

RESEARCH ARTICLE

Legal Analysis on Notarial Deed Concerning Transfer of Assets Belonging to Limited Liability Company Conducted by Director Without Prior Approval from General Meeting of Shareholders (Case Study in High Court of Pekanbaru)

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Abstract: Notary hold an important role to draw up authentic deed concerning transfer of assets belonging to limited liability company conducted by director, either movable or immovable assets. To guarantee the legal certainty of such action, the government has enacted law number 40 year 2007 concerning limited liability company prevailing in whole territory of republic of Indonesia which regulates that for specific transfer of assets, director must obtain approval either from board of commissioners or general meeting of shareholders. However, a civil litigation case from high court of pekanbaru indicates that director may ignore the obligation to obtain such approvals and just conduct the transfer of assets without obtaining the required approval stipulated into a notarial deed by using the out-of-goodwill excuse.

Keywords: *Limited Liability Company, Notary, Transfer of Company's Assets.*

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Introduction

The Unitary State of Republic of Indonesia as nation of laws duly based on the ground norm known as *Pancasila* and Constitution known as the 1945 State Constitution of the Republic of Indonesia guarantee the legal certainty, public order, and legal protection for all of its citizens by implementing 3 (three) principles which indicate nation of law, such as supremacy of law, equality before the law and due process of law [1]. As the execution for supremacy of law's principle, a written authentic deed as evidence concerning legal action, agreements, stipulation, and legal event drawn up before the authorized public officials is deemed necessary [2].

Notary, a profession's name derived from the word "*nota literaria*", which in English means letter mark, indicates a person whose main job is to write and indicate in full what has been discussed in the forum, back then in Ancient Romans [3]. Known as *openbare ambtenaren* in Dutch or public official in English [4], Notary under Indonesian Law is

considered as public official duly appointed by the government and given certain authorities by law [5], also qualified to draw up authentic deed to serve the public [6]. Authentic deed drawn up by Notary can be in the form of Official's deed (*ambtelijke akten*) consisting of what has actually been undergone, seen, and heard by the Notary within his/her capacity as the Notary, or in the form of Parties' deed (*partij akten*) consisting of the parties' wish and intention to be inserted into the form of Notary's authentic deed [7].

Under Law Number 1 Year 1995 concerning Limited Liability Company (hereinafter shall be referred to as "1995 Company Law") which now has been repealed and replaced by Law Number 40 Year 2007 concerning Limited Liability Company (hereinafter shall be referred to as "2007 Company Law"), in Indonesia Notary hold an important role to a limited liability company (hereinafter shall be referred to as "Company")'s legality aspect in the form of authentic deed, such as to draw

up a Company's article of association, amendment of article of association, transfer of assets, up until the Company's liquidation in the end. The aforementioned authentic deeds are all in the form of Parties' deed (*partij akten*) which covered the parties' wish and intention. Example of Parties' deed as previously mentioned is authentic deed concerning transfer of assets in a Company.

Notary as a legal expert at least shall provide legal opinion and advise the parties involved to execute the authentic deed in lawful manner, by fulfilling all the prerequisites set forth under Company Law, which is to obtain written approval from Board of Commissioners or even General Meeting of Shareholders for specific percentage of assets. One of the most bizarre civil litigation cases the Researcher has come across is case law which has possessed permanent legal binding force, commenced with Decision of District Court of Batam Number 303/Pdt.G/2017/PN.

Batam dated 03 May 2018 which has been request for appeal as how stipulated under Decision of High Court of Pekanbaru Number 130/Pdt/2018/PT.PBR dated 05 October 2018 which has been requested for Cassation as how stipulated under Decision of Supreme Court of Republic of Indonesia Number 1515K/Pdt/2019 dated 22 July 2019 (hereinafter shall be referred to as "**the Case**"). The main issue in the Case is about the transfer of assets exceeding 50% (fifty percent) of total assets belonging to a company known by the name of PT. MJS, established pursuant to the prevailing law regulation in Republic of Indonesia which was conducted by Director of PT.

MJS as hereby stipulated into a Notarial deed, without prior mandatory approval from General Meeting of Shareholders (hereinafter shall be referred to as "**GMOS**") of PT. MJS. The aforementioned action conducted by Director of PT. MJS is deemed as tortious action due to the absence of mandatory approval given by GMOS, even though Company Law has strictly regulated about the obligation given to Director to obtain approval from GMOS prior to conducting any corporate action for and on behalf of PT. MJS, especially concerning transfer of PT. MJS' assets. On the other hand, transfer of PT. MJS' assets conducted by Director of PT. MJS which was deemed as tortious act is

stipulated into a Notarial deed drawn up before the late Usman Koloay, Bachelor of Law, previously Notary in Batam. While performing work within his/her capacity as a Notary, there are several principles which must be kept in mind, such as acting with the utmost trustworthy, honesty, independency, neutrality, and ensuring the parties' interest is in accordance to the prevailing law regulations, which were often mentioned as prudential principle [8].

The prudential principle is important because Notary must prepare Notarial deed in accordance to the prevailing law regulations in Republic of Indonesia and such Notarial deed will possess the binding legal force as how it should [9]. However, in the Notarial deed drawn up before the late Usman Koloay, Bachelor of Law, previously Notary in Batam, Director of PT. MJS is not required to obtain mandatory approval from GMOS of PT. MJS, which resulted in dissatisfaction and rejection from GMOS of PT.

MJS in the future, and in the end resulted in the Case. In this paper, the Researcher aim to contributes to and extend the existing literature by focusing on the Notarial deed concerning transfer of assets belonging to Company conducted by Director without prior approval from GMOS. In addition, the Researcher is using normative legal research method supported by sociological-empirical legal research method, which shall use the normative legal research approach to obtain secondary data and to obtain the primary data through field research.

The remainder of this paper is organized as follows. Section 2 details the theoretical background concerning Notary and Notarial deed, Company, transfer of assets of the Company, organs within a Company, and Notary's role in drawing up Notarial deed concerning transfer of assets of the Company. Section 3 is devoted to discuss about implementation of Notarial deed concerning transfer of assets of the Company without approval from GMOS and detailed analysis about the Case. Section 4 presents and discusses the factors deemed as hindrance and solution for Notarial deed concerning transfer of assets of the Company conducted by Director without approval from GMOS. The final section concludes.

Theoretical Background

Notary and Notarial Deed in Indonesia

As regulated by Law Number 30 Year 2004 concerning Notary in conjunction with Law Number 2 Year 2014 concerning Amendment of Law Number 30 Year 2004 concerning Notary (hereinafter shall be referred to as “**Notary Law**”), Notary is defined as public official given mandate to draw up authentic deed and any other authority as regulated under Notary Law. According to Purwoto Gandasubrata, Notary is a public official appointed by the government to act as part of legal enforcement in the form of providing legal services and assistances for public.

Notary is capable in drawing up authentic deed which possess legal binding force and able to serve as evidence. According to Tan Thong Kie, Notary is a figure whose statements are reliable, signature and stamp possess warranty, also a legal expert who possess in-depth legal knowledge and immaculate [10]. Legal product of Notary in action while acting in his/her capacity is called Notarial deed, which is an authentic deed drawn up by or before Notary by the form and structure which have been regulated under Notary Law.

Authentic deed itself is regulated under Article 1868 of Indonesian Civil Code as deed drawn up in a legal format, by or before public officials who are authorized to do so. Notarial deed can be in the form either Official’s deed (*ambtelijke akten*) which consists of what the Notary saw, heard, and undergone from the parties, or in the form of Parties’ deed (*partij akten*) which consists of the parties’ wish and intention to be inserted into the form of Notary’s authentic deed [11]. In principle, Notarial deed possess 3 (three) legal evidential value, which shall be external evidential value (*uitwendige bewijskracht*), formal evidential value (*formele bewijskracht*), and material evidential value (*materiele bewijskracht*) [12].

Company in Indonesia

Etymologically speaking, Company comes from the phrase “*Namlooze Vennootschap*” in Dutch, which means company based on shares [13]. According to either 1995 Company Law or 2007 Company Law, Company means a legal entity constitutes a capital alliance, established based on an agreement, in order to conduct business activities with the Company’s authorized capital divided into shares and which

satisfies the requirements set forth by the government. According to Try Widiyono, legal entity is subject of law which was created by human by fictioning the aforesaid legal entity to possess the function and interest just like human being [14]. Company is one of several known legal entity, which is a capital alliance established, which capital is divided by shares [15].

There are at least 5 (five) structural characteristic of a Company, which consists of (1) legal personality; (2) limited liability; (3) transferable shares; (4) centralized management, and; (5) shared ownership [16]. Both 1995 Company Law and 2007 Company Law constitute that a Company must be established by using authentic deed drawn up before a Notary, in which such deed of establishment will serve as the Company’s article of association [17].

A Company is deemed to has obtained the status of legal entity once the Company’s article of association has been endorsed by Minister of Law and Human Rights of Republic of Indonesia. To support the Company’s right and liability as a separate legal entity, there are several organs of a Company, which shall be GMOS, Director, and Board of Commissioners. The Company will remain as an independent legal entity even though there are any changes on the GMOS, Director, and Board of Commissioners, and such changes will not affect the Company’s *persona standi in judicio* or the Company’s legal standing [18].

Transfer of Assets of the Company

As a separate legal entity from its founder, a Company is eligible to own, possess, assign and transfer its assets to any other party deemed relevant [19]. The legal requirements and consequences for transfer of assets of a Company will differ between Company which has possessed the status of legal entity and Company which has not possessed the status of legal entity. For Company which has yet to possess the status of legal entity, then according to Article 11 section (1) 1995 Company Law, legal action done for and on behalf of the Company will be binding for the Company if (i) the Company declared to accept all action performed by the Company’s founder, or (ii) the Company declared to undertake all the rights and liabilities which arise from the action performed by the Company’s founder on behalf of the

Company, or (iii) the Company reinforce all actions performed by the Company's founder in writing. On the other hand, 2007 Company Law especially under Article 14 section (1) mentioned that legal action on behalf of the Company which has not yet obtained the status of legal entity, may only be performed by all members of the Board of Directors together with all founders, as well as all members of the Board of Commissioners of the Company, and they will all be jointly and severally liable for such legal actions.

Under Article 14 section (2) of 2007 Company Law mentioned that in the event that such legal action is only performed by the founders on behalf of the Company, the relevant founders shall be responsible for such legal actions and the legal actions shall not bind the Company. However, for legal action performed only by the founders of the Company under Article 14 section (2) of 2007 Company Law shall bind and become the responsibility of the Company after such legal actions are approved by all shareholders in the GMOS attended by all shareholders of the Company, in which such GMOS must be the first GMOS that must be held not later than 60 (sixty) days after the Company obtains its legal entity status.

For transfer of assets of a Company which has possessed the status of legal entity, Article 88 section (1) of 1995 Company Law stipulates that Director is obliged to obtain mandatory approval from GMOS to transfer or to put the Company's assets as collateral although Article 88 section (2) of 1995 Company Law stipulated that action set forth in Article 88 section (1) of 1995 Company Law shall not bring harm to third party who has good faith.

From perspective of 2007 Company Law especially under Article 102 section (1), transfer of assets of a Company that must obtain mandatory approval from GMOS is for transfer which constitutes more than 50% (fifty percent) from the total net assets of the Company in 1 (one) transaction or more, either separate or inter-related. Article 102 section (4) of Company Law emphasize that legal action as referred to in Article 102 section (1) of 2007 Company Law shall remain binding for the Company even though without any mandatory approval from the GMOS, as long as the other party has a good faith in conducting such legal action. The

legal consequences for transfer of assets of the Company conducted by Director without approval of GMOS is the Director must be personally held responsible for such transfer, the Company's and third party's interest if GMOS rejected such transfer in the future, therefore as concluded by piercing the corporate veil and ultra vires doctrines [20].

Organs within a Company in Indonesia

According to Ronald Coase, the relation built within a Company represents the complex contractual relation between peoples involved with the Company and the Company itself [21]. As a legal entity, a Company is only considered as artificial person, which cannot do any action by its own [22]. Therefore, there are several organs created to functionate the Company, consists of GMOS, Director, and Board of Commissioners. Under 1995 Company Law, GMOS is deemed as the highest and mightiest organ who calls the shot for the Company and can order Director also Board of Commissioners around.

On the other hand, under 2007 Company Law, GMOS's position is equal as Director and Board of Commissioners [23]. GMOS that consists of shareholders of the Company is deemed as ultimate owner of the Company, but under 2007 Company Law shareholders does not have any direct authority to control and command Director and Board of Commissioners. The one who possess power is GMOS as a forum, but still, GMOS cannot intervene the managerial work conducted by Director [24].

As for Director, all Company is run by at least 1 (one) Director who is capable to represent the Company inside or outside courtroom. Director is the only organ given the authorization to act for and on behalf of the Company [25] under surveillance of Board of Commissioners. Legal relation between Director and the Company is considered as general power bestowing from the Company to the Director to act for and on behalf of the Company and perform managerial action for the Company under fiduciary duty [26]. Director must act within the boundaries and norms, such as honesty, reasonable diligence, and utmost good faith for the best interest of the Company [27]. For the third organs, it shall be Board of

Commissioners whose main responsibilities are to supervise the Director's work and

provide advice for the Director [28]. Board of Commissioners also conduct supervisory work for the policies issued by Director to ensure that the Director's actions will not bring any harm either for the Company or for the shareholders of the Company [29]. Boards of Commissioners' are responsible to ensure that all actions taken are in accordance to the Company's business objectives and goals [30].

Notary's Role in Drawing Up Notarial Deed Concerning Transfer of Assets of The Company

Notary's role in drawing up Notarial deed concerning transfer of assets of the Company is very important and fundamental, as Notary will draw up authentic deed in the form of the parties' deed (*partij akten*) which shall possess perfect evidential value [31]. Notary's role will be even more important when the assets to be transferred are in the form of immovable assets, which the transfer of such assets must be stipulated into Notarial deed [32]. Due to importance of Notary's role, then Notary must carry out the work in accordance to prudential principle in order to avoid any hassle in the future time and to avoid misconduct which could lead to serious legal consequences for the parties involved.

Implementation of Notarial Deed Concerning Transfer of Assets of the Company without Approval from Gmos

Pt. Mjs

PT. MJS is a Company established pursuant and duly abide to the prevailing law regulations in Republic of Indonesia by Mr. E and Mr. D, based on Article of Association number 29 dated 12 July 1996 drawn up before Ria Adji Hendarto, Bachelor of Law, previously Notary in Jakarta (hereinafter shall be referred to as "PT. MJS' AoA") which has not been endorsed by Minister of Justice (as how it was called at that moment) of Republic of Indonesia at that moment therefore caused PT. MJS to not possess the status of legal entity yet. Mr. E is the rightful holder of 75 (seventy-five) shares with total amount of Rp.75.000.000, - (seventy-five million Rupiah) in PT. MJS and served as the Director of PT. MJS. Mr. D is also the rightful holder of 75 (seventy-five) shares with total amount of Rp.75.000.000, - (seventy-five million Rupiah) in PT. MJS and served as the Commissioner of PT. MJS.

However, on October 2005, Mr. D decided to leave PT. MJS (both as shareholders and Commissioner) which was followed by release and discharge of liabilities (*acquitt et de charge*) and stipulated into Deed concerning Amendment of PT. MJS' AoA number 13 dated 10 October 2005 drawn up before the late Usman Koloay, Bachelor of Law, previously Notary in Batam. The shareholding structure of PT. MJS changed due to Mr. D's departure. Mr. E remain as the rightful holder of 75 (seventy-five) shares with total amount of Rp.75.000.000,- (seventy-five million Rupiah) in PT.

MJS and served as the President Director of PT. MJS. Mdm. S entered PT. MJS as the rightful holder of 60 (sixty) shares with total amount of Rp.60.000.000,- (sixty million Rupiah) in PT. MJS and served as the Director of PT. MJS. Mdm. BC entered PT. MJS as the rightful holder of 15 (fifteen) shares with total amount of Rp.15.000.000,- (fifteen million Rupiah) in PT. MJS and served as the Commissioner of PT. MJS. Mr. E as the Director of PT. MJS decided to give compensation to Mr. D even though Mr. D has been given release and discharge of liabilities from PT.

MJS, meaning that there is a clean and break settlement between Mr. D and PT. MJS. The compensations are in the form of motor vehicle, cash, and promise of 50% (fifty percent) commission when a plot of land has been sold, which all the aforementioned assets belong to PT. MJS. All of the compensation items have been given to Mr. D, except the 50% (fifty percent) commission when a plot of land has been sold because the said land has not been sold up to the date.

The compensation given by Mr. E in his capacity as Director of PT. MJS to Mr. D is stipulated into Deed concerning Pledge of Payment number 14 dated 10 October 2005 drawn up before the late Usman Koloay, Bachelor of Law, previously and Notary in Batam ("Deed of Pledge of Payment") without prior mandatory approval from GMOS of PT. MJS. At that moment, PT. MJS has not possessed the status of legal entity yet, because PT. MJS obtained the status of legal entity on 28 October 2005 based on Decree of Minister of Law and Human Rights of Republic of Indonesia number C-29873 HT.01.01.TH.2005 dated 28 October 2005. Article 11 section (4) and section (5) of PT.

MJS' AoA along with its amendment at that moment regulated that all actions taken by the Director in order to transfer PT. MJS' assets must obtain approval from GMOS of PT. MJS, regardless on the amount and percentage of assets to be transferred. At least, $\frac{3}{4}$ or 75% (seventy-five percent) approval from GMOS is required in order to allow Director to legally transfer PT. MJS' assets. In regulatory perspective, Mr. E's action in Deed of Pledge of Payment should be conducted by obtaining approval from Mdm. S and Mdm. BC as the remaining shareholders of PT. MJS through GMOS procedure. Mr. E's action in Deed of Pledge of Payment will be binding to PT. MJS if PT.

MJS decided to accept and undertake Deed of Pledge of Payment. However, through the year and several amendment of PT. MJS' AoA, on 28 November 2017 PT. MJS held an Extraordinary General Meeting of Shareholders (hereinafter shall be referred to as "EGMOS") and stipulated into Deed concerning Minutes of PT. MJS' EGMOS number 12 dated 28 November 2017 drawn up before Gerard Ikhsan Iskandar, Bachelor of Law, Notary in Batam (hereinafter shall be referred to as "Minutes of EGMOS") with agenda of Mr. E's request to obtain Mdm. S and Mdm. BC's approval on Deed of Pledge of Payment so PT. MJS will be liable for Mr. E's action under Deed of Pledge of Payment, which resulted in Mdm. S and Mdm. BC's rejection of Mr. E's action under Deed of Pledge of Payment (if combined, Mdm. S and Mdm. BC hold 50% [fifty percent] of PT. MJS' shares). Therefore, Minutes of EGMOS marks the remaining shareholders of PT. MJS' disapproval of Mr. E's action under Deed of Pledge of Payment.

The Case

Mdm. S and Mdm. BC filed for lawsuit concerning tortious action against Mr. E, Mr. D, and Notary who held the Protocol for the late Usman Koloay, Bachelor of Law who drawn up the Deed of Pledge of Payment to District Court of Batam which was registered under case number 303/Pdt.G/2017/PN Btm. The reason why Mdm. S and Mdm. BC went to such extent is due to the fact that when Deed of Pledge of Payment was signed between Mr. E and Mr. D, both Mdm. S and Mdm. BC has become the shareholders of PT. MJS. Mr. E is acting on behalf of PT. MJS to transfer PT. MJS' assets without approval from the remaining shareholders of PT. MJS,

and in the end Mr. E requested that such action under Deed of Pledge of Payment to bind PT. MJS, which is ridiculous and illogical for Mdm. S and Mdm. BC. Furthermore, Mdm. S and Mdm. BC have rejected such Deed of Pledge of Payment as how mentioned under Minutes of EGMOS, meaning that even though Mr. E is required to fulfill the promise made to Mr. D, then Mr. E shall fulfill it individually without involving PT. MJS. Mr. E on the other hand stated due to the fact that Deed of Pledge of Payment is made under Notarial deed, then it is impossible to consider Mr. E's action as tortious action. Mr. E also stated that he had received preliminary advice from the late Usman Koloay, Bachelor of Law prior to signing Deed of Pledge of Payment therefore means that everything is done in accordance to the prevailing law regulations.

For Mr. D, he argued that he shall be considered as third party with utmost good faith recognized under Article 102 section (4) of 2007 Company Law, thus he will be protected from any charge and claim made by Mdm. S and Mdm. BC. Mr. D also argued that he will remain his right to get the compensation which he is yet to get, the 50% (fifty percent) commission when a plot of land has been sold. He also urged PT. MJS to sell the land in the shortest manner of time so he can get part of his compensation as promised by Mr. E. On 03 May 2018, Panel of Judges in District Court of Batam decided to reject Mdm. S and Mdm. BC's lawsuit against Mr. E, Mr. D, and Notary who held the Protocol for the late Usman Koloay, Bachelor of Law who drawn up the Deed of Pledge of Payment. Mdm. S and Mdm. BC filed for appeal to High Court of Pekanbaru which was registered under case number 130/PDT/2018/PT PBR. On 05 October 2018, Panel of Judges in High Court of Pekanbaru decided to grant Mdm. S and Mdm. BC's lawsuit partially which include to declare that both Mr. E and Mr. D have conducted tortious action, and to void Deed of Pledge of Payment by considerations that such Deed of Pledge of Payment was signed in bad faith by Mr. E and Mr. D. Panel of Judges in High Court of Pekanbaru ignored the conditions set forth in Article 102 section (4) of 2007 Company Law for the sake of Mdm. S and Mdm. BC as shareholders in PT. MJS whose interest must also be protected from any intentional corporate misconduct. Due to the voidance of such Deed of Pledge of Payment,

the Mr. E and Mr. D jointly must return what have been given by Mr. E to Mr. D under Deed of Pledge of Payment, such as motor vehicle and cash. Mr. D filed for cassation to Supreme Court of Republic of Indonesia which was registered under case number 1515 K/Pdt/2019. On 22 July 2019, Panel of Judges in Supreme Court of Republic of Indonesia decided to reject the cassation legal effort filed by Mr. D, thus to reinforce appeal decision number 130/PDT/2018/PT PBR, which now possess permanent legal binding force (*in kracht van gewijsde*).

Factors Deemed as Hindrance and Solution for Notarial Deed Concerning Transfer of Assets of the Company Conducted By Director without Approval from GMOS

Gap for Director to Conduct Transfer of Assets of the Company without Approval from GMOS

Director as the entity who is given the authority to manage the Company should act with the utmost good faith and prudentially, in accordance to the prevailing law regulations in Republic of Indonesia and the Company's article of association.¹ At least, Director must act within the corridor of these 5 (five) principles, such as to act *intra vires* and within their respective authority, exercise duty of skill, care, and loyalty, acting for corporate opportunity, and acting with bearing in mind of the best interest of the Company.²

In relation to the Director's authority to manage the Company, prior to performing transfer of assets of the Company to any third party, then Director must obtain approval from shareholders through GMOS procedure, therefore as regulated under Article 102 section (1) of 2007 Company Law. However, Article 102 section (4) of 2007 Company Law seems to be wild card to be used by Director in the event that the Director intentionally does not seek for approval from shareholders through GMOS procedure. This will result in damage to the Company and its shareholders for

irresponsible actions conducted by the Director due to the fact that as long as the third party in legal relation entered into with the Director is deemed to have good faith, then such legal relation shall bind the Company. Article 102 section (4) of 2007 Company Law only protect the interest of third party in legal relation entered into with the Director as long as the third party is deemed to have good faith. The problem is good faith itself is very subjective, hard to be proven, and abstract. This clause seems to ignore the interest of shareholders and the Company itself, therefore this clause is deemed unable to provide legal certainty for implication of transfer of assets of the Company without approval from GMOS.

Other than unable to provide legal certainty, Article 102 section (4) of 2007 Company Law might just become imbalance and improper thus might just cause injustice for shareholders and the Company itself. It is illogical why shareholders and the Company must be held responsible for something conducted behind the back by the Director and has never been approved through GMOS.

Firming the Regulation under 2007 Company Law

Conditions set forth in Article 102 section (1) of 2007 Company Law and Article 102 section (4) of 2007 Company Law seems to contradict with each other. It is unreasonable why 2007 Company Law has such contradictive clause which may cause legal issue and misinterpretation. The most efficient effort to eradicate such contradiction is either by repealing Article 102 section (4) of 2007 Company Law or by amending Article 102 section (4) of 2007 Company Law so that the redaction will change. The amendment of Article 102 section (4) of 2007 Company Law shall be that Director will be held responsible personally by third party in the event that the Director entered into agreement with third party concerning transfer of assets of the Company without approval from GMOS.

Enforcing the Prudential Principle of the Notary

Notary as a public official deemed to possess broad legal knowledge shall act in accordance to the prevailing law regulations in Republic of Indonesia. Notary must enforce the prudential principle while on duty, in order to avoid any issue in the future. In case that Notary in handling transfer of assets of a

¹ Shinta Ikayani Kusumawardani, *Pengaturan Kewenangan, dan Tanggung Jawab Direksi Dalam Perseroan Terbatas (Studi Perbandingan Indonesia dan Australia)*, Jurnal Magister Hukum Udayana, No. 01, Vol 02, 2013, pg. 4.

² Abdul Rokhim, *Batas-Batas Wewenang Direksi dalam Mengurus Perseroan*, Jurnal Ilmiah Dinamika Hukum, No. 12, Vol 6, 2000, pg. 72.

Company, then the Notary must review all the documents and ensure that the required approval has been obtained by Director. Notary must also inform the parties appearing before him/her about the legal implication in the event there is any misconduct within the process, that is what called professionalism.

Conclusion

Notary must act with the utmost good faith by enforcing the prudential principle, especially concerning transfer of assets of a Company, Notary must ensure all prerequisites and approvals deemed necessary have been obtained. If not, then the legal consequences may be dire in the future. On the other hand, from the regulatory perspective, Article 102 section (4) of 2007 Company Law must be repealed or at least get amended so that Director will be held responsible personally by third party in the event that the Director entered into agreement with third party concerning transfer of assets of the Company without approval from GMOS. This is to protect both the Company (along with the shareholders) and the third party's interest from Director's intentional misconduct.

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