Notary's Authority in Establishing Deeds for Minors and Their Rights as Shareholders of Limited Company

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Abstract

Notaries are empowered to demonstrate different types of business practices. One of the acts involves a shareholder taking legal action at the company. The laws and regulations in Indonesia do not regulate the age limit of shareholders. However, the result of the incompetent duty in this case is a child under the age of twenty-one and can apply for dismissal. This raises the issue of Notary's authority to explain the claims of children who are unable to implement their rights as partners of a limited liability company. The normative legal method was used in this research. A child may be a legitimate shareholder, which is related to a person's legal conduct, that related to a person's legal actions and actions are seen from his skills and authority that was regulated in Indonesian Civil Code, the Law of Notary Position, and Indonesian Marriage Law. The attorney's authority over a minor child as a shareholder must be represented by his parents. Notary must focus on the skills and authority of the individual when exercising his position of drafting deeds or legal act on behalf of the company. Therefore, Notary must act diligently and thoroughly in drafting deeds and perform its position in accordance with the Law of Notary Position and the Notary Code of Ethics. Thus, Notary has the authority to establish deeds in a legal action for a twenty-one years old person as a company shareholder.

I. Introduction

One of the activities that generate income in the form of profit is to create abusiness entity. There are two types of business entities that operate in accordance with the laws and regulations that are enforced in Indonesia, which are those with legal entities and those without legal entities. The legal entities included: limited liability companies, cooperatives, foundations, state-

owned enterprises, and public companies. Whereas business entities without legal entities such as individual businesses, civil partnerships, general partnership, and limited partnerships. Limited liability company in Indonesia known as "Perseroan Terbatas" is a form of business that is widely and commonly used compared to other forms of business.[1] In Indonesia, the number of limited liability company exceeds other forms of business entities such as firms, cooperatives, limited liability companies,and many more.[2]

To that end, Law of the Republic Indonesia Number 40 of 2007 concerning Limited Liability (the Indonesian Company Law) as last amended by Law of the Republic Indonesia Number 11 of 2020 concerning on Job Creation was promulgated to create a conducive business climate. Article 1 Number 1 of the Company Law defines a limited liability company as a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual legal entities that meet the criteria for micro and small businesses as stipulated in the laws and regulations concerning micro and small business. In this case, as a legal entity, the limited liability company has the following elements:

(i) Limited liability company is a capital partnership;
(ii) Limited liability company is established under an agreement;
(iii) Limited liability company conducts business activities with authorized capital which is entirely divided into shares; and
(iv) Limited liability company is an individual legal entity that meets the criteria for micro and small enterprises standards stipulated in the micro and small enterprises regulations

As described above, limited liability company is a capital partnership in which all of its authorized capital is divided into shares. Article 60 Paragraph (1)of the Company Law stated that shares are movable objects and give rights to their owners as regulated in the Indonesian Company Law. Therefore, basically a limited liability company is established based on an agreement, then the shareholders in a limited liability company should be

[1] Nindyo Pramono, "Perbandingan Perseroan Terbatas di Beberapa Negara", *Karya Ilmiah* (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2012), 2.
[2] Orinton Purba, *Petunjuk Praktis bagi RUPS, Komisaris, dan Direksi Perseoran Terbatas agar Terhindar dari Jerat Hukum*, (Jakarta: Raih Asa, 2011), 1.

legally capable people in order to be able to fullfill their rights as shareholders.

Notaries are given considerable authority by the Company Law to notarize various corporate actions involving the company's shareholders, such as makinga news deed of the General Meeting of Shareholders ("GMS") both containing theagenda of the Annual GMS, amendments to the articles of association, as well as data on changes to the company. Article 16 Paragraph (1) Letter a Law of the Republic Indonesia Number 30 of 2004 concerning Notary Positions as amended by Law of the Republic Indonesia Number 2 of 2014 concerning amendments to Law of the Republic Indonesia Number 30 of 2004 concerning Position of Notary (known as "UUJN" in Indonesia) requires that in carrying out Notary is obliged toact carefully and protect the interests of the parties involved in legal actions. The Big Indonesian Dictionary defines the word "seksama" as thorough and precise.[3] Therefore, keeping in mind the consequences that the engagements made by an incompetent person or in this case a child under the age of twenty-one years old, the incompetent person can propose. This raises a problem regarding how does the authority of the Notary in declaring the legal actions of children who are not legally competent in implementing their rights as shareholders in a Limited Liability Company?

II. Research Method

The writing of this scientific paper uses normative legal research methods. Normative legal research is legal research conducted by examining library materials (secondary data).[4] In normative legal research, only library materials or secondary data are examined. Secondary data is a data obtained from the resultsof a literature review or a review of various literatures or library materials related to problems or research materials which are often referred to as legal materials.[5] In this study, laws and regulations and books were used as references for writing. The research specification used in this legal research is descriptive analytical. Descriptive analysis is used to describe matters relating to the subject matter andthen proceed with an analysis of the applicable positive law.[6]

[3] Indonesian Big Dictionory, (Jakarta: Gramedia Pustaka, 2011).
[4] Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986), 51.
[5] Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004), 156-157.
[6] Bambang Sunggono , *Metodelogi Penelitian Hukum*, (Jakarta: Rajawali Press, 2016), 36.

III. Results and Discussion

Notaries as trusted positions that provide services in the field of law are authorized to make authentic deeds, agreements and stipulations required by laws and regulations and/or those who have an interest in making authentic deeds, guaranteeing the date and making of the deed, keeping the deed, giving grosse, deposit, quote deed.[7] With respect to the deed to be made, Notary position is given the authority to make deeds related to legal actions in a company as requested bythe appearer. There are two types of deed made by a Notary, namely the partij deed and the relaas deed.

In the process of drafting the deeds, Notary is required to know the appearers which are known by the Notary itself or those who are introduced. The appearer must meet the requirements as determined by Law Number 30 of 2004 concerning Position of Notary, which will later be stated explicitly in the deeds to be draft, namely: (i) at least eighteen years old or married and (ii) competent to take legal actions.

Anyone in a limited liability company who acts to perform an act requires notariy deeds, one of whom is shareholder. Regarding to the law that will affect matters relating to the authorities that they have. However, the shareholders as regulated in the laws and regulations in Indonesia governing limited liability company are not limited to the limit of shareholder ownership. This problem results in the authority of the Notary to establish deeds due to legal actions for children who are not legally competent in implementing their rights as shareholders in a limited liability company. An explanation of this problem is described as follows:

1. The Rights of Shareholders in Limited Liability Companies

Shareholders in limited liability company have the rights as stipulated inArticle 52 paragraph (1) of the Indonesian Company Law, namely:

(i) attend and vote in the GMS;

(ii) receive dividend payments and the remaining assets resulting from theliquidation; and

(iii) exercise other rights under the Indonesian Company Law.

[7] rticle 15 paragraph (1), Law of the Republic Indonesia Number 2 Year 2014 concerning on revisions of law concerning on Position of Notary.

Article 60 Paragraph (1) of the Indonesian Company Law stipulates that share are movable objects and give rights to their owners as regulated in the Company Law. In general, there are at least two kinds of rights owned by the shareholdersof limited liability company, as follows:

3.1. a. Property Rights

Material rights (zakelijk recht) are rights that give direct power over an object,which can be defended against everyone.[8] In the concept of share ownership in alimited liability company, limited liability company shares can only be issued in the name of the owner. limited liability company are not prohibited from issuingshares upon appointment. Therefore, the name of the owner of the share has direct power over the shares and this power can be maintained against anyone. According to Subekti, the rightss of ownership (eigendom) to an object is the most perfect rights to an object. A person who has ownership rights to an object can do anything with the object as long as it does not violate the law or the rights of others.[9] The holders of the limited liability company have ownership related to the material rights of his shares, among others for his share ownership and to pledge his shares and to pledge the shares with a pledge or fiduciary guarantee as long as it is not specified otherwise in the articles of association of the limited liability company.

Based on Article 56 of the Indonesian Company Law, the transfer of rights to shares is carried out by a deed of transfer of rights which can be made before a notary or in the form of a private deeds. In addition, the articles of association of a limited liability company may stipulate requirements regarding the transfer of rights to shares in the limited liability company, such as prior approval of shareholders with classification or other shareholders, prior approval of limited liability company organs, and/or prior approval from the appropriate agency in accordance with the provisions of the legislation.

Based on Article 52 Paragraph (1) of the Indonesian Company Law, shares give the owner the rights to:[10]

a. attend and cast votes in the GMS;
b. receive dividend payments and the remaining assets resulting from

[8] Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: PT Intermasa, 2010), 62.
[9] *Ibid.*
[10] Article 52 paragraph (1), Law of the Republic Indonesia Number 40 Year 2007 concerning Limited Liability Company.

theliquidation;

c. exercise other rights under the Indonesian Company Law.

Furthermore, what is meant by carrying out other rights under the IndonesianCompany Law as referred to in Article 52 Paragraph (1) of the Indonesian Company Law includes the following:[11]

a. The right to file a lawsuit against the limited liability company to the district court if it is harmed, due to the limited liability company actions which areconsidered unfair and without reasonable reasons as it should be due to the decision of the GMS, the Board of Directors and/or the Board of Commissioners (Article 61 Paragraph (1) of the Indonesian Company Law);
b. When shareholder does not agree with the limited liability company actions that harm the holders or limited liability company in the form of price changes, or guaranteeing the assets of the limited liability company which has a value of more than 50% (fifty percent) of the limited liability company net worth, or merger, acquisition, or separation, the shareholders have the right to request to the limited liability company so that its shares are purchased at a reasonable price (Article 62 Paragraph (1) of the Indonesian Company Law);
c. The right to file a derivative lawsuit, namely on behalf of the limited liability company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights may file a lawsuit through a district court against a member of the Board of Directors whose fault or negligence causes losses to the limited liability company (Article 97 Paragraph (6) of the Indonesian Company Law); and
d. The right to file an application against a limited liability company submitted by one shareholder or more representing at least 1/10 (one tenth) of the total shares with voting rights (Article 138 of the Indonesian Company Law).

3.2. Skills and Authorities of Minors

In the eyes of law, not everyone is allowed to act alone in exercising their rights. Only those who have been declared legally competent are allowed to act alone in exercising their rights. Article 1330 of the Indonesian Civil Code determines the class of people declared incompetent in an agreement, as

[11] *Ibid.*

follows:

a. minors;

b. those who are put under custody;

c. woman.

Article 330 Indonesian Civil code stipulates that minor are those who have notreached the age of twenty-one years and have never been married. However, there are other provisions regarding this as regulated in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage as last amended by Law 16 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (Indonesian Marriage Law). According to theIndonesian Marriage Law, children who have not reached the age of eighteen years or never been married are under the control of their parents or guardians as long as they are not revoked from their power. In addittion based on the Indonesian Marriage Law, the parent or guardian of the child represents the childregarding all legal actions inside and outside the court.

All engagements made by minors, or persons who are under guardianship arefor the sake of law, and upon those proposed by or and their parties, must be declared void, solely on the basis of their maturity or guardianship. Engagements happends by married women and by minors who have been equated with adults,are not null and void, to the extent that the engagement does not exceed the limitsof their power.

According to Article 1446 Paragraph (1) and Article 1331 Paragraph (1) of theIndonesian Civil Code for people who are not capable of demanding the engagements they have made. From an important point of view by the eyes of law, children are not prohibited from owning shares. This is because Article 499 of theIndonesian Civil Code regulates objects. Property rights are absolute rights, which can be defended against anyone. A person who has property rights does not lookat the age of the holder of property rights.

3.3. Notary Obligations to Carefully Outline and Protect the Interests of the Parties

A notary is a public official who is authorized to establish authentic deeds. In relation due to the deeds related to the company, Notary is authorized to establish relaas deeds which are namely made by Notary as a public official. This deed was established by Notary from the request of the parties. Notary

records and writes down things that will be draft based on what is seen directly with legal actions or other actions taken by the parties for everything regarding to the deed. For example, drafting GMS deed.

The position carried out by Notary is known as a position of trust. One of the obligations is to act trustworthy, honest, thorough, impartial and safeguard the interests of the parties involved in the law.[12] In addition, Notary in carrying out their job and task must be known by them or introduced by two persons whom atleast eighteen years old or person whom are married and capable of carrying outlegal actions or introduced by two other appearers.[13]

Notary in carrying out their position is given the obligation to keep everythingrelated to the deed and other confidential documents in order to protect the interests of all parties related to the deed establish by them.[14] Notary's authorityit's just not only limited to establishing legal deeds to be carried out, but Notary also obliged to provide legal counseling on the deeds as stated and regulated in Article 15 paragraph 2 letter e of the amendment to the Law of the Republic Indonesia Number 30 of 2004 concerning Position of Notary.

3.4. Limited Liability Company, Shareholders and Share Investment

3.4.1 Limited Liability Company

A limited liability company, also called as a corporation, is a capital activityestablished based on a agreements. It is a corporation that completely divides theauthorized capital into shares and conduct business, and meets the requirements stipulated in the company law.[15] The limited liability company organ structure consists of the GMS, the Board of Directors, and the Board of Commissioners.

The GMS is a corporate organ that has the highest power and has authoritythat is not given to any party or board of commissioners within the

[12] Article 16 Paragraph (1) section a, Law of the Republic Indonesia Number 2 Year 2014 about revisions of law concerning Position of Notary.
[13] Article 29 paragraph (2), Law of the Republic Indonesia Number 2 Year 2014 about revisions of law concerning Position of Notary.
[14] Article 16 paragraph (1) section f, Law of the Republic Indonesia Number 2 Year 2014 about revisions of law concerning Position of Notary.
[15] Article 1 number 1, Law of the Republic Indonesia Number 40 Year 2007 concerning Limited Liability Company.

limits specified in the Limited Liability Company Law.[16] With the approval, reports, considerations, the Board of Directors and the Board of Commissioners, the holding of the Extraordinary GMS for basic purposes and other corporate legal actions that require approval from the GMS and approval in accordance with whatis specified in the company law and the articles of association of limited liability company.[17] Exclusive appointments and suspensions are only granted to the GMSas an exclusive organ

The GMS has a fairly important role, namely shareholders who are entitledto all matters of interest from the Board of Directors and the Board of Commissioners. In addition, the GMS has the function of carrying out overall control over the fulfillment of the obligations of the Board of Directors and the Board of Commissioners on the established regulations.[18] For the benefit of shareholders, each annual and annual report will be submitted to each shareholder

of limited liability company to be ratified in the GMS. Shareholders can find out the actual state of the limited liability company from the annual report submittedby the Board of Directors as a form of accountability in carrying out.[19] If the management or Board of Directors of the Company takes actions that exceed thelimits of the authority and capacity of the limited liability company as stipulated in the Articles of Association, the Indonesian Company Law also gives the right toeach shareholder to file a lawsuit against the limited liability company to the district court as stipulated in Article 61 paragraph (1) of the Indonesian CompanyLaw.[20]

3.4.2 Shareholders

The liability of limited liability company shareholders is limited, the liability is only limited to the limited number of shares, limited to the paid-up capital. By depositing capital into the company, shareholders have separated or released part of their personal assets into the assets of limited liability company. This can be seen in Article 3 paragraph (1) the Indonesian Company Law, which

[16] Article 1 number 4, Law of the Republic Indonesia Number 40 Year 2007 concerning Limited Liability Company.
[17] Bonifasius Aji Kuswiratmo, *Keuntungan & Risiko Menjadi Direktur, Komisaris, Dan Pemegang Saham,* (Jakarta: Transmedia Pustaka, 2016), 11.
[18] Gunawan Widjaja dan Ahmad Yani, *Seri Hukum Bisnis: Perseroan Terbatas*, (Jakarta: PT Raja Grafindo Persada, 2003), 77.
[19] Bonifasius Aji Kuswiratmo, *Keuntungan & Risiko Menjadi Direktur, Komisaris, Dan Pemegang Saham*, (Jakarta: Transmedia Pustaka, 2016), 12.
[20] M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2016), 69.

can be interpreted:

a. The company is not responsible to the shareholders, otherwise the shareholders are not responsible for the debts of the company;
b. Shareholder losses are limited to the price they invest;
c. Shareholders are not further liable to creditors for their personal assets.

However, this does not reduce the possibility of shareholders being liable to cover their personal assets, if in bad faith they use the limited liability company for their personal interests, or the shareholders act as bortoght against creditors for the debts of the limited liability company. Shareholders to benefit from the capital invested in a limited liability company. Thus, limited liability company has its own assets that are separate from the assets of the owners or founders.[21]

Then, Article 75 paragraph (2) of the Indonesian Company Law stipulates that shareholder have rights in making decisions at the GMS in limited liability company, namely the rights of shareholders to obtain information related to the agenda of the meeting without prejudice to the rights of shareholders to obtain other information related to the agenda. shares as regulated in the Indonesian Company Law, among others are the rights of shareholders to view the register of shareholders and the special register as referred to in Article 50 paragraph (4) Indonesian Company Law, as well as the rights of shareholders to obtain meeting materials after the invitation to the GMS as referred to in Article 82 paragraph (3) and paragraph (4) Indonesian Company Law. Article 85 of the Indonesian Company Law also gives shareholders the right to attend the GMS and use their voting rights in accordance with the number of shares owned, either alone or represented.[22]

Shareholders are given proof of their share ownership with a share certificate issued by limited liability company.[23] As a shareholder, the person concerned becomes part of the owner of the company. This ownership gives shareholders the right to cast votes in the GMS, receive a proportion of limited liability company assets proportionally according to the number of shares owned,if the company is liquidated.[24]

Shareholders as owners only have indirect control rights over the daily

[21] Ibid., 59.
[22] Bonifasius Aji Kuswiratmo, *Keuntungan & Risiko Menjadi Direktur, Komisaris, Dan Pemegang Saham,* (Jakarta: Transmedia Pustaka, 2016), 5.
[23] Article 75, Law of the Republic Indonesia Number 40 Year 2007 concerning Limited Liability Company
[24] Article 51, Law of the Republic Indonesia Number 40 Year 2007 concerning Limited Liability Company

operations of limited liability company and over everything in the Board of Directors. The more one invests in owning, the more control one can control.

Decision making can not be separated from the consideration of benefits and risks. The results obtained from investment activities are called profits, or returns.[25] Investors will look for the lowest risk for stocks that have the same rate of return.[26] Conversely, investors will choose a high rate of return for stocks that have the same risk. Therefore, investors really need information about the rate of return and the level of risk from their investment activities.

Companies with a growth rate of shares in sales that are considered to havea high risk of investment risk. This is caused by companies that have a high growth rate in sales. This reflects that the company has the opportunity to earn excessively.[27] The valuation variable is an indicator of measuring investor interest in a company's shares. The higher the stock valuation variable, the company is considered to have good performance.[28]

3.4.3. Share Investment

Share investment is one type of investment instrument that is in great demand by teenagers and parents at this time. Therefore, many minors become shareholders. Not a few people invest their capital in the form of shares, because land prices tend to rise. One of the reasons is as the population increases, the demand will always be larger and increases meanwhile the availability of land will continue to decline. The increase in land prices is estimated at 40% (forty percent).[29] In addition, land prices are rigid, which means that they determine market prices, instead of who controls the land.

Stock investments are in great demand, because one of them promises a large return. However, it should also be remembered that investing carries a large amount of risk. Investment risk management is the keyword for profit. In managing investments, it is necessary to understand so that these investments can generate profits. Understanding investment risk is a must for someone who wants to make stocks as an investment instrument. This cannot be done by just anyone,it requires understanding and expertise as is done by adults.

[25] M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2016), 73.
[26] Zarah Puspitaningtyas, *Prediksi Risiko Investasi Saham.* (Yogyakarta: Pandiva Buku, 2015), 5.
[27] *Ibid.*, 14.
[28] *Ibid.*,
[29] *Ibid*., 16.

3.5. Children as Shareholders

Children have several meanings, including:

a. Based on Law of the Republic Indonesia Number 23 of 2002 concerning child protection, a child is someone who is not yet eighteen years old, including those who are still in the womb;
b. Based on Article 47 paragraph (1) of the Indonesian Marriage Law, achild is a person who has not reached the age of eighteen years or has never married is under the control of his parents as long as theyare not revoked from his power;
c. Based on Article 330 of the Indonesian Civil Code, a child is someonewho has not reached the age of twenty-one years and has not been married.Based on some of the definitions of children above, it can be said that a child isa person who is underage or unmarried and is under their parental controls. Therefore, children in carrying out legal actions requires someone who is more mature to carry out legal actions, which is their parents.

Minors as shareholders have rights as regulated in Article 52 paragraph (1) ofthe Indonesian Company Law. However, the child is not in a position to carry outlegal acts as the rights he has as a shareholder. This is because Article 47 of the Indonesian Marriage Law stipulates that in exercising their rights as shareholders, minors must be shown by their parents.

In accordance with Article 39 the Law of the Republic Indonesia Number 30 of2004 concerning Position of Notary, the appearer is someone who is at least eighteen years old and capable of carrying out legal actions. In addition, Article 1446 of the Indonesian Civil Code states that a person is related to a matter in carrying out certain legal actions. Someone who takes certain legal actions against something and is capable of acting. Children who are underage to carry out a legal act must be shown by their parents or guardians. Therefore, a child who can be declared not to agree may claim the engagement they have made in terms of power for that cannot be excluded by law.

This also emphasizes the authority of a child to act as a shareholder and has an impact on a child who is still a minor in an action or act committed by their parents or their guardians.

IV. Conclusion

One of the powers of a Notary in making a deed must pay attention to the skills and authorities of the appearers. Therefore, in declaring a legal action, a Notary must know the appearers. The authentic deeds that will be establish by Notary is the real truth, which is Notary's full responsibility.

Based on Article 39 paragraph (1) the Law of the Republic Indonesia Number30 of 2004 concerning Position of Notary, the minimum age of a Notary appearsto be eighteen years old or have been married and capable of carrying out legalactions. Therefore, a child who is still a minor can be interpreted as not being legally competent in exercising his rights as a shareholder in limited liability company. Even though a child owned the property, because the shares are in hisname. Shareholdings that are kept as legal shareholders. However, the Notary incarrying out its implementation for the legal act deed to be carried out on behalfof the company must see the application and the authority of a person. Based on Article 47 paragraph (1) of the Indonesian Marriage Law, a child who has not reached eighteen years old or has not yet entered into a marriage is under their parent's authority. In addition, Article 330 Indonesian Civil Code stipulates that those minors are whom have not reached the age of twenty-one years old and have never married. Therefore, minors as shareholders in carrying out legal actions and actions in a limited liability company are represented by their parents.

Indonesian regulations have not yet regulated restrictions on shareholding. However, shareholders also have rights. Shareholder must be someone who is atleast twenty-one years old or older, which means share holder is someone whois considered capable in the eyes of the law.

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