibility of differences of opinion or misunderstandings that can cause obstacles in the agreement process. At the same time, the notary has a role as a mediator to help the parties reach an agreement. With his expertise in law and knowledge of the agreement process, the notary can help facilitate discussions and negotiations between the two parties. The notary needs to ensure that all terms and conditions set out in the agreement have been understood and agreed to by both parties before being signed. The notary can also ensure that the agreement made is valid and binding on both parties. As a mediator, the notary must also be neutral and not take sides with either party, so that he can ensure that the agreement reached is fair and beneficial to both parties.

4. Conclusion

There are several solutions that can be implemented to overcome obstacles that may occur in the agreement process carried out between a sole proprietorship and another party, especially those involving a notary. These solutions include: a. Prepare Complete Documents, b. Following the Specified Procedures, c. Provide clear information to the Notary, d. Avoiding Conflicts of Interest.

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