

The Role of a Notary in the Company Acquisition Process

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Abstract. *This study aims to determine the role of a notary in the acquisition process in a palm oil company. At present there are more and more palm oil companies in Indonesia, which makes competition between palm oil companies even tighter, so that the turnover of existing capital is not always smooth. That's why it is possible to make acquisitions for the purpose of business advantage. The approach method used in this study is an empirical juridical approach, namely studying the applicable legal provisions and what actually happens in society. Acquisitions are divided into two types, namely based on the object to be taken over and the type of business or businesses that have their respective procedures. The role of the notary in the acquisition starts from the beginning of the acquisition process, namely since the General Meeting of Shareholders (GMS) was held to obtain approval for the acquisition where the notary was always involved in making the deed of the GMS. Based on the results of the GMS, if the acquisition has received approval from the shareholders, the notary can prepare the acquisition deed. In addition to preparing the deed of GMS and deed of acquisition, the role of the notary in acquisitions is to provide services in the form of managing the validity of the acquisition, especially regarding the ratification of changes to the company's articles of association as a result of the acquisition to the competent authority (Ministry of Law and Human Rights). So it can be concluded that acquisitions in palm oil companies have a business goal to save the company and the Notary plays an important role in the processes that occur therein.*

Keywords: Acquisition; Company; Notary; Palm Oil.

1. Introduction

Acquisition of shares or "share acquisition" which means "to take over" is a legal action carried out by a legal entity or individual to take over company shares resulting in a transfer of control over the company.¹ Same as the meaning of merger and consolidation. Although they differ in terms of process, the actions

¹Article 1 number 10 of Act No. 40 of 2007 concerning Limited Liability Companies

of mergers, consolidations and acquisitions of limited liability companies are essentially the same, namely the actions of two or more companies to restructure the company. Therefore, the terms merger and acquisition are used to refer to all of these meanings. In the United States the term Merger and Acquisition (M&A) is intended to cover all forms of transaction or consolidation of ownership and control rights of a company whether in the form of a merger, acquisition or otherwise.²

As a leading palm oil producing country, Indonesia is the headquarters for a number of palm oil companies that have substantial assets and income. The majority of palm oil companies own land areas that reach hundreds of thousands of hectares. The oil palm fields are scattered in several regions of Indonesia, especially on the islands of Sumatra, Kalimantan and Papua.³

Oil palm companies exist because oil palm farmers cannot process their own crops, because to process oil palm requires huge costs and sophisticated tools. Oil palm companies process palm oil into CPO (Crude Palm Oil) and process it again into cooking oil, VCO and so on. Oil palm shells can also be used as briquettes or charcoal as fuel for steam power plants. The results of processed palm oil are marketed, both domestically and for export.

2. Research Methods

The method approach used in this thesis research is an empirical juridical approach. The research specification used in writing this thesis is an analytical descriptive specification. The data collection method used by the author in writing this thesis is the approach method and the type of data used. Then the techniques of data collection used in writing this thesis are document studies, observations and interviews. The data analysis used in writing this thesis is qualitative data analysis.

3. Results and Discussion

3.1. The Role of a Notary in the Acquisition Process at PT. Prosperous Austral Partners

²Maharani. (2018) Tesis Akuisisi Saham Asing Oleh Perusahaan Nasional Dalam Rangka Restrukturisasi Perusahaan (Studi Pada Pt. Lafarge Cement Indonesia), Sumatera Utara : Universitas Sumatera Utara Press, p. 1-2.

³Perusahaan Sawit, "Good News", <https://www.goodnewsfromindonesia.id/2020/11/21/simak-inilah-10-perusahaan-sawit-terbesar-di-indonesia>, accessed on 30 July 2021 at 16.00 WIB

Notaries have an important role in the acquisition process. In addition to having the role of being the only public official who draws up the acquisition deed, the notary is also the only public official authorized to manage the acquisition.⁴

The role of the notary in acquisitions starts from the beginning of the acquisition process, namely since the GMS is held to obtain approval for the acquisition where the notary is always involved in making the deed of the GMS. Based on the results of the GMS, if the acquisition has received approval from the shareholders, the notary can prepare the acquisition deed. In addition to preparing the deed of GMS and deed of acquisition, the role of the notary in acquisitions is to provide services in the form of managing the validity of the acquisition, especially regarding the ratification of changes to the company's articles of association as a result of the acquisition to the competent authority (Ministry of Law and Human Rights).

The acquisition has legal consequences in the form of a change in the shareholders of the Board of Directors and the Board of Commissioners, so the articles of association of the amendment are registered in the Register of Companies in the Ministry of Law and Human Rights, with the provisions that the notification is effective from the date of issuance of the letter of acceptance of notification of changes to the articles of association by the Minister of Law and HAM. Acquisition results in changes to the Articles of Association such as changes in authorized capital and or changes that require the approval of the Minister of Law and Human Rights, then these changes must obtain approval for changes to the articles of association, provided that they are effective as of the issuance date of the Decree of the Minister of Law and Human Rights regarding approval of amendments to the articles of association.⁵

The notary is the only official authorized by laws and regulations to process acquisitions to obtain approval from the Minister of Law and Human Rights.⁶ Filling in requests for amendments to the articles of association due to mergers, acquisitions and consolidations is carried out through the Legal Entity Administration System (SABH). This system is a service that is carried out electronically and a notary is the only public official specifically appointed as an official who can take care of the application.⁷

⁴Results of interviews with Notary Dr. Catharina Mulyani Santoso, SH., MH

⁵ Act No. 40 of 2007, Article 21 paragraph (1) and (2).

⁶ Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-02.AH.01.01/2009 concerning Procedures for Submitting Applications for Legal Entity Authorization

⁷ Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-02.AH.01.01/2009, Article 2 paragraph (2)

The role of a notary in an act of taking over shares of a Limited Liability Company is as follows:

a. Examine the fulfillment of the requirements stipulated by Act No. 40 of 2007 concerning Limited Liability Companies and other relevant laws and regulations, including fulfillment of the obligation to announce a takeover plan;

b. Make the Deed of Minutes or Deed of Statement of Meeting Resolutions from the General Meeting of Shareholders which approved the sale of shares which led to the takeover of shares of the Limited Liability Company directly from the shareholders. For the purposes of making the Deed of Minutes of the General Meeting of Shareholders as referred to above, at least:

- 1) Articles of Association of Limited Liability Company related,
- 2) Identity of the shareholders, namely identity cards for individual shareholders and articles of association for shareholders in the form of legal entities,
- 3) Notarial deed stating the composition of the Directors and Commissioners of the Limited Liability Company and the identity of the members of the Board of Directors representing the relevant Limited Liability Company,
- 4) Invitation documents for the General Meeting of Shareholders in accordance with applicable regulations, and 40
- 5) Approval documents needed to carry out the sale and purchase of shares which can be in the form of the approval of the General Meeting of Shareholders or the Board of Commissioners for parties in the form of a Limited Liability Company and the approval of the husband or wife (if there is no marriage agreement) for the individual parties of the Limited Liability Company and the approval husband or wife (if there is no marriage agreement) for individual parties;

c. Make deed of sale and purchase of shares in connection with the takeover of shares of the Limited Liability Company directly from the shareholders. For the purposes of making the deed of sale and purchase as referred to above, at least the following documents are needed:

- 1) The identity of the seller of shares, namely the identity card for individual shareholders and the articles of association for shareholders in the form of legal entities as well as the identity of members of the Board of Directors representing the selling Directors;

2) The identity of the share purchaser, namely the identity card for individual shareholders and the articles of association for shareholders in the form of legal entities as well as the identity of members of the Board of Directors representing the buying Board of Directors;

3) Approval documents needed to carry out the sale and purchase of shares which can be in the form of approval from the General Meeting of Shareholders or the Board of Commissioners for parties in the form of a Limited Liability Company and approval from the husband or wife (if there is no marriage agreement) for individual parties;

d. Notification of changes in the shareholders of the Limited Liability Company to the Minister of Law and Human Rights in connection with the takeover of the shares of the Limited Liability Company directly from the shareholders. This notification is made within 30 (thirty) days after the date of recording in the Register of Shareholders; Takeover actions are often followed by changes in members of the Board of Directors and Board of Commissioners. In such case, the notary shall notify the Minister of Law and Human Rights regarding changes in the members of the Board of Directors and Board of Commissioners of the relevant Limited Liability Company.

4. Conclusion

The role of the notary in acquisitions starts from the beginning of the acquisition process, namely since the GMS is held to obtain approval for the acquisition where the notary is always involved in making the deed of the GMS. Based on the results of the GMS, if the acquisition has received approval from the shareholders, the notary can prepare the acquisition deed. In addition to preparing the deed of GMS and deed of acquisition, the role of the notary in acquisitions is to provide services in the form of managing the validity of the acquisition, especially regarding the ratification of changes to the company's articles of association as a result of the acquisition to the competent authority (Ministry of Law and Human Rights).

5. References

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- [2] "Perusahaan Sawit", Goodnews:
<https://www.goodnewsfromindonesia.id/2020/11/21/simak-inilah-10-perusahaan-sawit-terbesar-di-indonesia>

Regulation:

- [1] Act No. 40 of 2007 concerning Limited Liability Companies
- [2] Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number:
- [3] M.HH-02.AH.01.01/2009

Interview:

Interview with Notary Catharina Mulyani Santoso