

Notary's Liability for the Cancellation of the Deed of Establishment of A Foreign Investment Limited Liability Company due to Violation of the Notary Profession

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Abstract

The need for notary services, especially in terms of the preparation of deeds of establishment of limited liability companies is increasing, along with the rapid development of the business world, which is also supported by the development of information technology. The establishment of a limited liability company according to Article 7 paragraph (1) and paragraph (2) of the Limited Liability Company Law, is based on an agreement between 2 (two) or more persons, by obliging each founder to take a share and stated before a Notary in a deed of establishment in Indonesian language containing the company's articles of association. In addition to requiring a deed of establishment, the establishment of a limited liability company also requires capital. The capital can come from domestic or foreign/foreign sources. Therefore, the type of limited liability company based on the type of capital is divided into 2 (two), namely Domestic Capital Limited Liability Company (PMDN) and Foreign Capital Limited Liability Company (PMA). The type of research in this legal research is normative or doctrinal legal research conducted by examining secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In practice, problems sometimes arise, especially in Limited Liability Foreign Capital Companies (PMA), as in the case decided by the Denpasar District Court Decision Number: 485/Pdt.G/2015/PN.Dps. The Panel of Judges of the Denpasar District Court decided that Deed No. 52 concerning the Establishment of PT Mexicano Asia made before Notary I Putu Chandra, S.H., was declared null and void.

Keywords: deed cancellation, notary; limited liability company establishment; foreign investment.

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Introduction

Article 15 paragraph (1) of the Notary Office Law authorizes notaries to make authentic deeds relating to acts, agreements, and stipulations based on laws and regulations and/or based on the provisions desired by the parties concerned. Therefore, the authority of a notary is not only to make authentic deeds relating to legal acts that are only based on the request of the parties, such as lease agreements and *cessie*.

The authority of a notary also includes legal acts stipulated in laws and regulations, which are the establishment of a limited liability company, which is regulated in Law Number 40 of 2007 concerning Limited Liability Companies, and the establishment of a foundation, which is regulated in Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning foundations (Budiono, 2014).

The need for notarial services, particularly in terms of the preparation of deeds of establishment of Limited Liability Companies, is increasing along with the rapid development of the business world which is also supported by the development of information technology. The establishment of a Limited Liability Company according to Article 7 paragraph (1) and paragraph (2) of the Limited Liability Company Law is based on an agreement between 2 (two) or more persons, by obliging each founder to take shares and is stated before a notary in a deed of

establishment in Indonesian language containing the company's articles of association.

In addition to requiring a deed of establishment, the establishment of a company also requires capital. The capital comes from domestic or foreign/foreign sources. Therefore, the type of limited liability company based on the type of capital is divided into 2 (two): Domestic Capital Limited Liability Company (PMDN) and Foreign Capital Limited Liability Company (PMA). Domestic Capital Limited Liability Company (PMDN) is a company that in conducting business in the territory of the Republic of Indonesia, and is carried out by domestic investors using domestic capital. Meanwhile, a Foreign Capital Limited Liability Company (PMA) is a company that in conducting business in the territory of the Republic of Indonesia is carried out by foreign investors, either using foreign capital entirely or in partnership with domestic investors. However, in practice, sometimes, problems arise, especially in Foreign Capital Limited Liability Companies (PMA), as in the case that has been decided by the Denpasar District Court Decision Number: 485/Pdt.G/2015/PN.Dps.

The case began when Adam James (Plaintiff), Kieron Samuel (Defendant I), Peter John (Co-Defendant II), and Sean Hamish (Co-Defendant III), agreed to cooperate in building a restaurant business in Bali, with the concept of a Mexican Restaurant and/or Latin American Restaurant. They authorized Peter John (Co-Defendant II) to represent Adam James (Plaintiff), Kieron Samuel (Defendant I), Sean Hamish (Co-Defendant III), and Peter John (Co-Defendant II) to search for land and take legal action by signing a lease agreement for the land as a place to build a business. After they obtained the land as a place of business, a lease agreement was made for 670 m² of land and 415 m² of building on it with a lease period of 5 (five) years and a rental price of Rp. 1,750,000,000, - (one billion seven hundred fifty million rupiah), as stated in the deed of lease agreement No. 07 dated November 16, 2012, made before Notary Erma Novita, SH. M. Kn.

On 11 December 2012, a Deed of Establishment of Limited Liability Company No. 52 (with attachments) of Mexicano Asia was made before Notary I Putu Chandra (Co-Defendant I) with the organizational structure of the company. Adam James (Plaintiff) was appointed as President Director of Mexicano Asia, Kieron Samuel (Co-Defendant I) was appointed as Commissioner and Kukuh Wijayanti (Co-Defendant II) was appointed as Director of Mexicano Asia. However, in reality, Adam James (Plaintiff) never knew about the establishment of the legal entity and was never informed of his position in the company. He also never signed an agreement to be appointed as the President Director of the company. Unbeknownst to Adam James (Plaintiff), on December 6, 2012, a Power of Attorney was made with the forged signature of Adam James (Plaintiff) and was unilaterally signed by Kieron Samuel (Defendant I) and Kukuh Wijayanti (Defendant II) which authorized Mila Aryani, Personal Assistant to Peter John (Co-Defendant II) to sign the Deed of Establishment of a Limited Liability Company (PT) named PT Mexicano Asia (Defendant III). For this reason, Adam James (Plaintiff) reported the alleged criminal act of forging signatures and/or using forged documents committed by Kieron Samuel (Defendant I), Kukuh Wijayanti (Defendant II), Peter John (Co-Defendant II), and Mila Aryani, to the Bali Regional Police.

Notary I Putu Chandra, S.H. (Co-Defendant I) also contributed to the adverse clause in one of the articles in the deed of establishment of Limited Liability Company No. 52 (with attachments) which states that: *“(2) Only Indonesian citizens or Indonesian legal entities may own and exercise rights over shares.”*

This clause indicates that the status of the money deposited by Adam James (Plaintiff), of AUD 220,000 (two hundred and twenty thousand Australian Dollars) for the capital of PT Mexicano Asia into the personal account of Peter John (Co-Defendant II) is unclear and at risk of being lost. With this clause, Adam James (Plaintiff) who is a foreign national (Australian citizen), legally, never owned the shares of PT Mexicano Asia, and only Kuku Wijayanti (Defendant II) owned the shares of the company. Thus, PT Mexicano Asia (Defendant III) cannot be categorized as a Foreign Investment Limited Liability Company (PT-PMA) which resulted in a loss to Adam James (Plaintiff). These actions can be suspected to be the plan of Peter John (Co-Defendant II) and Kuku Wijayanti (Defendant II) to commit fraud to own all of the assets of PT Mexicano Asia unlawfully as set out in Article 1328 of the Civil Code.

The Judges of the Denpasar District Court found that Kieron Samuel (Defendant I), Kuku Wijayanti (Defendant II), Notary I Putu Chandra (Co-Defendant I), Peter John (Co-Defendant II), and Sean Hamish (Co-Defendant III) had committed a tort. The panel of judges ordered them to pay compensation in cash to Adam James (Plaintiff) in terms of material losses of AUD 253,000 (two hundred fifty-three thousand Australian Dollars) plus Rp. 214,526,550, - (two hundred fourteen million five hundred twenty-six thousand five hundred fifty rupiahs) as well as immaterial losses of USD 375,000, - (three hundred seventy-five thousand United States dollars) since this decision is legally binding. Concerning Deed No. 52 on the Establishment of PT Mexicano Asia made before Notary I Putu Chandra, S.H., (Co-Defendant I), it was declared null and void. The Denpasar District Court Decision Number: 485/Pdt.G/2015/PN.Dps has been upheld by the Denpasar High Court Decision Number: 115/Pdt/2016/PT.Dps, Supreme Court Cassation Decision Number: 1068/K/Pdt/2017, and Supreme Court Judicial Review Decision Number: 181/PK/Pdt/2019.

Article 7 paragraph (1) of the Company Law stipulates that the establishment of a company must be done by at least 2 (two) or more persons, with a notarial deed in Indonesian. Specifically for Foreign Investment Limited Liability Companies, Article 1 paragraph 3 of Law Number 25 of 2007 on Capital Investment stipulates that foreign investment activities are carried out by foreign investors, either fully utilizing foreign capital or in partnership with domestic investors. Meanwhile, in the above case, the clause in Article 5 of the deed of establishment of Limited Liability Company No. 52 (with attachments) made before Notary I Putu Chandra states that: “(2) Only Indonesian citizens or Indonesian legal entities may own and exercise rights over shares.”

This clause caused a loss to Adam James (Plaintiff) who is a foreigner, because even though he had deposited a capital of AUD 220,000 (two hundred and twenty thousand Australian Dollars) into the personal account of Peter John (Co-Defendant II), he could not become a shareholder and founder of PT Mexicano Asia. Due to this clause, Adam James' capital deposit status was at risk of being lost, and the founder and shareholder was only one person: Kuku Wijayanti (Defendant II), who is an Indonesian citizen. Thus, the clause violated Article 7 paragraph (1) of the Company Law, which stipulates that in the case of the establishment of a limited liability company, the founders as well as the shareholders must consist of at least 2 (persons), not only 1 (one) person.

The clause also violates Article 1 Point 3 of the PMA Law, which stipulates that the investors, or in this case the shareholders, must be foreigners whose capital comes from all foreign capital or a joint venture between foreigners and Indonesian

citizens. If the shareholder is only an Indonesian citizen, as happened in the case, PT Mexicano Asia cannot be categorized as a foreign investment limited liability company (PT PMA).

A notary is a public official, who based on Article 15 paragraph (1) and paragraph (2) of UUJN, is authorized to make authentic deeds under statutory regulations and provide legal counseling regarding the making of deeds to the relevant service recipients. In exercising their authority, notaries are obliged to act trustworthy, honest, careful, independent, impartial, and safeguard the interests of parties related to their legal actions as specified in Article 16 paragraph (1) letter a and the Notary Oath of Office in Article 4 paragraph (2) of the UUJN. However, what was done by Notary I Putu Chandra, who allowed the signature forgery of Adam James (Plaintiff) by Mila Aryani as the personal assistant of Peter John (Co-Defendant II) in the power of attorney and deed of establishment No. 52, as well as inserting clauses that have harmed Adam James (Plaintiff), is contrary to Article 15 paragraphs (1) and (2), Article 16 paragraph (1) letter a and the Oath of Office of Notary in Article 4 paragraph (2) of the UUJN.

Based on the description of the case above, the researcher is interested in conducting a research entitled Notary's Liability for the Cancellation of the Deed of Establishment of a Foreign Investment Limited Liability Company Due to Violation of the Notary Profession.

Research Problems

Based on the above background, the researcher formulated the following problems:

1. What is the procedure for establishing a Foreign Investment Limited Liability Company?
2. How is the liability of a notary towards the cancellation of the deed of establishment of a Foreign Investment Limited Liability Company due to violation of the notary profession?

Research Method

This research is normative or doctrinal legal research. Normative legal research, another name for doctrinal legal research, is also known as library research or document studies because it is conducted or aimed only at written regulations or other legal materials (Soekanto S. M., 2004). The research was conducted by examining secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

Primary legal materials are legal materials that are authoritative, which means legal materials that have authority (Mahmud, 2011). Primary legal materials used in this research include laws and regulations, official records or minutes of legislation making, and judge decisions (Mahmud, 2011), which include: Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 25 of 2007 concerning Capital Investment, Government Regulation Number 24 of 2018 concerning Electronically Integrated Business License Services, Denpasar District Court Decision Number: 485/Pdt.G/2015/PN.Dps, Denpasar High Court Decision Number: 115/Pdt/2016/PT.Dps, Supreme Court Cassation Decision Number: 1068/K/Pdt/2017, and Supreme Court Judicial Review Decision Number: 181/PK/Pdt/2019.

Secondary legal materials include all publications related to law that are not included in official documents (Mahmud, 2011). Legal publications used in this research include textbooks and scientific journals.

Discussion

1. Procedure for Establishing a Foreign Investment Limited Liability Company

In principle, the procedure for establishing a Foreign Investment Limited Liability Company is almost the same as that of a limited liability company in general, considering that both are legal entities with the type of limited liability company. Article 1 paragraph 1 of the Company Law defines a Limited Liability Company as a legal entity of capital alliance established by agreement, which in conducting business activities uses authorized capital divided into shares, and fulfills the requirements under those specified in the Company Law and its implementing regulations (Pandoman, 2019).

However, in a Foreign Investment Limited Liability Company, as specified in Article 1 paragraph 3 of the PMA Law, the founder or investor is a foreign citizen. The capital also does not only come from domestic capital but can come from all foreign capital or a joint venture between a foreign citizen and an Indonesian citizen. To obtain status as a legal entity, both limited liability companies in general and limited liability companies with foreign investment are required to fulfill the requirements specified in the Company Law, the deed of establishment of which has been authorized by the Minister of Law and Human Rights. The deed of establishment of this limited liability company as specified in Article 7 paragraph (1) of the Company Law must be made in an authentic deed in Indonesian language before a notary.

Therefore, it can be understood that the absolute requirement in the deed of establishment of this limited liability company is that it must be made in a notarial deed. In addition, because this is included in the form of an agreement, as specified in Article 7 paragraph (1) of the Company Law, the establishment of a limited liability company can only be carried out by two or more persons, and the establishment agreement must meet the requirements based on Article 1320 of the Civil Code, which includes the following.

1. Agreement to bind themselves;
2. Capacity to create an obligation;
3. The obligation must be about a certain matter;
4. The obligation must be about a matter that is not contrary to law (Budiarto, 2009).

If all these conditions are met, a contractual relationship will be formed between the founders/shareholders, considering that after the signing of the deed, the company does not yet have the status of a legal entity. Therefore, the founders or shareholders must be personally liable for all legal actions they take. In this case, their personal assets can also be used to compensate third parties (Budiarto, 2009).

Concerning the case, initially, Adam James as the Plaintiff, Kieron Samuel (Defendant I), Peter John (Co-Defendant II), and Sean Hamish (Co-Defendant III), agreed to work together to build a Mexican Restaurant and/or a Latin American Restaurant. However, in reality, without the knowledge of Adam James (Plaintiff), a power of attorney was made in which the signature of Adam James (Plaintiff) was forged and signed unilaterally by Kieron Samuel (Defendant I) and Kukuh Wijayanti (Defendant II). The Power of Attorney authorized Mila Aryani, Personal Assistant to

Peter John (Defendant II) to sign the Deed of Establishment of a Limited Liability Company (PT) named PT Mexicano Asia (Defendant III). Then, an adverse clause appeared in Article 5 of the Deed of Establishment of Limited Liability Company No. 52 (with attachments) made before Notary I Putu Chandra, which stated that: “(2) *Only Indonesian citizens or Indonesian legal entities may own and exercise rights over shares.*”

What had been done by Kieron Samuel (Defendant I) and Kukuh Wijayanti (Defendant II) violated Article 7 paragraph (1) of the Company Law and Article 1 paragraph 3 of the Investment Law. That was because they had made a deed of establishment before Notary I Putu Chandra which contained a clause that made Kukuh Wijayanti (Defendant II) the only shareholder. This was not in line with the foreign investment limited liability company establishment agreement, regarding the ownership of 2 (persons) or more, with Adam James (Plaintiff), Peter John (Co-Defendant II), and Sean Hamish (Co-Defendant III) as the shareholders, as previously agreed. As a result of what Kieron Samuel (Defendant I) and Kukuh Wijayanti (Defendant II) did, the status of the limited liability company established cannot be categorized as a foreign investment limited liability company, because the shareholders are only Indonesian citizens, without any foreign nationals involved.

The deed of establishment of a Limited Liability Company, as specified in Article 8 paragraphs (1) and (2) of the Company Law, must contain the articles of association and other information including:

- a. the full names, place and date of birth, occupation, residence and nationality of the founders;
- b. the composition, full name, place and date of birth, occupation, residence and citizenship of the first appointed directors and commissioners;
- c. the names of the shareholders who have subscribed for shares, details of the number of shares, and or the nominal value or pledged value of the shares that have been subscribed and paid up at the time of incorporation (Budiarto, 2009).

As mentioned above, in a Foreign Investment Limited Liability Company, the acquisition of capital can come from all foreign capital or a joint venture between a foreign national and an Indonesian national. If the capital acquisition comes from a joint venture between a foreign and an Indonesian citizen, in addition to having to contain articles of association containing clauses under Article 8 paragraphs (1) and (2) of the Company Law, the deed of establishment of the Foreign Investment Limited Liability Company must also contain articles of association containing clauses contained in the joint venture agreement between the parties. These clauses include:

- a. capital structure and shareholding composition;
- b. the membership composition of the Board of directors and Board of commissioners;
- c. management or corporate governance;
- d. decision-making mechanism by the board of directors or gms related to certain matters; and
- e. dispute settlement in the event of a dispute between the parties (Dwi, 2020).

Thus, the joint venture agreement is made by the parties in English or Bilingual before the deed of establishment of the Foreign Investment Limited Liability Company is made (Dwi, 2020).

Meanwhile, according to Notary Dyah Maryulina Budi Mumpuni, S.H., M.Kn. in Yogyakarta, other requirements must be met before applying for permission and authorization from the Minister of Law and Human Rights, which are as follows.

1. Valid ID card of shareholders who are Indonesian citizens;
2. Valid passport of shareholders who are foreign citizens;
3. Valid work visa of shareholders who are foreigners;
4. Completeness of documents to invest from their home country, this applies to foreign investors;
5. The chosen line of business;
6. The amount of capital;
7. Place of domicile of the company;
8. Benefits of Foreign Investment for the surrounding community;
9. Ownership of authorized capital in the form of a percentage of Presidential Regulation Number 44 of 2016;
10. Principle permit with the investor himself or from the company;
11. Tentative checking of the name of the limited liability company within 60 (sixty) days. During this period, a decision from Capital Investment Coordinating Board (BKPM) must be obtained;
12. Non-tax revenue (PNPB) for the name must be paid to BKPM with the criteria of at least 3 (three) syllables in English;
13. Deed of establishment of the company which includes registration of foreign investment company through One-Stop Integrated Service (PTSP) at BKPM, Taxpayer Identification Number (NPWP), legalization of business entity;
14. Environmental permits including Nuisance Law permits, environmental impact assessment (AMDAL) recommendations, underground water withdrawal/utilization permits;
15. Company license includes Business Place Permit (SITU), Company Registered Mark issued by the Regional Government through regional PTSP by the Regional Head;
16. Especially for hotels, there must be a tourism license that is under the field of business (Yusrizal, 2018).

After requirements have been fulfilled, the notary can continue the process of establishing a foreign investment limited liability company by submitting the ratification of the limited liability company to the Minister of Law and Human Rights. Within 30 (thirty) days, the foreign investment limited liability company must be operational. If previously, the licensing application had to go through BKPM, now with Government Regulation No. 24/2018 that introduces an electronically integrated business licensing system or Online Single Submission (OSS), licensing does not need to be done manually through BKPM anymore but can be done through the OSS. OSS is a business licensing system issued by the OSS institution for and on behalf of the Minister, head of institution, Governor, or Regent/Mayor to business actors through an integrated electronic system. The types of licenses that can be registered through OSS include:

- a. business license (whether individual, business entity, or legal entity);
- b. committed and uncommitted (location permit, water location permit, environmental permit, and IMB);
- c. Business Identification Number (NIB);
- d. Taxpayer Identification Number (NPWP);
- e. Company Registration Certificate (TDP); and
- f. Plan for the Use of Foreign Workers (RPTKA) (Yusrizal, 2018).

If the deed has been approved by the Minister of Law and Human Rights, the limited liability company has the status of a legal entity. Thus, the founders/shareholders are only liable to the extent of the nominal value of the shares

they have taken, not to their personal assets as in a company that has not yet had the status of a legal entity. (Budiarto, 2009).

However, according to Article 3 paragraph (2) of the Company Law, the shareholders may still be personally liable even though the deed of establishment of the limited liability company has been approved by the Minister of Law and Human Rights. This happens when:

- a. the company has not or does not fulfill the requirements as a legal entity;
- b. the shareholder concerned, either directly or indirectly, has the bad intention of utilizing the company only for his personal interests;
- c. the shareholder participates in an unlawful act committed by the company;
- d. the shareholder, either directly or indirectly, unlawfully uses the company's assets. As a result, the company's assets are not sufficient to pay off the company's debts. (Budiarto, 2009).

In the above case, the judges of the Denpasar District Court found that Kieron Samuel (Defendant I), Kukuh Wijayanti (Defendant II), Notary I Putu Chandra (Co-Defendant I), Peter John (Co-Defendant II), and Sean Hamish (Co-Defendant III) had committed an unlawful act and ordered them to pay compensation in cash to Adam James (Plaintiff), in terms of material loss of AUD 253,000 (two hundred fifty-three thousand Australian Dollars) plus Rp. 214,526,550, - (two hundred fourteen million five hundred twenty-six thousand five hundred fifty rupiahs) as well as immaterial loss of USD 375,000, - (three hundred seventy-five thousand United States dollars) since the decision is legally binding.

Even though PT Mexicano Asia has been legalized as a legal entity by the Minister of Law and Human Rights, they fulfilled the element of exclusion of limitation of shareholders' liability under Article 3 paragraph (2) letter c of the Company Law. They were proven to have committed illegal acts. Thus, the researcher agrees with the Panel of Judges of the Denpasar District Court that they should be held liable to pay compensation personally, not on behalf of PT Mexicano Asia.

2. Notary Responsibility for the Cancellation of the Deed of Establishment of a Foreign Investment Limited Liability Company Caused by Notary's Position Violation

According to Article 1 Point 1 of the Law, a notary is defined as a public official who has the authority to make authentic deeds and other authorities, as referred to in the Notary Position Law and other laws and regulations. This means that notaries have responsibilities for every deed they make, which responsibilities are only determined based on the Notary Position Law and other laws and regulations.

As a consequence, if in the exercise of his/her authority, a notary commits a violation of the Notarial Position Law and other laws and regulations, or commits an unlawful act that results in a loss, he/she can be held liable to compensate the party concerned.

Regulations related to the authority of the Notary are reaffirmed in Article 15 paragraph (1) and paragraph (2) of the UUJN, which are divided into general authority and special authority. The general authority, as stipulated in Article 15 paragraph (1), is to make authentic deeds relating to deeds, agreements, and stipulations required by laws and regulations and/or desired by the parties concerned, to ensure the certainty of the date of making deeds, to keep deeds, to provide grosse, copies, and quotations of deeds, all insofar as the making of such

deeds is not assigned or excluded to other officials or other persons stipulated by law (Sulhan I. L., 2022).

The specific authority, as set out in Article 15 paragraph (2), is to perform certain legal acts, which include:

1. validating signatures and determining the certainty of the date of letters under the hand by registering in a special book;
2. recording a letter under the hand by registering it in a special book;
3. making a copy of the original underhand letter, in the form of a copy containing the description as written and described in the letter concerned;
4. attesting the suitability of the photocopy with the original letter;
5. providing legal counseling in connection with the making of the deed;
6. making deeds relating to land; or
7. making a deed of minutes of the auction (Sulhan I. L., 2022)

Based on the notaries' authority, as stipulated in Article 15 paragraph (1) of UUJN, and the evidentiary power of notarial deeds, it means that:

1. the duty of a notary is to confirm the wishes/acts of the parties to be included in an authentic deed by taking into account the rules specified in the applicable laws and regulations;
2. notarial deeds are included in authentic deeds that have perfect evidentiary power, so there is no need to add other evidence when there are parties who claim that the deed is untrue. Then, the party concerned is obliged to prove his statement based on the applicable laws and regulations (Adjie, 2014).

In addition to having the authority, notaries also have the obligation to act trustworthy, honestly, carefully, independently, impartial, and safeguard the interests of the parties involved in legal acts, as stipulated in Article 16 paragraph (1) of the UUJN. This obligation is also stipulated in the Notary Oath of Office in Article 4 paragraph (2) of the UUJN (Sulhan I. L., 2022).

Concerning the above case, Notary I Putu Chandra's actions in allowing the forgery of Adam James' signature by Mila Aryani as Personal Assistant to Peter John (Co-Defendant II) in the power of attorney and deed of establishment, as well as inserting a clause that was detrimental to Adam James (Plaintiff), violated Article 15 paragraphs (1) and (2). This was because the clause in the deed of establishment No. 52 was not under the prevailing laws and regulations, which are the Company Law and the Investment Law. Besides, the notary did not provide legal counseling in advance about the laws and regulations related to the deed to be made. Therefore, the parties, who were mostly foreign citizens, did not understand what had been written in the deed and this resulted in losses for the parties, especially in this case Adam James (Plaintiff).

Notary I Putu Chandra also violated Article 16 paragraph (1) letter a and the Notary Oath of Office in Article 4 paragraph (2) of the UUJN because he was not reliable in carrying out his duties. The notary violated the provisions in the laws and regulations as explained above, and favored Kieron Samuel (Defendant I) and Kukul Wijayanti (Defendant II), by inserting a clause in the deed of establishment No. 52 that made Kukul Wijayanti (Defendant II) the only shareholder. The notary also failed to safeguard the interests of another party, Adam James (Plaintiff), who was harmed as a result of the inclusion of the clause, so that he could not become a shareholder in the limited liability company PT Mexicano Asia, even though he had deposited AUD 220,000 (two hundred and twenty thousand Australian Dollars) for the capital of PT Mexicano Asia into Peter John (Co-Defendant II)'s personal account.

However, the limitation of the notary's responsibility, according to the construction of notarial law, is stated in the Jurisprudence of the Supreme Court Number: 702/K/Sip/1973. It states that the notary only formulates the wishes of the confronters into an authentic deed. There is no obligation for him/her to investigate materially regarding the matters conveyed by the confronters (Adjie, 2014).

It can be understood that if the deed made by or in front of a notary is disputed by the parties themselves, then the notary does not need to be involved either as a witness in a criminal case or as a defendant in a civil case, because the notary is not a party to the deed. However, a notary can become the only defendant in a civil case, when the parties/applicants whose names are listed in the deed want to deny the following matters.

1. The day, date, month, and year the parties came to the notary.
2. The time (hour) the parties came to the notary.
3. Signature in the deed minutes.
4. The parties feel that they never came to the notary.
5. The deed is not signed in the presence of a notary.
6. The deed is not read out.
7. Other reasons based on deed formalities (Adjie, 2014).

Considering that a notarial deed is an authentic deed that has perfect evidentiary power, parties who assess the untruth of the deed are required to prove otherwise, by denying the deed through a lawsuit to the District Court. (Adjie, 2014).

If the claim against the denial is proven, then the evidentiary power of the notarial deed is degraded from an authentic deed to a deed under the hand, because the judge has declared it null and void or has no legal force. Conversely, if the claim against the denial is not proven, then the notarial deed remains binding for the parties, as long as it is not canceled by the parties themselves (Adjie, 2014).

Adam James (Plaintiff) had denied his signature on the minutes of the deed of establishment No. 52 of PT Mexicano Asia. He also felt that he was never present during the making of the deed, because, without his knowledge, on December 6, 2012, a Power of Attorney was made in which the signature of Adam James (Plaintiff) was forged, and signed unilaterally by Kieron Samuel (Defendant I) and Kukuh Wijayanti (Defendant II) who authorized Mila Aryani, Personal Assistant to Peter John (Co-Defendant II) to sign the Deed of Establishment of a Limited Liability Company (PT) named PT Mexicano Asia (Defendant III). Therefore, in addition to reporting the alleged criminal act of forgery to the Bali Police, Adam James also filed a civil lawsuit to the Denpasar District Court, in which Notary I Putu Chandra became the Co-Defendant I.

According to the researcher, it is not appropriate for Notary I Putu Chandra to only be a Co-Defendant. The notary should have been a Defendant because one of the parties, Adam James (Plaintiff), had reneged on the deed of establishment No. 52. The denial was proven in court, so the deed of establishment No. 52 was declared null and void. Therefore, it can be understood that the reason why the deed of establishment No. 52 was null and void was due to the denial by Adam James (Plaintiff) of his signature in the deed minutes, as well as his statement that he never went to Notary I Putu Chandra.

The annulment of a notarial deed by the court is generally caused by the notary intentionally committing an unlawful act. The notary is declared to have committed an unlawful act if it is proven that:

- a. there is a loss;
- b. there is a causal relationship between the act of violation and the loss;

c. there is a violation caused by an error that can be accounted for (Adjie, 2014).

The researcher agrees with the Panel of Judges of the Denpasar District Court who stated that Notary I Putu Chandra had committed an unlawful act together with Kieron Samuel (Defendant I), Kukuh Wijayanti (Defendant II), Peter John (Co-Defendant II), and Sean Hamish, (Co-Defendant III) and ordered them to pay compensation in cash to Adam James (Plaintiff), namely: Material loss of AUD 253,000 (two hundred fifty-three thousand Australian Dollars) plus Rp. 214,526,550, - (two hundred fourteen million five hundred twenty-six thousand five hundred fifty rupiahs) and the immaterial loss of USD 375,000, - (three hundred seventy-five thousand United States dollars) since this decision has permanent legal force, for it was proven that:

1. There were losses suffered by Adam James (Plaintiff) in terms of material and immaterial losses.
2. There was a causal relationship between the act of violation and the loss. Notary I Putu Chandra violated Article 15 paragraphs (1) and (2), Article 16 paragraph (1) letter a and the Oath of Office of Notary in Article 4 paragraph (2) of the UUJN, and caused Adam James (Plaintiff) suffer both material and immaterial losses.
3. There was a violation caused by an error that can be accounted for. Notary I Putu Chandra has violated Article 15 paragraphs (1) and (2), Article 16 paragraph (1) letter a, and the Notary Oath of Office in Article 4 paragraph (2) of the UUJN.

Thus, there are several solutions to minimize unlawful acts committed by notaries and parties. As stated above, notaries as public officials should act carefully in confirming the wishes/deeds of the parties while taking into account the applicable laws and regulations. Notaries must provide legal counseling to the parties before the deed is made so that the parties understand things that will be included in the deed.

Conclusion

1. The procedure for establishing a Foreign Investment Limited Liability Company according to Notary Dyah Maryulina Budi Mumpuni, S.H., M.Kn., in Yogyakarta, must fulfill the following establishment requirements.
 - 1) Valid ID card (KTP) for shareholders who are Indonesian citizens;
 - 2) Valid passport for shareholders who are foreign citizens;
 - 3) Valid work visa for shareholders who are foreign citizens;
 - 4) Completeness of investment documents from the country of origin, for foreign investors;
 - 5) The chosen line of business;
 - 6) The amount of capital;
 - 7) Place of domicile of the company;
 - 8) Benefits of Foreign Investment for the surrounding community;
 - 9) Ownership of authorized capital in the form of a percentage of Presidential Regulation Number 44 of 2016;
 - 10) Principle license with the investors or from the company;
 - 11) Tentative checking of the name of the limited liability company within 60 (sixty) days. During this period, a decision from BKPM must be obtained;
 - 12) Non-tax revenue (PNPB) for the name must be paid to BKPM with the criteria of at least 3 (three) syllables in English;
 - 13) Deed of establishment of the company which includes registration of foreign investment company through One-Stop Integrated Service (PTSP)

at BKPM, Taxpayer Identification Number (NPWP), legalization of business entity;

- 14) Environmental permits including Nuisance Law permits, environmental impact assessment (AMDAL) recommendations, underground water withdrawal/utilization permits;
- 15) Company license which includes Business Place Permit (SITU), Company Registered Mark issued by the Regional Government through regional PTSP by the Regional Head. Especially for hotels, there must be a tourism license in the field of business.

After the establishment requirements have been met, the notary can continue the process of establishing a foreign investment limited liability company by submitting the validation of the limited liability company to the Minister of Law and Human Rights.

Meanwhile, the establishment procedure of PT Mexicano Asia has violated the Limited Liability Company Law and the Investment Law, resulting in its shareholders, Kieron Samuel and Kukuh Wijayanti being sued civilly by Adam James based on tort. Therefore, based on Article 3 paragraph (2) letter c of the Company Law, they must still be personally liable, even though PT Mexicano Asia has been authorized as a legal entity by the Minister of Law and Human Rights.

2. Notary liability for the cancellation of the deed of establishment of a Foreign Investment Limited Liability Company due to a breach of notarial duties arises when a notary in exercising his/her authority violates the Notary Position Law and other laws and regulations or commits an unlawful act that results in a loss. This is because based on Article 1 point 1 of the Notary Position Law, notaries have responsibility for every deed they make, which notary's responsibility is only determined based on the Notary Position Law and other laws and regulations. The liability of Notary I Putu Chandra is carried out civilly based on unlawful acts, because he is proven as follows: First, there are losses suffered by Adam James (Plaintiff), in terms of material and immaterial losses. Second, there is a causal relationship between the act of violation and the loss. Notary I Putu Chandra's actions that violated Article 15 paragraphs (1) and (2), Article 16 paragraph (1) letter a, and the Notary Oath of Office in Article 4 paragraph (2) of the UUJN have caused Adam James (Plaintiff) to suffer both material and immaterial losses. Third, there is a violation caused by an error that can be accounted for. Notary I Putu Chandra has violated Article 15 paragraphs (1) and (2), Article 16 paragraph (1) letter a, and the Notary Oath of Office in Article 4 paragraph (2) of the UUJN.

Suggestions

A notary as a public official should act carefully in confirming the wishes/actions of the parties while still paying attention to the applicable laws and regulations. In addition, the notary should provide legal counseling in advance to the parties before the deed is made, so that they can understand the things that will be included in the deed.

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