

The Role and Legal Position of a Notary in the Process of Making a Deed of Change in Management of a Limited Liability Company (CV) Due to Death

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Abstract. *A Limited Liability Company can remain in existence, either with the participation of the heirs of the deceased members, or only between the remaining members as long as these conditions have been agreed upon in advance by including them in the articles of association of the CV. This writing aims to determine and analyze the role and legal position of the Notary in making a deed of change in management of a limited partnership company (CV) due to death, the legal position of the deed clauses made by a Notary in making a deed of change in management of a limited partnership company (CV) because of death. The approach method used in this research is a sociological juridical approach, meaning research carried out on the real conditions of society or the community environment with the aim and purpose of finding facts which then lead to identification and ultimately lead to problem solving. The analytical knife in this writing uses the theory of authority and the theory of legal certainty. The results of this research show that the procedure for changing the CV management company by a successor is that there must be provisions confirming the ability to continue the CV must be clearly stated in the CV's articles of association agreement, after which all deeds are registered and announced in the Supplement to the State Gazette. The position of the clause on changing the managing partner from the notary to the heirs is to explain and strengthen the position of the heirs as managing partners. Even though the deed of establishment of CV does not contain a clause on changing the heirs of the management company, the process of changing heirs is still ongoing.*

Keywords: Company; Dies; Liability; Notary.

1. Introduction

The Unitary State of the Republic of Indonesia is an independent and sovereign state based on Pancasila and the 1945 Constitution of the Republic of Indonesia

(UUND N RI 1945), which aims to achieve equal welfare for every citizen of the country. A notary is a public official who has the authority to make authentic deeds as long as the making of certain authentic deeds is not reserved for other public officials. Making authentic deeds is required by statutory regulations in order to create certainty, order and legal protection. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for certainty.

Notaries are appointed by the government not solely for the interests of the notary himself, but also for the interests of the wider community. The services provided by notaries are closely tied to issues of trust (the trust of the parties), meaning that the state places great trust in notaries.¹

The task of a Notary is to regulate in writing and authentically the legal relationship between parties who have entered into an agreement by consensus using the services of a notary, which in essence provides legal certainty for the agreement they have agreed to. Here it is clear that a notary is a position free from the influence of any pressure, but has strong legal certainty, therefore, every time a particular deed is made, the grosse always includes the phrase "For the sake of justice based on belief in the Almighty God." This has the consequence that notarial deeds have executorial power.²

The position of a notary in human life makes the process of someone who wants to become an expert notary important. Therefore, notary education also pays attention to notary ethics. So in this case it is emphasized that professional education without education regarding professional responsibility and ethics is incomplete. In the field of law, technical skills that ignore aspects relating to the responsibilities entrusted to them and the profession in general, as well as the ethical values and standards that must be a guide in carrying out their profession, will only become skilled craftsmen in the field of law and their

¹A. Emma Nurita, 2012, *Cyber Notary Initial Understanding in Concepts of Thought*, PT Refika Aditama, Bandung, p. 2.

² http://repository.unissula.ac.id/8658/4/BAB%20I_1.pdf accessed on March 15 2023 at 12.00 WIB.

profession.³ The notary profession is a public official who, in carrying out his duties, is bound by statutory regulations and a professional code of ethics.

Article 83 paragraph (1) of Law Number 30 of 2004, concerning the Position of Notaries states that, "Notary organizations determine and enforce a notary code of ethics."⁴Then in the provisions of Article 13 paragraph (1) of the Articles of Association of the Indonesian Notary Association, which was established based on the Extraordinary Congress of the Indonesian Notary Association in Bandung on January 28 2005, states: "To maintain the honor and nobility of the notary office, the association has a notary code of ethics. which are established by congress and are moral rules that must be obeyed by every member of the association."

The most important position of the notary profession is its main task as a maker of authentic deeds. Article 1870 of the Civil Code states that an authentic deed is absolute and strong evidence for the parties who made it. Notaries are given the authority by law to create absolute evidence. This implies that the contents stipulated in the authentic deed are basically considered correct. One of the duties of a notary is to regulate in writing and authentically the legal relations between parties who have agreed to request the services of a notary.⁵

Notaries in carrying out the legal profession cannot be separated from fundamental issues related to the role and function of law itself, law is defined as the rules that regulate all social life. The most important position of the notary profession is its main task as a maker of authentic deeds. Article 1870 of the Civil Code states that an authentic deed is absolute and strong evidence for the parties who made it. Notaries are given the authority by law to create absolute evidence. This implies that the contents stipulated in the authentic deed are basically considered correct.

A Notarial Deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in Law No. 30 of 2004. To make an authentic deed, the Notary with his/her authority has responsibility for the deeds he has

³Darji Darmodiharjo and Shidarta, 2004, Basics of Legal Philosophy, What and How is Indonesian Legal Philosophy, Jakarta: PT Gramedia Pustaka Utama, p. 265.

⁴Law no. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions article 83 paragraph (1)

⁵Supriadi, 2008, Ethics and Responsibilities of the Legal Profession in Indonesia, Sinar Graphics, Jakarta, p. 50.

made, where the deed is produce written evidence and have an authentic character for the parties. Apart from authentic deeds made by or before a Notary, not only because it is required by statutory regulations, but also because it is required by statutory regulations, but also because it is desired by interested parties to guarantee their rights and obligations. parties for the sake of certainty, order and security. Legal protection for interested parties and for society as a whole.⁶

Notaries' responsibilities relating to the legal profession cannot be separated from the opinion that in carrying out their position they cannot be separated from the majesty of the law itself, so that Notaries are required to be able to act and reflect this in their service to the community. The role and function of Notaries in this increasingly complex national development is becoming wider and more developed, because the smoothness and certainty of law carried out by various parties is becoming more and more extensive, in this case of course it cannot be separated from the legal services and products produced by Notaries. Notaries are public officials in terms of providing services, making agreements that exist or arise in society. Law Number 2 of 2014 concerning the Position of Notary, hereinafter referred to as the Position Law The notary emphasized more the important position of a notary as a public official which provides legal certainty through the authentic deeds it makes. Through the deed he makes, the notary must be able to provide certainty law to the public who use notary services.⁷ The need for these written agreements to be made before a notary is to guarantee legal certainty for the parties entering into the agreement. Written agreements made before a notary are called deeds.⁸ Legal Certainty According to Gustav Radbuch, law must contain 3 (three) identity values, namely, "First, the principle of legal certainty (*rechtmatigheid*), this principle is viewed from a juridical perspective. Second, the principle of legal justice (*gerechtigheit*), this principle is viewed from a philosophical perspective where justice is equal rights for all people before the court, and the third is the principle of legal expediency (*zwechmatigheid* or *doelmatigheid* or utility), this principle is viewed from a

⁶ Syaifuddin, DM (2022). *Legal Protection for the Community for the Legal Certainty of Authentic Notarial Deeds for Deeds That Are Not Read and Explained to the Parties* (Doctoral Dissertation, Sultan Agung Islamic University).

⁷ Mauliawati Alifah, "Notary Investigation in Making Copies of CV's Deed Establishment Which Different Numbers in Minutes", *Sultan Agung Notary Law Review (SANLaR)* Vol. 3, no. 3 (2021), Pg. 834

⁸ Hartanti Sulihandari & Nisya Rifiani, 2013, *Basic Principles of the Notary Profession*, (Smart World, Jakarta), p. 5.

sociological perspective.⁹ The existence of legal certainty is hope for justice seekers. Because with legal certainty, people will know the clarity of their rights and obligations according to the law. Without legal certainty, people do not know what to do, do not know whether their actions are right or wrong, whether they are prohibited or not prohibited by law. This legal certainty can be realized through good and clear norms in a law and its implementation will also be clear. In other words, legal certainty means that the law is precise, its subject and object and the threat of punishment.¹⁰

Based on the background above, the researcher is interested in discussing a study entitled The Role and Legal Position of Notaries in the Process of Making a Deed of Change in Management of a Limited Liability Company (CV) Due to Death.

2. Research Methods

The research approach used in this thesis is a sociological juridical research method. Sociological juridical research emphasizes research that aims to obtain legal knowledge empirically by going directly into the object.¹¹ The specifications of this research use descriptive analysis, namely research that, apart from providing a description, writing and reporting an object or event, will also draw general conclusions from the problem being 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 the data is interactive model qualitative analysis as proposed by Miles and Huberman.

3. Results and Discussion

3.1. The Role of a Notary in the Process of Making a Deed of Change in the Management of a Limited Liability Company (CV) Due to Death to Ensure the Correctness of the Data Obtained

⁹Sri Rahmayani, Sanusi, Teuku Abdurrahman, Changes to the Minutes of a Deed by a Notary Unilaterally Without the Apprentice's Knowledge, IUS Journal of Law and Justice Studies, Vol.8, No. 1, 2020 p. 98

¹⁰Jodhi Restu Pamungkas, Suryadi, Ayu Efridadewi, Analysis of the Legal Certainty of Deeds on the Authority of Notaries in Electronic-Based Services (Cyber Notary), Student Online Journal, Vol. 2, no. 1, 2021 p. 635

¹¹Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 88.

The role of a Notary in the Process of Making a Deed of Change in the Management of a Limited Liability Company Due to Death to Ensure the Correctness of the Data Obtained. In the process of making a deed of change in the management of a limited partnership company due to death, the notary plays an important role in ensuring the correctness of the data obtained. The following are some of the notary's roles that are relevant in this context:

a. Data Identification and Verification

The notary is responsible for identifying and verifying data related to the death of the company's management limited. This includes checking relevant documents and information, such as death certificates and death certificates. The notary must ensure that the data is correct and valid, so that it can be used as an accurate basis in making a deed of change of management.

b. Preparation of Deed of Change of Management

A notary has the task of preparing a deed of change in the management of a limited liability company in accordance with applicable legal provisions.

In this process, the notary must ensure that the data contained in the deed is in accordance with the facts that have been verified. The notary can also carry out additional checks and ask for clarification from related parties if necessary to ensure the correctness of the data obtained.

c. Proving Data Validity

The deed made by a notary has to strong evidentiary power before the law. Thus, the notary is also responsible for providing proof that the data contained in the deed of change in management of the limited liability company is correct and has been verified.

The notary can provide witnesses or other supporting documents that can strengthen the validity of the data obtained.

d. Professional Obligations

Notaries have professional obligations to carry out their duties in good faith and with utmost care. In the context of making a deed of change of management, the notary must ensure that the data obtained is correct and accurate before being used as the basis for making the deed.

Notaries must also maintain the confidentiality of the data obtained in the process, in accordance with their professional obligations. Throughout the

process of making a deed of change in the management of a limited liability company due to death, the notary plays an important role in ensuring the correctness of the data obtained. With identification, verification, preparation of deeds, and proof of data validity, the notary guarantees the accuracy and validity of the deed as a valid legal basis.

The Notary profession plays an important role in making deeds what the person wants so that the Notary must really understand and know the contents of the Notary Position Law so that the deed made is not problematic in the future and provide legal protection for the community. A Notary must have strong principles so as not to conflict with the wishes of the deed made if the rules are not in accordance with the notary's code of ethics and the Law invite the Notary's Office. Because the notary's power lies in his responsibility only in making deeds. Therefore, be careful and careful in making it must be considered¹²

The Notary profession plays a role it is important in making the deed desired by the applicant so that the Notary must really understand and know the contents of the Notary Position Law so that the deed made does not have problems in the future and provides legal protection for the public. A Notary must have strong principles so as not to contradict the wishes of the deed he makes if the rules are not in accordance with the notary code of ethics and the Law on the Position of Notaries. Because the notary's power lies in his responsibility only in making deeds. Therefore, be careful and careful in making it must be noticed. Legal certainty as one of the goals of law can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or legal enforcement of an action regardless of who carries it out. Legal certainty can predict what will happen if you take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.

3.2. Legal Position Regarding the Clause for Replacement of Limited Liability Company (CV) Management Due to Death

Legal position regarding the replacement clause for company management limited liability (CV) due to death can be important in regulate the succession and continuity of the company's activities. The following is discussion regarding the legal position of the replacement of management clause limited liability

¹²Didi Muhammad, "The Legal Protection for the Public for Legal Certainty of Notary Authentic Deeds against Deeds that Are Not Read and Explained to the Parties". Sultan Agung Notary Law Review (SANLaR), Vol. 4, no. 3, 2022, p. 870

company (CV) due to death, along with footnotes as a relevant legal reference:¹³

a. Limited Liability Company Law: Limited liability companies are regulated in Law Number 40 of 2007 concerning Limited Liability Companies. Article 10 paragraph (1) in the law states that a limited partnership consists of at least one person who acts as a limited partner. In the event of death, it is necessary to replace the management of the limited liability company to ensure the continuity of the company's activities.

b. Company Agreement: A limited liability company agreement is a document that regulates the relationship between the parties involved in a limited liability company. A clause for replacing the management of a limited liability company can be contained in the company agreement and regulates the procedures for replacing the management in the event of death. The company agreement becomes a binding legal basis for the parties involved, including in the case of changing management.

c. Legal Status of the Replacement of Management Clause: The replacement clause for the management of a limited liability company stipulated in the company agreement has a binding legal status for the parties involved. This clause provides instructions and procedures that must be followed when replacing the management of a limited liability company due to death. In the event of death, this clause becomes a reference in implementing the replacement of management with the aim of maintaining the continuity of the company's activities. Legal Protection and Evidence: The legal status of the replacement clause for management of a limited liability company provides legal protection for the parties involved, including the company itself. In situations of death, this clause can be a strong legal basis for enforcement.

Legal position regarding the replacement clause for company management limited partnership (CV) because death can be linked to Theory Certainty Gustav Radbuch. The following is an explanation regarding the legal position in the context of legal certainty theory Gustav Radbuch :

a. Legal certainty:

1) According to Gustav Radbuch's theory of legal certainty, the law must provide certainty to the public regarding their rights and obligations.

¹³Results of Interview with Notary Ega Farrel SH, M.Kn, Notary in Pematang Regency on June 20 2023

2) In the context of the clause for replacing the management of a limited partnership company, the existence of this clause provides legal certainty for the limited company and the related parties.

3) The replacement of management clause provides a clear and predictable reference regarding the steps that must be taken in the event that the administrator dies.

b. Procedure Settings:

1) The clause on replacing management of a limited company regulates the procedures and mechanisms that must be followed in replacing management.

2) In Gustav Radbuch's theory of legal certainty, clear and structured procedural arrangements are important to achieve legal certainty.

3) With an agreed replacement clause for management, the parties can understand the steps that must be taken to replace management due to death.

c. Legal protection:

1) The clause on replacement of limited liability company management provides legal protection for the parties involved.

2) In Gustav Radbuch's theory of legal certainty, legal protection is an important element in achieving legal certainty.

3) With a legally binding replacement clause for management, the parties have clear and reliable legal protection in the event of the death of an administrator.

Legal protection must look at stages, namely legal protection is born from legal provisions and legal regulations provided by society. Basically, legal regulations are a community agreement to regulate behavioral relationships between members of society and between individuals and the government which is considered to represent the interests of society. In general, protection means protecting something from dangerous things, something that could be interests or objects or items. Apart from that, protection also means protection given by someone to someone who is weaker.

4. Conclusion

Preparing a Deed of Change to the Management of a Notary Public has the task of preparing a deed of change to the management of a limited liability company in accordance with applicable legal provisions. In this process, the notary must

ensure that the data contained in the deed is in accordance with the facts that have been verified. The notary can also carry out additional checks and ask for clarification from related parties if necessary to ensure the correctness of the data obtained. Proving the Validity of Data. A deed made by a notary has strong evidentiary power before the law. Thus, the notary is also responsible for providing evidence that the data contained in the deed of change in management of the limited liability company is correct and has been verified. The notary can provide witnesses or other supporting documents that can strengthen the validity of the data obtained. Professional Obligations Notaries have a professional obligation to carry out their duties in good faith and with high accuracy. In the context of making a deed of change of management, the notary must ensure that the data obtained is correct and accurate before being used as the basis for making the deed. The theory of authority put forward by Philips M. Hadjon is in line with the duties and authority of the Notary to ensure the legal position of the clauses of the deed of replacement for the company's management which has been made technically as above to obtain legal certainty for the new company's management. This shows that the Notary has carried out his role in accordance with his authority. Authority is often equated with the term authority. The term authority is used in the form of a noun and is often equated with the term "bevoegheid" in Dutch legal terms. According to Phillipus M. Hadjon, if you look closely there is a slight difference between the term authority and the term "bevoegheid". The difference lies in the legal character. The term "bevoegheid" is used in the concept of public law as well as in private law.

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