

The Role of Notary in the Cooperation Agreement Between PT. Perhotelan Resty Menara and the Youth and Sports Service of Pekanbaru City

Riana Sari

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:
nisrinafebriani86362@gmail.com

Abstract. *This study aims to determine and analyze the role of notaries in the implementation of the Cooperation Agreement between PT. Perhotelan Resty Menara and the Youth and Sports Service of Pekanbaru City, as well as to determine and analyze the Implementation of the Cooperation Agreement in accordance with the Agreement made in the Cooperation Agreement between PT. Perhotelan Resty Menara and the Youth and Sports Service of Pekan Baru City. The research approach method used in this thesis is the sociological juridical legal research method. The specification of this research uses descriptive analysis. Data collection using interview techniques and document studies or library materials. The benefits of this research are practically expected to be used to formulate the arrangement of Cooperation between the Regional Government and the Private Sector in implementing cooperation in the context of developing Contract Law in Indonesia. The results of the study indicate that the role of a notary in the implementation of the Cooperation Agreement between PT. Perhotelan Resty Menara with the Youth and Sports Service of Pekanbaru City has an important role in creating legal certainty in every legal relationship. Given the importance of the involvement of a notary in making a cooperation agreement between a private company and the government, certain requirements are required in making the agreement so that the agreement remains in accordance with applicable laws and regulations. This is done by both parties because they realize that in addition to the main task of a notary is to create or record events authentically, the parties also realize that the involvement of a notary's role is more than that regulated in the law, especially as a mediator in differences of opinion on something in a legal relationship.*

Keywords: Agreement; Cooperation; Notary; Role.

1. Introduction

Entering the global economy has resulted in the rate of development of national

economic activities experiencing very rapid and sharp changes, especially in the field of business law which is part of civil law. The field of business law includes activities of buying and selling transactions, work contracts, company establishment, leasing, exports and imports and the relationship of mutual need between one party and another party which gives rise to a working relationship that gives birth to a cooperation agreement, including a cooperation agreement between the local government and the private sector.

The rapid economic development in Pekanbaru City is the hotel business, the use of hotels as meeting places for State Civil Apparatus activities. In the Regulation of the Ministry of State Apparatus Empowerment - Bureaucratic Reform Number 06 of 2015 concerning Guidelines for Limiting Meetings/Conferences Outside the Office in the Framework of Increasing the Efficiency and Effectiveness of Civil Apparatus Work, meeting/conference activity packages can be held outside the office if they meet certain criteria. The large number of government agencies holding activities in hotels must also be followed by compliance with tax deductions and deposits.

One of the notary's involvements in company cooperation with the government in the use of hotels is cooperation between PT. Resty Menara Hotel with the Youth and Sports Service of Pekanbaru City where the role of a notary in this cooperation is closely related to the valid requirements of an agreement as regulated in the Civil Code Book Three Regarding Obligations, Obligations arising from Contracts or Agreements in Article 1313 states that an agreement is an act in which one or more people bind themselves to one or more other people, then regarding the requirements for a valid agreement explained in Article 1320 for the validity of an agreement, four conditions are required, namely the agreement of those who bind themselves, the ability to make an agreement, and a certain thing and a lawful cause.

The study of the role of notaries in the process of cooperation between companies and the government is very important, namely to assist in the legal administration process, namely making deeds to show the legality of the administration of limited liability companies. Limited liability companies can be referred to as legal entities based on notarial deeds that have been registered and have been approved by the Ministry of Law and Human Rights through various processes that have been regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

Limited Liability Company, hereinafter referred to as a company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in this law and its implementing

regulations.¹The Company must have aims and objectives and business activities that do not conflict with the provisions of laws and regulations, public order and/or morality.²

A limited liability company is a business entity and the amount of the company's capital is stated in the articles of association. The company's assets are separate from the personal assets of the company owner so that it has its own assets. Each person can own more than one share which is proof of ownership of the company. Shareholders have limited liability, namely as many shares as they own. If the company's debt exceeds the company's assets, then the excess debt is not the responsibility of the shareholders. If the company makes a profit, the profit is distributed according to the provisions set. Shareholders will receive a portion of the profit called a dividend, the amount of which depends on the amount of profit obtained by the limited liability company.

The formation of a Limited Liability Company (PT) itself is usually carried out by two or more people, then they make an agreement that is known by a notary and a company deed will be made. This deed will then be legalized by the Ministry of Law and Human Rights so that this company will officially become a limited liability company.

Periodically, a Limited Liability Company (PT) will hold a meeting called a general meeting of shareholders (GMS). The objectives of the GMS include:

1. Authorized to appoint or dismiss directors
2. Authorized to appoint or dismiss commissioners
3. Making additions or reductions to the Company's capital
4. Changing existing articles of association.

However, sometimes in matters related to cooperation between limited liability companies and the government, there are still several obstacles, such as delays in payments due to government limitations in terms of regional finances.

The obligation arises from the law as a result of the unlawful actions of people regulated in Article 1365 of the Civil Code, the law stipulates the obligation to perform the performance. Problems will arise if one of the parties turns out to be in default or breach of promise.

Given the importance of notary involvement in making cooperation agreements between private companies and the government, then in making the agreement certain requirements are needed so that the agreement remains in

¹Article 1 paragraph (1) of the Republic of Indonesia Law Number 40 of 2007 concerning Limited Liability Companies

²Article 2 of the Republic of Indonesia Law Number 40 of 2007 concerning Limited Liability Companies

accordance with applicable laws and regulations, therefore in the process of making cooperation agreements as well as other business agreements that must involve a Notary as a public official who has the authority in the field of service for making and ratifying cooperation agreements. However, in this case the role of a Notary in making cooperation agreements. Therefore, this study analyzes the laws and regulations that regulate both cooperation agreements and the implementation of the Notary's position in relation to the role that can be played by a Notary in making Cooperation Agreements.

The Government in this case the Pekanbaru City Youth and Sports Office annually carries out various youth and sports activities where the activities are carried out, one of which is at the Resty Menara Pekanbaru Hotel, which of course in the implementation of its activities such as in terms of making payments, SOPs for renting buildings/meeting rooms, even managing management at the hotel related to the implementation of activities at the Pekanbaru City Youth and Sports Office can run according to what was agreed with PT. Perhotelan Resty Menara. To obtain legal certainty so that there is no legal defect or breach of contract in the agreement between the two parties in this case the Pekanbaru City Youth and Sports Office and PT. Perhotelan Resty Menara, a Cooperation Agreement is made which must involve a Notary as the authorized body in ratifying the cooperation agreement and this is where the important role of a Notary in an agreement.

2. Research Methods

The research approach method used in this thesis is the sociological legal research method. Sociological legal research emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.³The specification of this research uses descriptive analysis, namely research that in addition to providing a description, writing and reporting an object or an event will also draw general conclusions from the problems discussed. Data sources come from primary data and secondary data. Data collection methods include interviews, Document Studies or Library Materials. The data analysis method used in analyzing data is an interactive qualitative model analysis as proposed by miles and Huberman.

3. Results and Discussion

3.1 Implementation of the Cooperation Agreement and Agreement that has been made between PT. Perhotelan Resty Menara and the Youth and Sports Service of Pekanbaru City

An agreement or agreement is a legal relationship between two or more people (parties) in the field of property, which creates obligations for one of the parties

³Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 88.

in the legal relationship.⁴

The Pekanbaru City Youth and Sports Agency in achieving the main goals of its institution, they need an institution/other agency to support every activity carried out. One of the routine activities often carried out by the Pekanbaru City Youth and Sports Agency is holding youth meetings and sports meetings with the wider community. Which activity must be bound by a Cooperation agreement so that it can run according to the agreement of both parties.

However, in practice, before an agreement is reached to make a cooperation agreement, both parties carry out several stages and processes in determining the agreement between the two. The following are some of the stages carried out:

1. Stages of explaining the form of work to the provider (in this case the provider is the Resty Menara Hotel)
2. Direct procurement document preparation.
3. Preparation of Bidding Documents and submission of bidding documents
4. Opening of Offers, Evaluation, Clarification and Negotiation
5. Clarification and negotiation
6. Signing of SPK (Work Order)
7. Recording the cooperation agreement letter that has been agreed upon between the two parties in a special book made by a notary.

According to Article 1320 of the Civil Code, which states that there are four conditions for an agreement to be considered valid, namely:

1. There is an agreement between both parties

Before making a valid agreement, the Youth and Sports Service of Pekan Baru City together with PT. Perhotelan Resty Menara first made a draft agreement in terms of several forms of agreements to be made, such as an agreement on the implementation schedule, an agreement on the costs to be budgeted, an agreement on experts to be involved in an activity to be implemented and so on. This shows that both parties have implemented the rules regarding the valid requirements of a cooperation agreement.

2. Ability to act

Acting capacity is the ability to carry out legal actions. Judging from the results of the research conducted by the author, all experts and parties involved in each

⁴Kartini Muljadi and Gunawan Widjaja, 2003, *The Union Born from the Law*, Jakarta: PT. Raja Grafindo Persada, p. 18

implementation of the agreement carried out by both parties were all carried out by adults who were competent to act according to applicable law. Both competent in age and competent in action.

3. The existence of an object of agreement (a certain thing)

In implementing several cooperation agreements between the Pekanbaru City Youth and Sports Office and the Pekanbaru Resty Menara Hotel, both parties are very clear in determining the object of the agreement. Where one party clearly provides its achievements to the other party, such as the Resty Menara Hotel providing building services and facilities as previously agreed by both parties at the time of determining the agreement. Likewise, the party receiving the achievement in this case is the Pekanbaru City Youth and Sports Office also receives the achievement by providing compensation for the achievements it has received, in accordance with the agreement of both parties.

4. There is a lawful cause

In the implementation of the agreement between the two parties, which has been running since 2018 until now, the author studied several forms of cooperation agreements, but there is nothing prohibited or something that is not halal that has been agreed upon by both parties. All forms of agreements and agreements between the two parties are halal and justified in applicable laws.

Based on the above, both parties in implementing the agreement choose a notary as a party who can mediate and provide legal certainty in every agreement between the two. In the implementation of the next agreement, both parties still carry out several stages of negotiation to further clarify the form of agreement that will be made by both. Of course, in finding an agreement, it cannot be separated from what is called Negotiation or the bargaining process in an effort to reach the agreement, starting from price negotiations, negotiation of services to be received to negotiation of the appropriate event schedule to signing the Work Agreement which is then recorded in a special book by the Notary.

3.2 Role Notary in the Cooperation Agreement between PT. Perhotelan Resty Menara and the Youth and Sports Service of Pekanbaru City

Notary as one of the legal professions, especially related to the making of deeds. The legal profession carries one mission, namely to uphold just law, making a noble profession known as "officium nobile".⁵

According to Soerjono Soekamto, he said that role is a dynamic aspect of status. If someone carries out his rights and obligations according to his position, then

⁵ Yulies Tiena Masriani, Norms for Notaries in Notary Supervision, Duta Nusindo, Semarang, 2014, p. 13

he is carrying out a role.⁶

In relation to the role of notaries, the development of the business world has encouraged the field of civil law to always accommodate the need for written evidence. In carrying out their duties and positions, Notaries are bound by notarial rules and codes of ethics that they may not violate. This also aims to ensure that the role of notaries is in accordance with laws and regulations. To avoid civil and criminal lawsuits, Notaries must adhere to the guidelines and regulations, and most importantly, Notaries must practice their oath/Promise of office.

According to Habib Adjie, specifically related to *Openbare Ambtenaren* which is translated as Public Official, it is interpreted as an official who is entrusted with the task of making authentic deeds that serve the public interest, and this qualification is given to a Notary.⁷ However, it should be noted that Habib Adjie explained that a Notary is not the same as a Civil Servant considering that a Notary is subject to special regulations, in which a Notary is independent, does not side with anyone (impartial) and does not depend on anyone (independent), meaning that a Notary in carrying out his duties is not interfered with by any party, including the party that appointed him, such as the profession of a judge.

AW Voors sees two issues regarding the function of Notaries in the business sector, namely:

- a. Making contracts between parties, in the case of an action starting and ending in a deed, for example a sale and purchase agreement, lease. In this case, Notaries have been skilled with the existence of models in addition to knowing and understanding the law.
- b. The contract maker actually starts something and is the basis of a relationship that is valid for a fairly long period of time. In this case, a Notary is required to have a sharp vision of the material and the ability to see far into the future, whether there is any danger, and what might happen.

Considering the importance of a contract in a business transaction such as a contract agreement that is needed and often implemented by the Pekanbaru City Youth and Sports Service, then in making a contract certain requirements are needed so that the contract remains in accordance with applicable laws and regulations, therefore in practice, the Pekanbaru City Youth and Sports Service with PT. Perhotelan Resty Menara is fully aware of deciding to involve a Notary as a public official who has the authority in the field of drafting and/or ratifying business contracts and cooperation that they carry out.

⁶Soerjono Soekamto, 2009, *Sociology: An Introduction*, New Edition, Jakarta: Rajawali Press

⁷Habib Adjie, *Civil and Administrative Sanctions against Notaries as Public Officials*, Bandung, Refika Aditama, 2009, p. 27 (hereinafter referred to as "Habib Adjie III")

The involvement and role of notaries in every implementation of cooperation between the Pekanbaru City Youth and Sports Service and PT. Perhotelan Resty Menara Pekanbaru are as follows:

1. Legalize the agreement that has been agreed and signed by both parties.

So, in this case, the notary only records the agreement that has been mutually agreed upon by both parties without changing or forcing changes to the contents of the agreement that has been agreed upon. However, if there are elements that are considered invalid in an agreement between the two parties, then the notary is obliged to remind about things that are not permitted in an agreement.

2. Making a deed of amendment to the articles of association of both the Youth and Sports Service and changes to the Resty Menara Pekanbaru Hotel if there are changes to management or others during the course of making a deed of amendment to the articles of association of the agreement.

Here the notary's function is clearly as an official who is authorized to make the deed of change and is also signed by both parties who agree.

In addition to the above, here the notary also plays a role in advising and emphasizing to the parties to include matters related to obstacles that have been previously encountered in the agreement letter that will be legalized by the notary, so that these obstacles do not recur and do not harm either party.

4. Conclusion

In the process of implementing cooperation between the Pekanbaru City Youth and Sports Service and the Resty Menara Hotel, the author noted that there were several stages and detailed negotiation processes that had been carried out in order to realize a mutually beneficial cooperation pattern for both parties, so that it is hoped that there will be no violations of the applicable legal regulations and SOPs in the agreement that has been mutually agreed upon. The role of a notary in the process of cooperation between companies and the government is very important, namely being able to assist in the legal administration process and creating legality by recording a Cooperation Agreement that has been signed and agreed upon by both parties into a special book list made by a notary, such as the Youth and Sports Service of Pekanbaru City with PT. Perhotelan Resty Menara Pekanbaru.

5. References

Habib Adjie, *Civil and Administrative Sanctions against Notaries as Public Officials*, Bandung, Refika Aditama, 2009, (hereinafter referred to as "Habib Adjie III").

Kartini Muljadi and Gunawan Widjaja, 2003, *The Union Born from the Law*, Jakarta: PT.

Law Number 2 of 2014 concerning Amendments to the Law concerning the Position of Notary

Republic of Indonesia Law Number 40 of 2007 concerning Limited Liability Companies

Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta

Soerjono Soekanto, 2009, Sociology: An Introduction, New Edition, Jakarta: Rajawali Press

Yulies Tiena Masriani, Norms for Notaries in Notary Supervision, Duta Nusindo, Semarang, 2014