

The Role of Notaries in Public Company Share Transactions In the Capital Market of the Indonesia Stock Exchange

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Abstract. *This study aims to analyze: 1) The role of notaries in stock transactions of public companies in the Capital Market of the Indonesia Stock Exchange. 2) Obstacles faced by notaries in ensuring the validity and legal certainty of stock transactions in the capital market. This type of research is included in the scope of empirical legal research. The approach method in this study is a sociological legal approach. The types and sources of data in this study are primary and secondary data obtained through interviews and literature studies. The analysis in this study is prescriptive. The results of the study concluded: 1) The role of notaries in stock transactions of public companies in the Capital Market of the Indonesia Stock Exchange based on Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notaries (UUJN), notaries are tasked with making authentic deeds required by laws and regulations, including in the Initial Public Offering (IPO) process and stock transactions. In addition, in accordance with Article 64 paragraph (1) of Law No. 8 of 1995 concerning Capital Markets, as amended by Law No. 4 of 2023 concerning Development and Strengthening of the Financial Sector (PPSK Law), notaries are recognized as a supporting profession for the capital market. In this capacity, notaries play a role in helping to prepare and ratify important legal documents, such as changes to the company's articles of association, minutes of the General Meeting of Shareholders (GMS), and share sale and purchase agreements, which are the legal basis for transactions on the IDX. 2) Obstacles faced by notaries in ensuring the validity and legal certainty of stock transactions in the capital market, such as inaccurate or incomplete data and documents, issuers' ignorance of regulations, rapid regulatory changes, the complexity of capital market transactions, limited access to digital information, and potential inconsistencies between national law and international practices. To overcome these challenges, solutions are needed such as better data validation, education for issuers, improving notary competency, collaboration with related parties, development of an integrated digital system, and alignment of national regulations with international standards. Thus, notaries can carry out their role optimally to create legality and legal certainty in capital market transactions.*

Keywords: Exchange; Notary; Role; Stock.

1. Introduction

Welfare must be realized in material and non-material ways. Related to material issues, it is usually related to how much the economic potential of the community can be optimized in meeting its needs. For this, adequate financial institutions are needed for efforts to optimize the economy.¹Economic optimization can be done by investing. Investment is a form of investment of funds or capital to generate wealth that will gain profit either now or in the future. The purpose of investment is to develop the funds owned or expect profit in the future. One of the financial institutions that provides investment facilities is the capital market.²

The capital market is also known as the Stock Exchange. According to Article 1 paragraph (4) of Law No. 8 of 1995 concerning the Capital Market, the Stock Exchange is a party that organizes and provides a system and/or means to bring together offers to buy and sell securities from other parties with the aim of trading securities between them.³Stock Exchange in Indonesia is known as Jakarta Stock Exchange (BEJ), Surabaya Stock Exchange (BES), later, on October 30, 2007 BES and BEJ have been merged with the name Indonesia Stock Exchange (BEI). So that there is only one implementation of Stock Exchange in Indonesia, namely BEI. While for the sharia capital market, its Listing is done on the Jakarta Islamic Index which has been launched since July 3, 2000.⁴

The purpose of the Capital Market is to support the implementation of national development to increase equality, growth and stability of the national economy towards increasing people's welfare.⁵In order to achieve this goal, the capital market has an important role in the economic development of a country as a means of funding business or can be a means for companies to obtain funds through investors and as a means for the public to invest in financial instruments such as stocks, bonds, mutual funds and others.⁶

The capital market is an alternative source of funding for both the state and the private sector. Governments that need funds can issue bonds or debt securities and sell them to the public through the capital market. Likewise, the private sector

¹Muhamad, 2016, Sharia Financial Management: Fiqh & Financial Analysis, UPP STIM YKPN, Yogyakarta, p.547.

²Diit Herlianto, 2013, Investment Management Plus Tricks to Detect Fraudulent Investments, Pustaka Baru Yogyakarta, p. 1

³Heri Sudarsono, 2013, Islamic Banks and Financial Institutions Description and Illustration, Ekonisia, Yogyakarta, p. 204.

⁴Andri Soemitra, 2009, Islamic Banks & Financial Institutions, Kencana Prenada Media Group, Jakarta, p. 109-110.

⁵Lastuti Abubakar and Tri Handayani, 2017, Readiness of Legal Infrastructure in Issuing Sukuk (Sharia Securities) as a Financing and Investment Instrument to Encourage the Growth of the Indonesian Sharia Capital Market, Jurnal Jurisprudence, p.962

⁶Yenny SJ Nasution, 2015, The Role of Capital Markets in the State Economy, Human Falah: Journal of Islamic Economics and Business, Vol. 2 No.1, p. 112.

in terms of This is a company that needs funds and can issue securities, either in the form of shares or bonds, and sell them to the public through the capital market.⁷

The role of a notary in stock transactions of public companies in the capital market, especially on the Indonesia Stock Exchange, has an important legal dimension. As a public official recognized by the state, a notary is tasked with ensuring that every agreement or transaction relating to shares of a public company is carried out in accordance with applicable laws and regulations. This role includes not only verifying the validity of documents, but also ensuring legal certainty for the parties involved in the stock transaction, both investors and companies. However, in reality, various problems are often found in the implementation of laws involving stock transactions of public companies. Some of the issues that arise are ambiguity in documents, violations of administrative procedures, or lack of notary involvement in supervising certain transactions.

Many notaries only focus on the formal aspects, without substantially delving into the details of transactions that could potentially harm investors or companies. In some cases, the lack of clarity regarding the role of notaries in public company stock transactions also raises legal issues related to the protection of minority shareholders' rights. In addition, the Indonesian capital market, as a center of dynamic and complex economic activity, often requires fast and efficient transaction settlement. This is where there is a clash between what should happen and what happens in practice. In some cases, notaries may face pressure to expedite the document verification process without conducting an in-depth examination. This poses a risk to the validity of the transaction and the potential for future legal disputes.

2. Research Methods

This type of research is included in the scope of empirical legal research. The approach method in this research is a sociological legal approach. The types and sources of data in this research are primary and secondary data obtained through interviews and literature studies. The analysis in this research is prescriptive.

3. Results and Discussion

3.1. The Role of Notaries in Public Company Share Transactions on the Indonesian Stock Exchange Capital Market

Notary is one of the Capital Market Supporting Professions besides Accountants, Legal Consultants, Appraisers, and other professions stipulated by Government Regulation.⁸A notary is also a public official who is authorized to make authentic deeds and has other authorities as referred to in the Notary Law or based on other

⁷Ibid.,

⁸Article 64 paragraph (1). Capital Markets Law, Law No. 8 of 1995, LN No. 64 of 1995, TLN No. 3608,

laws.⁹The involvement of a Notary basically starts from the establishment of a company, but in the case where the company wants to carry out or participate in the capital market, the notary in this case who has the authority to obtain a permit will participate in the preparation for the company to go public, both during planning and after the public offering on the primary market.

The legal basis for Notaries being designated as a supporting profession for the capital market is stated in Article 64 paragraph (1) of Law No. 8 of 1995 concerning the Capital Market in conjunction with Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector. Notaries as a supporting profession for the capital market have a role to assist an issuer in the process of going public and fulfilling the requirements regarding continuous transparency.¹⁰Article 64 paragraph (2) of the UUPM states that there is an obligation for every Capital Market Supporting Profession, including Notaries, to first register with the Financial Services Authority in order to act as a Capital Market Supporting Profession. The obligation for Capital Market Supporting Professions to register is further strengthened by Government Regulation Number 45 of 1995 concerning the Implementation of Activities in the Capital Market Sector dated December 30, 1995, Chapter X, Article 56 and Article 57 (hereinafter referred to as PP 45) and the Attachment to the Decree of the Chairman of the Capital Market Supervisory Agency Number Kep-37/PM/1996 concerning Registration of Capital Market Supporting Professions dated January 17, 1996, which is listed as Regulation Number VIII.B.1. which is an amendment to the Decree of the Chairman of Bapepam Number Kep-204/PM/1992 concerning Registration of Capital Market Supporting Professions.

Registration of Capital Market Supporting Professions is required so that related parties as Capital Market Supporting Professions involved in capital market activities better understand the provisions applicable in the capital market, therefore not all notaries can carry out activities in the capital market. Notaries who can carry out activities in the capital market are generally also referred to as capital market notaries. In its journey, the implementation of all activities that were previously regulated by Bapepam has now shifted to the Financial Services Authority (OJK). Where with integrated legal services, OJK will be able and efficient to protect all existing consumer interests, as well as related to Capital Market transactions. However, currently, regarding decisions regarding the granting of business permits, individual permits, the effectiveness of registration statements, registered certificates, approval to carry out business activities, ratification, and approval or determination of dissolution, and every decision that has been determined by Bank Indonesia, the Ministry of Finance, and the Capital Market

⁹Article 1 number (1) of the Law on Amendments to Law No. 30 of 2004 concerning the Position of Notary, Law No. 2 of 2014, LN No. 3 of 2014, TLN No. 5491,

¹⁰Rahma Putri Prana, 2019, The Role of Notaries as a Supporting Profession for Capital Markets in Legal Protection Efforts for Investors to Avoid Losses Due to Market Manipulation Practices in the Capital Market, Scientific Journal of Notary Law, Vol 8, No. 1, p. 44.

and Financial Institutions Supervisory Agency based on laws and regulations in the financial services sector before the transfer of functions, duties and authorities as referred to in Article 55 of Law No. 21 of 2011 concerning the Financial Services Authority, are declared to remain valid and applications for these activities based on Article 67 paragraph (2) of this Law will be continued by the Financial Services Authority.¹¹

The profession of a Notary who will later act in the Capital Market must meet the requirements determined by the OJK as stated in Article 3 of the Financial Services Authority Regulation Number 67/POJK.04/2017 concerning Notaries who carry out activities in the Capital Market (hereinafter referred to as "POJK 67").¹²

The implementation of an initial public offering is not an easy job, but is a very complex process with various aspects that must be carried out very carefully, including restructuring and reorganization of the company and changing the company's strategy, in addition to requiring high commitment and encouragement and assistance from shareholders and management, especially in matters concerning company policies.¹³

In the capital market environment on the Indonesia Stock Exchange, for companies that wish to conduct an initial public offering (IPO) of shares or go public, according to Law No. 8 concerning the Capital Market, a party is required to become an issuer partner as a supporting profession in the capital market to provide opinions and assessments in accordance with the provisions in the Capital Market institution. According to Article 64 paragraph a number 1 of Law No. 8 of 1995 as amended by Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector, one of the supporting professions of the Capital Market is a Notary, namely as a public official who is authorized to make authentic deeds in connection with the IPO process.

According to the Capital Market Law and Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the Position of Notary, in essence a notary has certain authority or powers according to his/her needs. Authority or power is often defined as power, the power that commands obedience. That power lays down its claim to the authority that is controlled. What is meant by authority or power or authority is the right that has been established, in any social order, to

¹¹Andika Prayoga, 2022, The Position of Notaries as a Supporting Profession for the Capital Market in Indonesia, Kertha Semaya Journal, Vol.10 No.4, p.965

¹²Article 3 of the Financial Services Authority Regulation Number 67 of 2017 concerning Notaries Carrying Out Activities in the Capital Market, POJK No. 67 of 2017, LN RI No. 288 of 2017, TLN RI No. 6156,

¹³Faisal Santiago, The Role of Notaries in Stock Transactions in the Capital Market on the Jakarta Stock Exchange, Jurnal Constitutum, Vol. 12 No.2, p.514

determine policies, to announce decisions on considerations of relevant issues, and to reconcile conflicts, or, more broadly, to act as a leader, or guide for others.¹⁴

A company that has made a public offering is called a public company. This means that the company is already owned by the shareholders of the company concerned. The amount of ownership depends on the percentage of shares owned by investors. In a simple way, companies that have gone public are easily recognized by the public, because behind the company name the term "Tbk" (open) is added, while in English the term "Pic" (Public Listed Company) is added.¹⁵

Initial Public Offering(IPO) Shares, the initial offering to is a series of initial activities for companies that want to go public, by way of offering shares or other securities carried out by the company to the general public based on the procedures regulated by the Capital Market Law and its Implementing Regulations. IPO is one alternative source of funding that comes from outside the company by collecting and utilizing funds through a general participation mechanism carried out by selling company shares to the public. By conducting an IPO, the company will get fresh money and liquid funds from the investor community, where the funds from the public will be used by the company for various purposes, including to strengthen capital.

An IPO will be able to increase the market value of the company, because public companies are usually more liquid than companies whose shares are only owned by a few people and also by listing the company on the Stock Exchange, it is a low-cost promotion for the company.¹⁶Public offerings are often referred to as going public. Going public is an offering of shares or bonds to the general public.

Notary is one of the supporting professions of Capital Market that has a role in developing and advancing the IPO process of Shares, especially to ensure legal protection and legal certainty for related parties in the Capital Market Stock Exchange environment in Indonesia. As a public official who has the authority to make authentic deeds, the role of Notary is very much needed in making various contracts that have been required by Law and/or its implementing regulations to be made by or before a Notary at the will of the parties.

The earliest stage that must be passed by a company that will conduct an IPO process is to obtain approval for the plan to go public from the shareholders in the company's General Meeting of Shareholders. Furthermore, the company must obtain approval from the General Meeting of Shareholders to change the company's status from a Private Company to a Public Company as well as make changes and adjustments to all of its Articles of Association in accordance with

¹⁴Ibid., p.512

¹⁵Bod., p. 513

¹⁶Asril Sitompul, 1999, Responsibilities of Supporting Institutions in the Public Offering Process, Citra Aditya Bakti, Bandung, p. 7

applicable provisions, especially provisions regarding the Main Articles of Association of Companies conducting Equity Securities Offerings and Public Companies.

This stage is a stage that needs attention from the Notary because the Law authorizes the Notary to make and ratify the Minutes of the General Meeting of Shareholders of the company planning to conduct the IPO. The role and function of the Notary in the context of the IPO are highly expected in order to support readiness to face global competition in the future because the development of the world economy and trade will be increasingly competitive and competitiveness and development of company culture and regulations that are anticipatory to the development of the business world both domestically and abroad.¹⁷

Notary Authority according to Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions Related to Companies that will Conduct Initial Public Offering (IPO) of Shares A company that will go public usually begins by conducting an Initial Public Offering (IPO) of Shares. The company's actions are generally intended to increase capital, after first considering the condition of the company's management, especially because it concerns shareholder ownership. Several things include the need to request approval of the plan from old shareholders in the GMS. If approved, the company needs to find supporting institutions and capital market supporting professions that will help prepare complete documents.¹⁸

In the initial stage of a company that will conduct an Initial Public Offering (IPO) of shares, the administrative procedure structure for going public is referred to as the Pre-Issue Stage, which includes, among other things;

1. The company conducts an in-depth study of the financial situation, assets, liabilities to other parties and the liabilities of other parties to the company and the fundraising plan.
2. The company prepares a public offering plan that must be approved by the General Meeting of Shareholders (GMS), and at the same time the GMS makes changes to the Company's Articles of Association, especially the provisions regarding the Main Points of the Company's Articles of Association that are conducting Equity Securities Offerings and Public Companies.

After that, the company determines the underwriter, supporting professions and supporting institutions for the public offering.¹⁹ These two things that must be done, in the Initial Public Offering structure stage, are internal company issues.

¹⁷Faisal Santiago, Op.cit., p. 515

¹⁸Ibid., p.515

¹⁹Irsan Nasarudin, 2004, Legal Aspects of the Indonesian Capital Market, Prenada Media, Jakarta, p. 21

The plan is still a discourse and the results of the completeness become administrative requirements that will be legitimized by the parties involved in the Initial Public Offering (IPO) mechanism of Shares in the Capital Market. These requirements must be met and valid according to Law No. 8 of 1995 concerning the Capital Market. For the validity of the completeness, it must be proven by a valid deed, made by a public official, namely a Notary.

The authority of a Notary according to Article 15 paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary states that a Notary has the authority to make authentic deeds regarding all acts, agreements and determinations required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and extract of the deed, all of which as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

Notaries play a strategic role in ensuring that all stock transactions that occur in the capital market have a strong legal basis. The IDX prioritizes transparency and market trust, which largely depend on the validity of documents authorized by a notary. With legally valid documents, the IDX can guarantee that the securities transaction process has complied with capital market regulations, thereby protecting the interests of investors. Furthermore, deeds made by notaries in stock transactions at the IDX have the highest legal evidentiary force based on the UUJN. This is important to prevent potential legal disputes that can harm issuers, investors, or other related parties. In addition, the role of notaries in ensuring the legality of documents helps create a safer, more stable, and more credible capital market environment.

3.2. Obstacles Faced by Notaries in Ensuring the Validity and Legal Certainty of Stock Transactions in the Capital Market

The role of a capital market notary in the world of capital markets is needed in matters relating to the preparation of articles of association for parties such as issuers, public companies, securities companies and mutual funds, and the preparation of various other important agreements.²⁰This is the mandate of Article 64 paragraph (1) of the UUPM which explains that a notary is one of the supporting professions in the capital market world, where the explanation of the article also states that a notary is a public official who is authorized to make authentic deeds and is registered with the OJK. Not all notaries are able to become a capital market notary. Notaries who can become notaries in the supporting profession of the capital market are notaries who are registered with the OJK. In their capacity as a supporting profession of the capital market, notaries can also be dismissed by the OJK if their work permit has been revoked by the authorized

²⁰M. Irsan Nasrudin and Indara Surya, 2014, Legal Aspects of the Indonesian Capital Market, Prenada Media Group, Jakarta, p.94

agency. In addition, capital market notaries can also voluntarily resign by sending a letter of resignation to the OJK.²¹

Notaries in carrying out their duties face various obstacles that can affect the validity and legal certainty of stock transactions in the capital market. Here are some of the main obstacles that are commonly faced:

1. Inaccurate or Incomplete Data and Documents

Issuers often do not provide complete documents or accurate data related to the articles of association, list of shareholders, or GMS decisions. Inaccuracy of this data can affect the validity of the documents created. The solution that can be done is that the Notary must ensure complete validation and verification of documents before making the deed. The use of technology such as the Online Single Submission System (OSS) or collaboration with the OJK to gain direct access to data can help minimize data errors.

2. Issuer's Ignorance of Capital Market Regulations

Issuers, especially companies that are just about to go public, often lack understanding of relevant capital market regulations, including legal requirements for IPOs. This makes it difficult for notaries to ensure that documents comply with legal requirements. The solution that can be done is that the Capital Market Authority and notary associations must conduct regular socialization and training for issuers regarding legal procedures and documents needed to ensure legal compliance.

3. Rapid Regulatory Changes

Capital market regulations and other related regulations often change, which are sometimes not well socialized. Notaries can have difficulty ensuring that documents made are in accordance with the latest regulations. The solution that can be done is that Notaries must continue to update their knowledge through regular training held by the OJK or notary associations, and utilize the latest legal information system that provides access to the latest regulations.

4. Complexity of Capital Market Transactions

Stock transactions involve many parties and complex mechanisms, such as issuers, underwriters, OJK, and investors. This complexity increases the risk of administrative or legal errors. The solution that can be done is that the Notary needs to work together with other parties involved in the transaction, such as underwriters and capital market legal consultants, to ensure that every aspect of the transaction is processed in accordance with applicable provisions.

5. Limited Access to Digital Information

In some cases, notaries do not have sufficient access to digital systems used for data verification, such as the Capital Market Electronic Trading System. This can

²¹Sheila Aliya, 2024, The Role and Responsibilities of Notaries in Backdoor Listing Stock Transactions Against Limited Liability Company Deeds They Make, Notary Journal, Volume 4, No. 1, p. 14

slow down the document validation process. The solution that can be done is that the Government and capital market authorities must improve digital infrastructure that allows notaries to access information related to stock transactions in real time, including the capital market data integration system.

6. Inconsistencies Between National Law and International Practice

Capital markets often involve foreign investors, who sometimes require different document standards from Indonesian law. Notaries must ensure that documents meet national legal requirements while being internationally acceptable. The solution that can be done is that Notaries must understand the needs of the international capital market and work with international legal consultants to ensure that legal documents made meet national legal requirements while being globally acceptable.

The main role of a notary in creating legal certainty in society is related to the making of deeds, notaries have an obligation to create authenticity in the deeds they make.²²To obtain legal certainty in a deed made by a notary, it is necessary to fulfill the formal and material requirements in making a notarial deed. This refers to material truth (*materiele waarheid*) which can be interpreted as the real truth, the essential truth, and the real truth that is sought in the process of proof and can convince the judge in deciding a case. In addition, formal truth (*formeel warheid*) can be interpreted as the truth obtained based on formal evidence submitted to the trial whose truth is only proven based on the evidence submitted.²³It is known that the Notarial Deed in this case related to the transfer of rights to shares made by a Notary has the function of providing legal certainty for the seller and buyer of shares, in terms of a formal function which means that a legal act in this case the transfer of rights to shares will be more complete if a Notarial deed is made, as well as a means of proof where the making of the deed by the parties bound by an agreement is intended for proof at a later date.²⁴

4. Conclusion

The role of a notary in stock transactions of public companies on the Indonesia Stock Exchange Capital Market is an important element to ensure legal certainty, legality, and transparency in every stage of the transaction. As a public official who has the authority based on Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary (UUJN), a notary is tasked with making authentic deeds required by laws and regulations, including in the Initial Public Offering (IPO) process and stock transactions. In addition, in accordance with Article 64 paragraph (1) of Law No. 8 of 1995 concerning the Capital Market, as amended by Law No. 4 of 2023 concerning the Development and Strengthening of the Financial

²²Asteria Tiar, 2021, Notarial Deed as Proof of Ownership and Validity of Sale and Purchase of Shares Relating to Capital Deposit by the Company's Founders, Indonesia Notary, Volume 3 Article 10, p. 8

²³Stevanus David, 2024, Legal Certainty Regarding Share Sale and Purchase Deeds Canceled by the Court Due to Default, Action Research Literate, Vol. 8, No. 9, p. 2700

²⁴Ibid., p.2701

Sector (UU PPSK), notaries are recognized as a supporting profession for the capital market. In this capacity, notaries play a role in helping to prepare and ratify important legal documents, such as changes to the company's articles of association, minutes of the General Meeting of Shareholders (GMS), and share sale and purchase agreements, which are the legal basis for transactions on the IDX. Obstacles faced by notaries in ensuring the validity and legal certainty of stock transactions in the capital market, such as inaccurate or incomplete data and documents, issuers' ignorance of regulations, rapid regulatory changes, the complexity of capital market transactions, limited access to digital information, and potential inconsistencies between national laws and international practices. These obstacles can hamper the administrative process, create legal risks, and affect the trust of capital market players. To overcome these challenges, solutions are needed such as better data validation, education for issuers, improving notary competency, collaboration with related parties, developing an integrated digital system, and aligning national regulations with international standards. Thus, notaries can carry out their role optimally to create legality and legal certainty in capital market transactions.

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