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IMPLEMENTATION OF NOTARY RESPONSIBILITIES FOR THE ESTABLISHMENT OF A LIMITED COMPANY REPRESENTED TO THE SECOND PARTY

“(Study at City Notary Offices and Kediri Regency Notary Offices)”

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Abstract: Managing the establishment of a Limited Liability Company for some community groups is considered a hassle and a burden. Some people ask for help from other parties to arrange certificates of establishment, while others use it as a business opportunity by providing deed management representative services. This study aims to reveal the role of a notary in notarial duties, the status of the deed of establishment of a represented Limited Liability Company, and the execution of making authentic deeds through a second party. The research method used is juridical-empirical with primary, secondary, and tertiary data as well as qualitative analysis. The results of the study show that as long as the second party fulfills the requirements of a notary, obtaining the deed of establishment through them is not a problem. The signing of the deed by the business owner and the second party is an important moment in the process. The deed of establishment through a third party has legal status if it follows the procedure set by a notary. In conclusion, notaries in Kediri are familiar with the management of Limited Liability Companies through third parties with anticipatory steps to ensure compliance with applicable regulations.

Keywords: Business Law; European Competition Law; Market; Predatory Pricing

1. Introduction

Having a business entity such as a Limited Liability Company (PT) or CV as a form of business entity is a must for entrepreneurs. This is because a Limited Liability Company is a means for carrying out economic activities which has become a necessity that cannot be negotiated in business practices carried out by business actors, no longer separated from the presence of a Limited Liability Company both on a micro, small, medium and large scale which is a model that most and most often done at this time, because of the limitation of liability in it ¹.

The Limited Liability Company was established based on an agreement, this shows as an association of people who agree to establish a business entity in the form of a limited liability company. Because the basis for its establishment is using an agreement, the establishment of a Limited Liability Company cannot be separated from the

¹ Binoto Nadadap. LIMITED LIABILITY COMPANY LAW (BASED ON LAW NO.40 OF 2007), Jalan Permata Aksara, Jakarta. (2016)

requirements for the validity of an agreement according to the provisions contained in Article 1320 of the Civil Code². For this purpose, entrepreneurs are required to register the issuance of business establishment deed through a notary.

Notary is a public official who is the only one authorized to make deeds regarding all actions, agreements and literature which are required by public law, or the parties concerned to be stated in an authentic letter, determine the date, save the deed and provide a legal copy, copies and excerpts thereof, all of that as long as the making of the deeds is not also obligatory for officials or is specifically their obligation. Article 1 of Law Number 30 of 2004 concerning the Position of Notary.

In carrying out his duties and authorities as a public official, the Notary apart from confirming the wishes of the parties which will be set forth in the form of the Deed of Establishment of a Limited Liability Company also has the authority to provide legal counseling related to the making of the deed of establishment. This has been emphasized in the provisions of Article 15 paragraph (2) letter e UUJN which states that a Notary is also authorized to provide legal counseling in connection with making a deed.

The main task of a notary is to make authentic deeds. In relation to proving legal certainty including the rights and obligations of a person requiring the role of a Notary. The 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 dispute over rights and obligation³.

An authentic deed, such as a deed of establishment of a business made by a notary, has very strong legal force, bearing in mind that an authentic deed is a perfect proof, so it is not uncommon for various laws and regulations to require certain legal regulations to be made in an authentic deed, such as the establishment of a limited liability company, cooperative, deed of fiduciary guarantees, , and so on in addition to the deed made at the request of the parties. Positive law in Indonesia has regulated the position of a notary in a special law, the government together with the House of Representatives established Law Number 30 of 2004 concerning the Position of a Notary⁴.

To set up a business entity such as a PT, the entrepreneur must take care of it through a notary. From this point of view, it can be seen that the notary has an important role in preventing misuse of the business establishment deed. Misuse of business establishment deed, such as using a business entity as a place to launder money, using a business entity to collect illegal goods, etc. The notary as the person who issues the deed of establishment of the business entity is indirectly involved. The consequences are very serious if the notary is involved in misusing the business establishment deed. The notary will lose his job forever as the biggest consequence. Therefore, the notary must prepare appropriate anticipatory steps.

²Ibid

³ Sjaifurahman. ASPECTS OF NOTARY LIABILITY IN MAKING DEEDS. Bandung.CV, Mandar Maju. (2011)

⁴ Abdul Ghofur Anshori. INDONESIA NOTARY INSTITUTE FROM LEGAL AND ETHICAL PERSPECTIVE, FH UII Press Yogyakarta (2009)

The notary must be authorized insofar as it relates to the deed made, meaning that not every public official can make all the deeds, but a public official can make certain deeds, which are assigned or excluded to him based on statutory regulations, this authority concerning⁵:

- a. The notary must be authorized as long as it concerns the people, for the benefit of whom the deed is made, meaning that a notary is not authorized to make a deed for the benefit of everyone, in Article 20 Paragraph (1) of the PJN, for example it stipulates that a notary is not allowed to make a deed for the notary himself, wife/husband.
- b. The notary must be authorized insofar as it relates to the place where the deed was made, meaning that each notary is determined by his legal area (his area of office) and only within the area determined for him is authorized to make authentic deeds, a deed made outside his area of office is invalid.
- c. The notary must be authorized as long as it is related to the time of making the deed. A notary may not make a deed while he is still on leave or is fired from his position, likewise a notary may not make a deed before he takes his position (before taking his oath).

With the obligation for entrepreneurs who will establish a business entity into an authentic deed, and based on the Notary's position regulations, where a Notary is one of the parties authorized by the State to carry out the work of making an authentic deed, it is clear that the role of a notary in the process of establishing a business entity must be needed. This is a good bargaining position for the notary to ensure that the process of obtaining the business establishment deed runs smoothly.

Based on the description above, the author will compile a research that aims to find out what anticipatory steps must be taken by a notary to avoid misuse of the deed of establishment of a business with the title Legal Review of Anticipatory Steps by a notary on Misuse of Limited Liability Company Establishment Deed

2. Method

This research is a juridical-empirical research conducted in action on certain legal events that occur in society. Juridical – empirical research a research approach that combines juridical (law) and empirical (facts or social reality) elements⁶. This study aims to understand legal phenomena in a real social context. The research approach used is a juridical-empirical-sociological approach, which combines juridical analysis to analyze the phenomenon of obtaining limited liability certificates and empirical and sociological analysis to analyze people's behavior related to this phenomenon. The location of the research was carried out in the City and Regency of Kediri because the researchers lived in the area and knew about business development and the increase in the establishment of PTs around the airport. The type of data collected consists of primary data obtained through in-depth interviews and secondary data used to complement the primary data. Data sources consist of primary legal materials (laws and regulations related to notarization), secondary legal materials (books, papers, research results, interviews), and tertiary legal materials (legal dictionaries, encyclopedias). The data collection technique

⁵ Deni Yohanes. *ESTABLISHMENT OF NOTARY ASSOCIATION BY NOTARIES AS GENERAL OFFICIALS*, Thesis: Diponegoro University Semarang. (2005)

⁶ Edy Ikhsan dan Mahmut Siregar. *METODE PENELITIAN DAN PENULISAN HUKUM SEBAGAI BAHAN AJAR*, Medan: Fakultas Hukum Universitas Sumatera Utara (2009)

used was a document study to collect data from books, journals, documents and relevant articles, as well as interviews with 20 notaries in the City and District of Kediri. The interview method used is open or semi-structured interviews.

3. The Role of a Notary in Carrying out Notary Duties at a Notary's Office

Although the majority of notaries operate in less crowded areas, office location does not affect the number of clients who use notary services. In a year, notaries in remote areas can serve around 60-70 clients. The awareness of notaries in Kediri regarding their authority in processing business establishment deed such as CV or PT is quite high. Many clients choose to hand over the company establishment process to a notary for reasons of convenience and practicality.

The notary has the authority to set down deeds, agreements and stipulations in an Authentic Deed, which provides complete evidence and legal validity. They are also responsible for ensuring conformity of the actions requested by the parties with the applicable laws and regulations. In the process of obtaining the deed of establishment of the company, the notary in Kediri makes both written and unwritten rules regarding task delegation. Clients generally don't mind this rule as long as the process is smooth and timely.

In addition, the notary also plays a role in providing legal counseling related to the making of the deed of establishment of the company. They must explain the requirements, procedures, and permits required for establishing a PT, such as NPWP, SKDP, SIUP, and TDP. Tracing the client's background is the first step taken by a notary before starting the processing, and this is considered important to avoid legal defects that can harm the parties involved.

The authority of a notary in making authentic deeds is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. During 2021/2022, notaries in Kediri will not experience any problems in the process of applying for the establishment of a PT, so that all requests can be handled properly.

4. What is the Position of the Deed of Establishment of the Limited Liability Company Represented to the Second Party

In the period from January 2021 to December 2022, the 20 notaries who were the subject of this research received a total of 128 applications for the establishment deed of Limited Liability. Of these, 95 requests were made through a second party, either as a business owner's representative or a service bureau representing the business owner. This means that there are 95 valid PT establishment deed processed by the second party.

The definition of a deed is a letter that becomes evidence and has a signature, which contains events that form the basis of a matter or engagement, which is deliberately made for evidence. In addition, the term deed also refers to legal actions, not just letters. An authentic deed is a deed that not only contains a signature and is used as evidence, but is also made before an authorized public official in the form determined by law. The presence of an authentic deed creates legal consequences for other interested parties and has strong evidentiary power. However, the opponent's evidence can still invalidate the strength of the authentic deed against the parties concerned. For third parties, the

evaluation of an authentic deed depends on the discretion of the judge. There are three limitations or elements that must be present in an authentic deed, namely made by a public official, in the form determined by law, and the public official has the authority to make the deed.

Article 1321 of the Civil Code states that an agreement is invalid if it is made due to oversight, coercion or fraud. Subjective elements that can cause an agreement to be "flawed" are:

Oversight: Occurs when one party misunderstands or is mistaken about important matters that are the object of the agreement, such as the important characteristics of the goods or people involved in the agreement. The oversight must be significant enough that if the party was not mistaken, he would not give his consent. The notary plays a role in preventing this oversight by verifying the parties involved and ensuring that there is no miscommunication between them.

Coercion: It is a threat against the law to cause harm to a person or his property, with the aim of forcing that person to do or not to take certain actions. Coercion can be a psychological threat, not a physical one. For example, one of the parties was forced to agree to the agreement because it was threatened or frightened. Force can make the agreement void, either if it is done by one of the parties or by a third party who is not involved in the agreement. The notary can ensure that there is no coercion by including provisions regarding the absence of coercion in the letter of intent to arrange the deed of establishment.

Fraud: Occurs when one party deliberately provides false or untrue information accompanied by deception to influence the other party to give consent. The deceptive party acts actively to impersonate the other party. The notary performs background tracing of shareholders and parties on behalf of them to prevent fraud.

5. Implementation of Making an Authentic Deed for the Establishment of a Limited Liability Company Represented to a Second Party in the City/District of Kediri

The 20 notaries in Kediri have experience in issuing notarial deeds represented, with a process that generally takes 1 month, but some take 2 months due to adjustments to the business owner's schedule. Of these, 18 notaries have no objection to the length of the issuance process as long as the procedures are carried out in accordance with the law. This is because the notarial deed has an important role in creating legal certainty in every legal relationship, as the strongest evidence in cases related to the notary deed. The making of an authentic deed is also required by laws and regulations to create certainty, order and legal protection. In addition, the making of an authentic deed is also desired by interested parties to ensure the rights and obligations of the parties as well as legal certainty for society as a whole. The purpose of the existence of a notary institution is to guarantee legal certainty, order and protection for the community in daily legal life.

Basically, the law can provide liability or responsibility for actions taken by a Notary, but this does not mean that all losses to third parties are entirely the responsibility of the Notary. The law has provided limits or guidelines for the liability and responsibility of a Notary, so that not all third party losses are the responsibility of a Notary. This is known as the form of legal protection for Notaries as public officials in charge of providing

services. Normatively, the role of the notary is only to confirm the will of the parties to be later set forth in an authentic deed, so that legal rights and obligations arising from the legal actions contained in the deed only bind the parties to the deed, if there is a dispute regarding the contents of the agreement, the notary will not be involved in the performance of obligations and in the prosecution of rights.

The notary's responsibility with regard to the authenticity of the Limited Liability's deed of establishment is only limited to formal and not material truth, which has been stipulated in the laws and regulations, especially UUPT, that what needs to be stated by the founders to be poured into the deed of establishment in the form of the articles of association regulated in Article 15 UUPT.

In carrying out his position, if a Notary commits a violation based on the provisions stipulated in UUJN, the Notary must be held responsible by being subject to sanctions or being subject to sanctions in the form of civil sanctions, administrative sanctions, criminal sanctions, code of ethics for Notary positions or a combination of sanctions. Thus the Notary must be responsible for the deed he has made.

In Article 84 UUJN⁷ it is determined that there are 2 (two) types of civil sanctions, if a Notary commits an act of violation of certain articles, including: 1. Notary deed which has the power of proof as a private deed 2. Notary deed becomes null and void. In principle, notaries are allowed to work on the process of establishing a represented PT as long as the notary has clear procedures. Basically, the legal consequences if the formal requirements are not met then the nature of the limited liability that exists in the Limited Liability becomes unlimited, some things that result in limited liability or no such responsibility.

6. Discussion

The procedure for obtaining the deed of establishment of a Limited Liability represented by a notary in Kediri has strict provisions. The notary requires the fulfillment of several things from both the business owner and the representative. One of the first steps taken was the signing of a statement by both parties. This statement letter serves as an anticipatory measure against violations of management procedures. Every notary in Kediri provides this statement letter, and by signing it, the business owner and the party representing it agrees and commits to all the terms offered by the notary.

In preparing the deed of establishment of a Limited Liability, it is important to pay attention to the available funds for management costs as well as initial capital for establishment. The notary in Kediri has examined the accounts of capital owners in the past week. This step aims to ensure the availability of sufficient funds to run the Limited Liability as well as to assess the seriousness of the owners of capital and the parties they represent. The signing of the deed of establishment also involves an agreement between the capital owner and the notary, in which the capital owner states his willingness to show the final account. This step is an important part of the regulatory process and ensures compliance with notary requirements.

It is important to note that the actions taken by a notary in obtaining the deed of establishment of a Limited Liability are in accordance with applicable law. Article 1313 of

⁷ UUJN

the Civil Code states that an agreement or agreement can only occur with the permission or will of all parties involved. In this case, the notary provides requirements involving the owner of the capital and a second party representing, and the notary is obliged to complete the work given by the client if these requirements are met. In managing a Limited Liability, the owner of capital as a client has the right to obtain his rights after fulfilling all the requirements set by the notary.

In this study, the researcher found that notaries in Kediri used steps that were in accordance with the code of ethics in dealing with the deed of establishment of Limited Liability. The methods used may vary, but the similarity lies in the signing of the deed of establishment by the business owner. In accordance with Article 16 paragraph (1) letter i UUJN⁸, this signing session is an important step, in which the deed is read out in front of the attendee by at least 2 witnesses and signed at the same time by the attendee, witness and notary.

7. Conclusion

The Notary in Kediri has sufficient experience in administering the establishment deed of establishment of a business such as a represented Limited Liability Company. They have procedures that must be followed by clients who wish to set up a Limited Liability Company. One of the requirements that must be met is the signing of a statement of willingness to attend the business deed signing session. This shows that the notary understands his authority and wants to ensure that the process of making the deed of establishment of a Limited Liability Company runs correctly.

The procedures imposed by a notary in Kediri for the processing of authentic deed represented vary. Most notaries draw up procedures based on previous management experience, while some notaries put forward the principle of mutual trust. Nevertheless, all notaries refer to the Limited Liability Company establishment form as the main reference in determining the procedure. This process is carried out to ensure that the deed of establishment remains in accordance with the law and legal.

The authority of a notary in making authentic deeds is based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. Article 15 paragraph (1) of the law states that a notary has the authority to make authentic deeds relating to acts, agreements and decisions required by laws and regulations. The notary also has the obligation to maintain the validity and keep the deed, as well as provide copies and excerpts of the deed to interested parties.

Notary integrity is an important factor in rejecting a client's request that is contrary to laws and regulations. In processing the deed of establishment, business owners often feel that the process is complicated and requires the help of a third party. The notary has a role to ensure that all processes and parties involved comply with the laws and regulations related to the issuance of the deed of establishment of PT. By carrying out their duties carefully, the notary can avoid any legal defects in the notary's deed which can cause the cancellation of the deed and losses for the parties involved.

⁸ UUJN

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Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

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