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The Urgence of Making a Shareholders List on Limited Company

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Abstract

The purpose of this study is to find out the legal consequences if a company does not make a Shareholder Register, the second is to know the Notary's Responsibilities in making any Deed that does not have a Shareholder Register. This study uses a normative juridical writing type by using secondary data sources. The results of this study that the Board of Directors is obliged to make a Register of Shareholders, related to the legal consequences if this is not done, it is not regulated in the Company Law, then it is considered that there was negligence on the part of the Board of Directors because this is an obligation of the Board of Directors. Furthermore, the Notary's Responsibilities in the preparation of any Deed for which there is no Register of Shareholders that the responsibilities of the notary prior to the making of the deed relate to the notary's thoroughness and prudence in viewing and examining documents according to the facts.

Keywords
register of shareholders; notary; company

I. Introduction

The statement of a Limited Liability Company becoming a legal entity has only been found in the formulation of the definition of a limited liability company as regulated in Article 1 point 1 of the Limited Liability Company Law 1995, and thus the same thing as stipulated in the provisions of Article 1 point (1) of the 2007 Limited Liability Company Law, so that as a legal entity it is clear that the Company Limited is a supporter of rights and obligations or legal subjects (Mulhadi, 2018). A Limited Liability Company has the concept that a legal entity creates the existence of a Limited Liability Company as an independent legal subject, with a separate existence from its shareholders. Limited Liability Company as an artificial Person, then he can only carry out legal actions through human intermediaries as his representatives (Mulhadi, 2018).

Limited Liability Company representatives are the organs of the company, namely the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners, each of which has their respective duties and authorities.

The powers and responsibilities of the General Meeting of Shareholders are:

1) General Meeting of Shareholders

Based on the PT Law, there are 3 (three) types of General Meeting of Shareholders that can be held by the company, namely the First General Meeting of Shareholders, Annual GMS, and Extraordinary General Meeting of Shareholders.

a. First General Meeting of Shareholders

As stipulated in Articles 13 and 14 of the UUPT, this General Meeting of Shareholders is a means of decision-making on legal acts performed by prospective founders before the company is established "accepted" or "taken over" this becomes a right and obligation for companies that have become legal entities and also with legal acts performed by the founders

before the company was ratified as a legal entity, so that the legal act of foreclosure binds the company.

b. Annual General Meeting of Shareholders

This Annual General Meeting of Shareholders is regulated in Article 78 of the Company Law, which has the following functions:

1. Means to know the development of the company's performance
2. To become a means of evaluating whether the company has carried out in accordance with the articles of association and in accordance with the principles of good corporate governance.

Submission of the management's annual report on the implementation of every right, fulfillment of every obligation, as well as outlining the company's assets on a regular basis.

c. Extraordinary General Meeting of Shareholders (Others)

The existence of this Extraordinary General Meeting of Shareholders is contained in Article 78 paragraph (4) of the Company Law, this General Meeting of Shareholders can be held at any time based on the need for the benefit of the company. The interests referred to here are discussing matters deemed critical by the Shareholders, such as amendments to the Articles of Association, merger, consolidation, acquisition, bankruptcy, dissolution and transfer or guarantee of all or most of the company's assets.

2) Directors

The provisions of the Board of Directors are regulated in Articles 92-107, for the obligations of the directors themselves as stated in Article 100, the Board of Directors must:

a. Make a list of shareholders, special register, minutes of and minutes of board of directors meeting;
b. Prepare annual reports and company financial documents;
c. Maintain all registers, minutes and financial documents of the company;

Members of the Board of Directors are required to report to the company regarding the shares owned by the member of the board of directors concerned and/or their families in the company and other companies to be further recorded in a special register.

The Board of Directors is required to seek approval from the General Meeting of Shareholders in the transfer of the company's assets or as collateral for the debt of the company's assets, which is more than 50% (fifty percent) of the total net assets of the company in 1 (one) transaction or more, whether related to each other or not (Mulhadi, 2018).

3) Board of Commissioners

The Board of Commissioners is regulated in Article 1 paragraph (6), Article 108 to Article 121 of the Company Law, that the Board has responsibility for the supervision of the company. The supervision of the company in question is based on policies in management and the course of management in general, both related to the company and the company's business.

There are several obligations that must be carried out by the Board of Commissioners, namely:

a. Make Minutes of Meeting of the Board of Commissioners and keep a copy thereof. Minutes of the Board of Commissioners meeting contain everything discussed and decided at the meeting. Furthermore, what is meant by the term 'copy' is the minutes of the Board of Commissioners' Meeting because the original minutes are kept by the Board of Directors.
b. Report to the company regarding their share ownership and/or their family in the company and other companies. Including any changes in share ownership that must also be reported;

Reporting related to supervisory duties that have been carried out during the new financial year to the General Meeting of Shareholders, the reporting of the Board of Commissioners regarding this matter is recorded in a special list as stated in Article 50 paragraph (2).

Whereas in the term “a company is the baby of the Notary”, it must be known by the Notary that the meaning is that a company is a baby for the Notary, because the Notary must carry out the management of a company that is born until when the company dies or disbands. A company that is born must require several procedures as stipulated in Article 7 of the Company Law, one of which is in the making of a deed. The provisions stipulated in Article 1867 of the Civil Code can be seen that the writing consists of 2 (two) types of writing, namely authentic writing (authentiek) or official writing (onderhands) (Subekti, 1987).

The meaning and significance of the authentic act must be made by or in the presence of a Public Official, the Authentic Act primarily contains the testimony of an official, who explains what he did and saw before him (Mertokusumo, 2002). Manufacturing companies need to invest to increase the company's business capital (Afiezan, 2020). Saleh (2019) states that the existence of the company can grow. Manufactaring companies nned to invest to increase the company's business capital (Angelia, 2020).

As a statement from an official that what he sees is considered to be true before him, then the power of proof applies to everyone. Because the authentic deed is a treatise from the official, it is only evidence rather than what happened before him (Mertokusumo, 2002).

Authentic Deeds essentially make formal truths in accordance with what the parties have notified the Notary. However, the Notary has an obligation to state that what is contained in the Notary deed has truly been understood and in accordance with the wishes of the parties, namely by reading it out so that it becomes clear that the contents of the deed are correct, as well as providing access to the relevant laws and regulations for the parties.

The authentic deed clearly determines the rights and obligations of each party related to the deed, provides legal certainty and with the existence of the authentic deed is expected to avoid problems or disputes between the parties in the future. However, if problems still arise, the existence of an authentic deed as evidence will be able to provide a real role in resolving disputes between the parties (Tia, 2019).

As for what is meant by an authentic deed according to Article 1868 of the Code of Civil Law, namely "an authentic deed is a deed made in the form prescribed by law made by or in the presence of a public official authorized for it in the place where the deed was made" The purpose of making written agreements made by or before a Notary is for the deed to be authentic that can be used as strong evidence if at any time there is a dispute between the parties or there is a lawsuit from another party (Afifah, 2017).

A letter under hand is a letter made for proof by the parties without assistance or without the intervention of an official.

For example, a letter of agreement between a company and a service company regarding the Procurement of Outsourced personnel is made by only the two parties.

The importance of the role of the Notary in helping to create certainty and protection of the community, is more preventive or preventive in nature from the occurrence of legal problems. Notaries as one of the professions in the field of law are tasked with providing legal services and creating certainty, order and legal protection in society. Notary in English is called Notary, while in Dutch it is called van Notary. Notaries have a very important role in legal traffic, especially in civil law, because notaries are public officials, who have the authority to make deeds and other authorities (Salim, 2016).

The authority of a notary in making a deed includes 4 (four) things, namely:

a. The notary must be authorized as far as the deed he made is concerned.

b. The notary must be authorized as long as it concerns the people for whom the deed was made
c. The notary must be authorized as long as it concerns the place where the deed was made;
d. The notary must be authorized at the time of making the deed (Tobing, 1980)

One of the deed requirements in the business sector is the deed of establishment of a Limited Liability Company. A limited liability company is the most desirable and most preferred form of business, because in addition to its limited liability, a limited liability company also makes it easy for owners (shareholders) to transfer their company (to everyone) by selling all of their shares in the company, as well as profit. -Other advantages.

The position of a Limited Liability Company as a legal entity is solely determined by ratification as a legal entity granted by the Ministry of Law and Human Rights (hereinafter referred to as KEMENKUMHAM) and since then the Limited Liability Company has become a legal subject capable of supporting the rights and obligations to be independently responsible for all consequences arising from legal actions that have been carried out (Budiarto, 2002).

The same thing is also confirmed in Article 8 of the Regulation of the Minister of Law and Human Rights No.M.HH-01.01 of 2011 concerning Procedures for Submitting Applications for Legal Entities and Approval of Amendments to the Articles of Association and Submission of Notification of Amendments to the Articles of Association and Changes in Limited Company Data. So, every time there is a change, there is a change in an amendment to the articles of association in a company, a deed of amendment to the articles of association must be made by a notary. This deed is a new deed containing changes from the previous articles of association (Rizka, 2018).

Article 15 of the Limited Liability Company Law Number 40 of 2007 states that, the articles of association are part of the deed of establishment which contains the rules of the game in a Limited Liability Company which determines every right and obligation of the parties in the articles of association, be it the Limited Liability Company itself, the shareholders stock and management.

According to Supramono (2004) the amendments to the Articles of Association that require the approval of the Ministry of Law and Human Rights and the registration referred to above are those concerning the discussion of:

a. The name of the company and/or the domicile of the company;
b. The aims and objectives as well as the company's business activities;
c. The period of establishment of the company;
d. The amount of capital is large;
e. Reduction of issued and paid-up capital; and/or
f. The status of a closed company becomes a public company or vice versa.

Amendments to the articles of association shall take effect from the date of the issuance of a ministerial decree concerning the approval of amendments to the articles of association. Amendments to the articles of association other than those mentioned above are sufficient to notify the Minister. Amendments to the articles of association shall come into force as from the date of issuance of the notification of receipt of notification of amendments to the articles of association by the Minister. Amendments to the articles of association that are not contained in the deed of minutes of meeting made by a notary must be stated in a notarial deed no later than 30 (thirty) days from the date of the decision of the General Meeting of Shareholders (Rizka, 2018).

The application limit for changes to the Articles of Association has a time limit as regulated in Article 21 paragraphs (5), (6), (7), and (9) of the Company Law Number 40 of

2007. To be able to make changes to the Articles of Association is a specific matter by way of the General Meeting of Shareholders, this is regulated in Article 19 paragraph (1) of the Company Law Number 40 of 2007 amendments to the articles of association determined by the General Meeting of Shareholders. A limited liability company must meet the requirements stipulated by law if it wishes to make changes to the Articles of Association. Changes to the articles of association are determined by the General Meeting of Shareholders and the proposal for changes to the articles of association is included in the summons or announcement to convene the General Meeting of Shareholders. Fundamental changes must be approved by the Ministry of Law and Human Rights made in a notarial deed in Indonesian (Rizka, 2018).

Based on the background description of the problems that have been described previously, the problems to be formulated are as follows:

1. What are the legal consequences if a company does not make a list of shareholders?
2. What is the Notary's Responsibilities in the preparation of any Deed without a Shareholder Register?

II. Research Methods

This study aims to firstly determine the legal consequences if a company does not make a Shareholder Register, secondly to find out the Notary's Responsibilities in making any Deed that does not have a Shareholder Register.

There is no research that does not have benefits. Good research must be used, in general, a research has to develop the repertoire of knowledge in the field of research (Syahrum, 2012). This study uses a normative juridical writing type, namely research that is focused on examining the application of rules or norms in positive law (Ibrahim, 2006). In this study, secondary data sources are used, namely through library research carried out by means obtained from various books, laws and regulations, scientific journals and other materials related to research conducted after that to study and analyze the data obtained (Soekanto, 2015).

Sources of data needed in this study is secondary data consisting of:

a. Primary legal materials, namely legal materials in the form of regulations consisting of:
   1. Law Number 40 of 2007 concerning Limited Liability Companies.
   2. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.
   3. Civil Code
b. Secondary legal materials are materials that provide further explanation of primary legal materials. Materials related to primary legal materials in order to assist in analyzing and understanding primary legal materials, such as scholarly scientific books, theses or dissertations as well as other research results such as articles.
c. Tertiary legal materials, namely, legal materials obtained to provide instructions or explanations to primary legal materials and secondary legal materials, such as legal dictionaries.

III. Discussion

3.1 Legal consequences if a company does not make a Register of Shareholders

Based on the Law on Limited Liability Companies, regarding the Register of Shareholders, the Board of Directors must make a Register of Shareholders and a Special Register. There are 2 (two) types of Shareholders, namely; general and special in nature (Gatot, 2009);

1. The general list of Shareholders has a broad scope because the registered shareholders are not only the internal shareholders of the relevant PT, without exception.
2. A special list is a list containing information regarding the shares of members of the Board of Directors and the Board of Commissioners and their families in other PT and/or PT along with the date the shares were acquired. The obligations of the Board of Directors in carrying out and maintaining a register of shareholders are at a minimum;
    a. Name and address of shareholder;
    b. The number, number, date of acquisition of shares owned by shareholders, and their classification in the event that more than one share clarification is issued;
    c. The amount paid for each share;
    d. The name and address of the company person or legal entity that has a lien on the shares or as the recipient of the share fiduciary guarantee and the date of acquisition of the lien or the date of registration of the fiduciary guarantee;
    e. Information on payment of shares in other forms as referred to in Article 34 paragraph (2) of the Company Law.

This is related to the Board of Directors in running a PT management company which must be guided by the principles of good faith and full responsibility or in other terms referred to as fiduciary duty. Further, in Article 97 paragraphs (1) and (2) of the Company Law, namely:

1) The Board of Directors is responsible for the management of the Company as referred to in Article 92 paragraph (1)
2) The management as referred to in paragraph (1) must be carried out by each member of the Board of Directors in good faith and full of responsibility.

The fiduciary duty principle applies to the Board of Directors in carrying out their duties, both in carrying out their functions as management and as representatives of the company. Thus there is a management function, which means that the Board of Directors carries out their duties as the leader of the company. While the function of representation, in the sense that the Board of Directors is the function of representing the Company, both inside and outside the court.

So that the board of directors must comply with the provisions of the legislation, including the obligations of the board of directors in procuring and keeping the list of shareholders, it can be categorized as negligence of the board of directors in managing and running PT. Regarding the sanctions that are applied directly to the Board of Directors not making a shareholder list, it is not regulated in the Limited Liability Company Law, however, because the creation of a shareholder register is something that is mandatory for the Board of Directors, so that the Board of Directors negligence in not making a shareholder list will have consequences for the Board of Directors. Personally responsible for PT losses that will arise due to the negligence of the directors. As stipulated in Article 97 paragraph (3) of the Law on PT.

In the event that the Board of Directors is unable to carry out the obligations in making a special list, the Board of Directors may accept the legal consequences as referred to in Article 101 paragraph (2) of the Company Law. Because this obligation must be carried out by the Board of Directors in good faith and full of responsibility. So that the shareholders who are harmed due to the absence of shareholders that should be made by the Board of Directors, the shareholders concerned can claim compensation for losses to the Board of Directors by filing a lawsuit to the Court, on the grounds that the Board of Directors does not carry out its obligations with full responsibility, causing losses. For certain losses, members of the Board of Directors cannot be held accountable if they can prove:

a. The loss is not due to error or negligence

b. Has conducted management in good faith, prudence and full responsibility in the interests and in accordance with the intent and purpose of the company;
c. There is no conflict of interest either directly or indirectly against the management action resulting in loss;
d. Has taken action in the event of prevention of the occurrence and continuation of losses (Mulhadi, 2018).

If there is an indication that a member of the board of directors has made a mistake or is negligent in carrying out his duties and responsibilities, causing a loss to the company, then on behalf of the company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights may submit lawsuit through the district court to members of the board of directors (Mulhadi, 2018).

3.2 Responsibilities of a Notary in the preparation of any Deed for which there is no Shareholder Register

Based on the provisions of Article 1 number 1 Jo Article 15 paragraph (1) of the Notary Office Law. A Notary is a Public Official who is authorized to make authentic deeds in the case of acts, agreements, and stipulations required by legislation and/or required by the interested parties to be stated in the authentic deed.

The word "all" has the meaning that in fact the Notary is the only public official authorized to make an authentic deed, as referred to in Article 1868 of the Civil Code. Other public officials are exceptions, so in the sense that other public officials have only the authority to make an authentic deed, if the public official concerned is appointed by Law to make the deed in question (Alwesius, 2019).

The role of a notary is very important in helping to create legal certainty and legal protection for the community, because a notary as a public official is authorized to make an authentic deed, as long as the act of an authentic deed is not reserved for other public officials. This legal certainty and protection can be seen through the authentic deed made as perfect evidence in court. The evidence is perfect because the authentic deed has three powers of proof, namely external power (uitwedige berwijracht), formal proof power (formale bewijskracht) and material evidence power (materialele bewijskracht).

The need for a notarial deed here is meant by the existence of a deed made before a notary, so that deviations in fraud in the company will be minimized, so that legal problems can be anticipated, because the parties are clearly the parties authorized to carry out legal actions and the interests of the company will be better protected. The parties whose position is balanced, and the background of the appearers can be clearly identified through legal supporting documents, because the notary in carrying out his position is obliged, among others, to not take sides and protect the interests of the parties involved in legal actions.

The notary when going to perform a legal action must always have a precaution so that the notary before making a deed, must examine all the relevant facts in his judgment based on applicable legislation. Examining every completeness and validity of evidence or documents shown to the notary, and hearing the evidence or statements of the witnesses, this must be done as a basis for consideration in the making of the deed. If the notary is less thorough in this matter (checking important facts) it means that the notary does not practice the principle of prudence (Fikri, 2018).

Notaries in carrying out their duties and positions are very important to carry out the precautionary principle in the process of making authentic deeds, considering that there are often legal problems with authentic deeds made by notaries because there are parties who commit crimes such as providing fake letters and false statements in the deed. Made by a notary. Thus, in terms of preventing the occurrence of crimes that can lead to notaries, it is seen in legal issues, which need to be regulated again in the Law on Notary Positions

regarding Guidelines and notary guidance to act more carefully, thoroughly and carefully in the process of making authentic deeds.

In the principle of prudence that must be carried out by a notary in the process of making a deed, namely;

a. Conducting an introduction to the identity of the appearer;
b. Carefully verifying the data of the subject and the object appearing;
c. Give a grace period in the work of the deed;
d. Fulfill all technical requirements for making a deed;
e. Report if there are indications of money laundering in transactions at a Notary

This precautionary principle must be carried out by a notary, so that a notary can prevent legal problems with authentic deeds made in the future.

IV. Conclusion

After describing in the discussion the legal consequences if a company does not make a list of shareholders as stipulated in Article 100 letter a of the Limited Liability Company Law, the Board of Directors is obliged to make a list of shareholders, related to the legal consequences if this is not done, it is not regulated in the UUPT, then it is considered that there was negligence on the part of the Board of Directors because this is an obligation of the Board of Directors. This is if the shareholder concerned feels aggrieved, then the shareholder concerned can claim compensation from the board of directors.

Furthermore, in the case of the Notary's Responsibility for the making of any Deed that does not have a List of Shareholders, the notary's responsibility before the making of the deed relates to the accuracy and caution of the notary in viewing and examining the documents in accordance with the facts. In relation to company deeds that do not have a List of Shareholders or a special list, the Notary must act by following up to the respondent by completing the documents. Because of this, the Notary is supposed to seek the material truth in terms of preventing the occurrence of problems that could harm one of the parties. Seeking material truth is one of the Notaries' ways of applying the principle of prudence.

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