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## | RESEARCH ARTICLE

# THE AUTHORITY OF NOTARIAL DEEDS IN THE FORMATION OF LEGAL ENTITIES DECLARED TO COMMIT CORPORATE CRIMES

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## | ABSTRACT

It is mandatory that the formation of legal entities is executed through a notarial deed. However, issues arise when a violation is committed by the board of directors. Notaries, official representatives of the government in private legal matters, particularly those concerning legal entities, have full legal authority in drafting deeds. This research adopts a normative legal approach with a prescriptive nature. This study employs several methodologies, including a conceptual approach and a statutory regulations approach. To ensure a comprehensive conclusion, the analysis incorporates relevant legal theories. The strength of Notarial deeds lies in their authenticity. When such authenticity is entirely fulfilled, any corporate crimes committed by the board of director members do not negatively affect the legal standing of the deed. In fact, the responsibility lies with the individual wrongdoers, and the notarial deeds remain legally valid. Yet, if it is proven that the deed's formation involves a legal violation, the deed may be annulled or declared null and void by a court decision.

## | KEYWORDS

*Authentic Deed, Notaries, Corporate Crime*

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## I. INTRODUCTION

The development of society at this time is very rapid, which certainly makes the needs of the community increase. The growing economic condition certainly causes the wider community to be interested in doing businesses to meet their daily needs. It is not uncommon for economic activities carried out by the community to require a large amount of capital. Therefore, an agreement is needed, not just an underhand agreement, but an authentic agreement made by and before a Notary. The reason for making an agreement before the Notary is not because there is no trust between each other, but to provide more legal protection for the interests of the parties if a problem occurs in the future related to the implementation of the agreement [1].

Notaries who are representatives of the Government certainly have the mandatory authority to make authentic deeds in the private sector. The making of authentic deeds carried out by Notaries includes making agreements, making deeds related to legal entities such as Limited Liability Companies, Foundations, Legal Entities, and others. The position of notary is an office of trust and is a noble profession (*officium nobile*), in carrying out the duties of his office the notary is regulated by Law No. 30 of 2004 concerning the office of notary which has been amended by Law No. 2 of 2014 concerning the Office of Notary and also regulated in the Code of Ethics for the Notary Profession [2].

A notary must always enforce the law since they are state officials. This means that they are respecting the law when doing their profession as they keep the pledge they made when doing his notarial responsibilities as stated in Article 4 Paragraph 2 of UUJN. According to [3], a notary is required to take the following oath before performing his/her notarial duties:

1. To obey and be loyal to Republic Indonesia, Pancasila and the 1945 Constitution of Republic Indonesia.
2. To obey Notary Office Law, as well as other laws and regulations.
3. To conduct my duties in a trustful, honest, thorough, independent and impartial manner.

4. To maintain attitude, behavior, and to conduct the obligations in accordance with the professional code of ethics, honor, dignity, and my responsibilities as a Notary.
5. To keep the contents of the deed and the information obtained in the implementation of my confidential position.
6. To be appointed to this position, either directly or indirectly, with any name or argument, never and will not give or promise anything to anyone.

The ease of inventory, which is one of the President's aspirations, certainly hopes to attract foreign parties to invest in Indonesia. Of course, here Notaries have an important role in the business world. In supporting direct investment, the Investment Law explains in Article 5 paragraph (2) that the company used to invest must be based on Indonesian law in the form of a limited liability company, which in this case is regulated in the Limited Liability Company Law. Notaries in their positions only assist investors in the establishment of the desired company [4].

The making of a deed related to a legal entity is certainly a notary deed where, an authentic deed is a valid document and can be a perfect piece of evidence. Perfect here means that the judge considers everything stated in the deed to be true, unless there is other evidence that can prove that the contents of the first deed are not true [5].

In a legal entity, of course, there are organs that run it, in a limited liability company it is run by the board of directors, then for the foundation it is carried out by the Management. Specifically, the author will discuss more specifically, namely about limited liability companies, where the board of directors has a very vital role in running the company. If there is a corporate crime in the company that raises the question of what is the strength of the deed made by the Notary when a corporate crime occurs? Then what is the form of accountability?

## II. METHODOLOGY

For research to obtain measurable/validated and systematic results, a methodology is needed. This research is a normative law that is prestigious. In answering the problem, there is a legal and regulatory approach, namely the notary position law and the limited liability company law, as well as a conceptual approach, namely how the concept of a limited liability company is. Furthermore, it is analyzed using relevant laws and legal doctrines. All the legal materials are studied comprehensively to obtain an answer/conclusion.

## III. RESULTS AND DISCUSSION

Nowadays, the establishment of a legal entity is no longer a luxury item or, because the ease of investment provides convenience, is encouraged by the ease of licensing which is currently in the form of a one-stop licensing that has been integrated or known as online single submission (OSS). OSS facilitates the work of Notaries in assisting business actor to carry out the process of issuing a Business Identification Number (NIB). It is just that there are several obstacles experienced by Notaries and Business Actors in this Online Single Submission system that can have legal consequences for the owner of the company [6].

In making a deed, the notary must understand the relevant legal regulations, and must prioritize the principle of filial piety. In constructing a deed, it must be done carefully and carefully. This is a sign for Notaries to protect Notaries from the potential for legal defects in the deeds that have been made. A notary must ensure that an agreement has fulfilled the conditions so that it does not imply an infringement. From the construction of civil law above, if in an authentic act making a notary pays attention to and refers to the legal relationship with the parties involved and pays attention to the principle of accuracy [7].

In carrying out his professional duties, a notary is obliged to uphold the law and code of ethics. The position of the notary code of ethics aims to ensure that the position of the notary public can be carried out professionally based on motivation and receipt that rests on the ability of scholars and assumes rationally and critically and respects moral values [8]. It is possible for a notary to be negligent in performing his professional duties. Negligence in carrying out one's position is usually associated with not carrying out obligations and authorities as they should. Notaries can also be prosecuted for criminal liability if it can be proven that there was an element of notary negligence which resulted in the employee's mistakes [9].

The government has issued a new regulation, namely Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK) formed with a relatively new method carried out in Indonesia, this method is called the omnibus law. Until now, in Indonesian law, regulations related to companies are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT 2007) which then several articles of the 2007 UUPT have been amended in the UUCK. As explained earlier, the UUCK expands the meaning of PT as explained in the 2007 UUPT, namely by introducing a new concept, namely a sole proprietorship company that has a limited liability company in its definition. Article 109 of the UUCK adds the definition of a limited liability company in the 2007 UUPT, namely by mentioning "or an individual legal entity that meets the criteria for Micro and Small Enterprises as regulated in the laws and regulations concerning Micro and Small Enterprises" [10].

The ease of investment is welcomed by the community so that now there are many people and it is easy to establish a legal entity. Specifically, this article discusses legal entities about limited liability companies. Then the problem is that it is often found in companies, namely the occurrence of corporate crime. The provisions of Article 1 number 5 of Law Number 40 of 2007 concerning UUPPT explains that the board of directors is a corporate organ that has the authority and full responsibility for the management of the company for the interests of the company, in accordance with the company's aims and objectives and representing the company, both inside and outside the court in accordance with the provisions of the articles of association. Furthermore, the provisions of Article 92 paragraph (1) of the Company Law state that the directors in carrying out the management of the company for the benefit of the company and in accordance with the aims and objectives of the company. This provision means that the trust given by the company to the board of directors is based on the principle of fiduciary duty, so as an organ of the company that carries out business activities according to the company's goals and objectives, the directors are certainly exposed to business risks. The business risk is sometimes beyond the maximum ability of the board of directors. Therefore, in order to protect the inability caused by human limitations, directors are protected by the business judgment rule doctrine [11].

The abuse of authority carried out by the directors, especially against the occurrence of corruption crimes in corporations, is certainly a problem. A corporation cannot be criminally held liable for a criminal act of money laundering committed by the management on behalf of the corporation, if the act is carried out through activities that are not included in the scope of its business as specified in the articles of association or other provisions applicable to the corporation concerned [12].

The authority possessed by the board of directors, the board of directors is required to maintain loyalty and have good faith in running the company [13]. In corporate legal terms, it is known as the doctrine of fiduciary duty. This doctrine requires that a director in a Limited Liability Company must carry out his duties in good faith. This doctrine is attached to the board of directors which is the organ that runs the company.

The existence of the Board of Directors in a Limited Liability Company is like the lifeblood of the Company. The relationship between a limited liability company and its directors is mutually supportive, meaning the existence of the company justifies the existence of the directors, and vice versa, as it is impossible to have a limited liability company without a board of directors. Therefore, there is a fiduciary relationship between the limited liability company and its directors [14].

The Notary Office Law provides guidelines for Notaries to draft authentic notarial deeds. If these guidelines are not followed, the deed may be subject to invalidation or cancellation. Therefore, a Notary is responsible for exercising their authority properly. In drafting a deed, certain terms influence the customary meaning in the creation of an authentic deed. [15].

#### **IV. CONCLUSION**

The legal force of a notarial deed in the occurrence of corporate crime remains valid unless a court decision declares its cancellation. This is because only a court has the authority to annul a notarial deed. A key parameter in determining the validity of a deed is whether the authenticity process has been properly fulfilled during its creation, ensuring compliance with legal requirements. In cases where a director or corporate organ commits a corporate crime, the individual who can be held accountable is the member of the board of directors responsible for the act.

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