IMPLEMENTATION OF DUE DILIGENCE NOTARY BEFORE AND AFTER THE COMPANY LEGAL ENTITY PT LISTING IN THE CAPITAL MARKET

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ABSTRACT

Background. The capital market involves the public offering and selling of publicly traded firms' securities, with businesses required to complete the necessary paperwork and submit registration statements to Bapepam, supported by organizations and experts. This research aimed to describe the implementation of due diligence notary before and after the company's legal entity listing in the Capital Market.

Research Method. This legal research includes normative and empirical legal research. This research is descriptive-analytical, namely research that describes facts and data regarding the implementation of Notary due diligence and the principle of openness before and after the Limited Liability Company listing in the Capital Market.

Findings. The application of the principle of openness in the capital market is necessary for the implementation of Notary due diligence. This means that before carrying out the duties of the Notary in making deeds, the Notary verifies the company's data, which will be mentioned in the deed he will draft. The Notary's responsibilities both before and after listing include making amendments to the articles of association, minutes of the General Meeting Shareholders, deeds of agreements about public offerings, and registration with Bapepam. The Notary's role is restricted to the deed he executes; that is, to guarantee that the deed's intent, content, and purpose are correct and do not contravene applicable laws, statutes, regulations, or the code of ethics.

Conclusion. The notary has made the deed properly and correctly to the applicable provisions and code of ethics, so in this case the notary has been protected.

Keywords: Capital Market, Due Diligence, Notary.

BACKGROUND

A company that intends to buy and sell shares through the capital market [1, 2] which called go public, such as a public offering, is required to fulfill the obligation to prepare the required documents for a registration statement that must be submitted to Bapepam[3]. The preparation of these documents will be made by the issuer assisted by capital market supporting institutions, such as underwriters, accountants, legal consultants, and notaries appointed by the issuer. For example, prospectus documents are done with the help of underwriters, accountant report documents are done with the help of accountants, and legal examination documents are done with the help of legal consultants[4].

By the Decree of the Chairman of Bapepam Number Kep-37/PM/1996, dated January 17, 1996, and Regulation Number VIII.D.I. A deed made by a Notary is an authentic deed and
its authenticity continues even after his death. His signature at the time of the deed still has power. Although he can no longer convey information about events at the time of making the deed. If the notary is temporarily dismissed or dismissed from his position, the deeds still have the power as authentic deeds, but the deeds must have been made before the temporary dismissal or dismissal was imposed in connection with the Notary profession as one of the supporting professions in the capital market[5]. The notary will do all the work specified by the Law and its implementing regulations and has responsibility for the work carried out in the context of a company's public offering[6].

The legal institution known as a Notariat is an integrity of the guarantee assigned by the general power (openbaar gezag) to where and when the law requires such or is desired by the community to make written evidence that has authentic strength. The need for Notary services as an authentic deed maker in Indonesia has been recognized since the Dutch East Indies colonial rule[7]. Whereas in Anglo-Saxon countries the development of Notaries is different from that in continental countries where Notaries do not function as deed makers.

Companies that will make a public offering, the supporting institutions, and capital market professionals will help the issuer make documents and also conduct due diligence so that they know in depth about the financial condition of the last years, operations, projections of the issuer, and the prospects of the issuer. In this due diligence, the executive of the issuer must provide accurate and sufficient information to the supporting institutions and capital market professionals[8]. The results of this due diligence will be written in the issuer's documents at the time of the registration statement at Bapepam.

Before listing, a company must first go public, and as a public official as well as a supporting professional, Notary has duties and responsibilities[9]. The main task of the Notary is to provide information and suggestions. Before a deed is made by a Notary, the Notary must collect data, complete information, and study the legal consequences that will occur, then provide suggestions to prevent disputes between the parties in connection with the deed to be made. "If an Advocate defends the rights of a person when a difficulty arises, then the Notary must try to prevent the difficulty from occurring."

In the general explanation of Law No. 30/2004 on Notary Position hereinafter referred to as UUJN, the authentic deed essentially contains the formal truth by what is notified to the Notary[10]. However, the Notary must include that what is contained in the Notarial Deed has really been understood and by the will of the parties, namely by reading it so that it becomes clear the contents of the Notarial Deed, and providing access to information. Thus, the parties can determine freely to agree, or disagree with the contents of the authentic deed they signed. In this case, if the Notary has followed the making of the deed according to what is regulated in the law, he gets legal protection if something happens that causes problems in making the deed.

A company that will be listed, then the company must make preparations until the company goes public, in this case, a Notary, as a capital market support professional is needed because it is a requirement proposed by law and whose duties and responsibilities have been regulated in law. For companies that will trade in the capital market before listing, the duties and responsibilities of the Notary are at the pre-emission stage where the Notary provides due diligence to the company that will conduct a public offering, and after listing the Notary is obliged to make every deed if there is a change in the articles of association. Based on the explanation above, this research aimed to describe the implementation of due diligence notary before and after the company's legal entity listing in the Capital Market.
RESEARCH METHODS
This research uses a normative juridical approach as the main approach and an empirical approach[11]. Referring to the typology of research explained that the study of approaches to normative law to normative law conceptualizes law as norms, rules, regulations, and legislation that apply at a certain time and place as a product of a certain sovereign state power. The main problem in this research is the juridical analysis of the existence of a Notary before and after the Limited Liability Company (hereinafter abbreviated as PT) listing in the capital market. The normative approach is intended to explore and examine the laws and regulations as a basis for researching the issue which then based on this, the researcher sees empirically in the practice of its implementation.

FINDINGS
1. Implementation of Notary Due Diligence and Disclosure Principles Before and After Limited Liability Company (PT) Listing in the Capital Market
The implementation of this due diligence standard needs to be carried out by all parties involved in the process of going public a company, because the goal to be achieved from the implementation of this due diligence is so that there are no violations of the principle of openness in the capital market, this is because if a violation of the principle of openness occurs, it can cause losses to investors and it is certain that the aggrieved investors can demand accountability from those who have violated the principle of openness. The application of the principle of openness is very important in the capital market, namely to maintain public/investor confidence in the exchange to maintain an efficient market mechanism and to prevent fraud because, without the rules of this disclosure obligation, it will have adverse consequences for public investors to obtain information or material facts from the company.

Examining the opinions of the respondents above, it can be analyzed that the concept of due diligence itself refers to the various obligations imposed by the UUPM, meaning that due diligence is an absolute obligation for interested parties to verify the accuracy of the disclosure principles relating to the company's securities and is a standard for investigation and research that is part of the preparation process for the public offering to be carried out by the company[12].

Notary as a capital market supporting profession will not be separated from its duties and profession as an official who is the only authorized to make authentic deeds as stated in Article 1 of the UUJN, it is stated that Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law[13]. Whereas in Article 1 of the PJN, it is stated that Notary is a public official who is the only authorized to make authentic deeds required by a general regulation or by the interested party desiring to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, provide a grosse, copy, and citation as long as the making of the deed by a general regulation is not assigned or excluded to another official or person[14].

Notary in activities in the capital market, as a supporting profession, will be seen in the initial process when the company goes public, namely, the Notary is tasked with making deeds which are certain documents in preparation for the holding of a public offering, including the Minutes of the General Meeting of Shareholders (GMS), the agreement between the
issuer and the Securities Administration Agency, Underwriter, and other legal entities involved in the process of going public, meaning here that the Notary helps the issuer to prepare document completeness.

The notary in the issuance of shares plays a role in making the deed of articles of association or deed of amendment to the articles of association, and if desired by the parties Notary also assists the issuer in making the necessary documents, all of which are very important and fundamental matters, such as in terms of making[15, 16]: a) Sales agent agreements are agreements entered into by the underwriters to offer and sell shares to the public, b) Securities underwriting agreement is an agreement made by the issuer with the underwriter.

The securities issuance regarding the guarantee statement with the ability to offer and sell the issuer's shares to the public through a public offering and to bear and buy shares that are not sold out. An underwriting agreement is an agreement made between the underwriter and the executor of the underwriter to guarantee and purchase the issuer's shares and shares that are not sold to the public in a public offering.

In the issuance of bonds, Notary plays a role in the creation: 1) A guarantee agreement is an agreement entered into by and between the insurer, the trustee, and the issuer so that the insurer guarantees to pay to the bondholders and the trustee the amount of the issuer's debt, 2) The trustee agreement is an agreement made between the issuer, trustee, and insurer so that the trustee represents bondholders to carry out legal actions inside and outside the court.

The implementation of Notary due diligence is an obligation to fulfill the implementation of the principle of transparency, which must be adjusted to the provisions that have regulated it and also cannot be separated from what is contained in the regulations regarding professional examination standards. In carrying out its duties and role, a Notary is also needed to help the parties find solutions and find a way out to solve the problems faced by them in making agreements related to the capital market. Article 67 of the Capital Market Law states that in conducting business activities in the field of capital markets, capital market-supporting professionals are obliged to provide independent opinions or assessments[17].

2. Duties and Functions of Notary towards Limited Liability Company (PT) Listing in the Capital Market

Notary according to the Law and Notary according to the actual duties that must be carried out which are placed on him by law. A Notary Official of another research explained that it is very different from the duties imposed by the community in practice, so it is difficult to provide a complete definition of the duties and work of a Notary. If a company goes public, as a public official and at the same time as a capital market supporting profession, Notary certainly has duties and functions that are no less important than other supporting professions, meaning that each party involved in the process of going public of a company, will certainly do their work by their respective fields so that therefore it can be said that in this case, the main tasks of Notary [18] are:

a. Provide illumination or advice

Before making a deed, the Notary must first collect data, information as completely as possible and study the legal consequences that may occur, and then provide suggestions to prevent disputes between the parties in connection with the deed to be made.

b. Making authentic deeds, either:

1) Which are ordered by law, such as the Establishment of a Limited Liability Company
2) At the request of the party who wants Notary services, for example regarding the sale and purchase of shares, share purchase agreements, and others.

In terms of deed-making, there are two recognized forms of authenticity, namely:

a) *Partij akta* (deed before) means a deed made according to the information of the parties and the party concerned must sign the deed. For example, in the context of a company that will be listed, a notary will make agreements such as securities underwriting agreements, printed matter procurement agreements, share administration management agreements, and sales agent agreements that are made underhand, and the signing is legalized by a Notary.

b) *Relaas Akta* (official deed), which is a deed made because of events witnessed and heard by a Notary and signing is not required, for example, the minutes of the GMS.

**DISCUSSIONS**

**Forms of Legal Protection for Notaries in the Implementation of Due Diligence of Limited Liability Companies (PT) Listing in the Capital Market**

The implementation of activities in the capital market if there is a violation of the laws and regulations is prone to be done by the parties involved in the capital market[19]. Violations in the field of capital markets are administrative technical violations. There are three patterns of violations that commonly occur, namely: a) Offenses committed individually, b) Offenses committed in groups, and c) Violations committed directly or based on the order or influence of another party.

The perpetrators involved in violations in the field of capital markets are parties with a fairly high education. Parties that have the potential to commit violations are issuers or public companies and parties who have strategic positions in the company such as directors, commissioners, and major shareholders. Other parties that have the potential to commit violations are professionals in the capital market sector, such as accountants, legal consultants, appraisers, and notaries. This happens because they know the legal loopholes either regulated or unregulated so that when they commit violations they are not sanctioned or the sanctions are not balanced with the violations they have committed.

The law has stated that a Notary is a public official authorized to make authentic deeds regarding all acts, agreements, and provisions required by laws and regulations and/or desired by those concerned to be stated in an authentic deed. The aim is that one day the deed can be used as strong evidence in the event of a dispute between the parties or a lawsuit from another party. If this happens, then it is possible that the Notary can be summoned as a witness and possibly as a suspect, depending on how the Notary made the deed[20, 21].

Notaries make deeds after studying company documents in preparation from a closed limited liability company to a public limited liability company[22]. If the Notary does it by the code of ethics and regulations, the Notary can get out of the problem or case if there is a dispute over the deed he made. In Chapter XI of the sanction provisions, both Articles 84 and 85 of the UUJN do not regulate violations of Article 16 paragraphs. letter l and paragraph (7). Neither in the Civil Code nor the UUKN are there clear sanctions against violations of Article 16 paragraph (1) and paragraph (7) except that the deed concerned only has evidentiary power as a deed underhand as stipulated in Article 16 paragraph (8) of the UUJN. However, in the UUPM there are 3 types of sanctions applied in the event of a violation[23], namely:
1. Administrative sanctions

Administrative sanctions are sanctions imposed by Bapepam to parties deemed to have violated the laws and regulations in the capital market sector. Parties that can be sanctioned are: a) Parties licensed by Bapepam, b) Parties that obtained approval from Bapepam, c) Parties that register with Bapepam.

The types of administrative sanctions that can be imposed by Bapepam on the parties mentioned above are a) Written warning, b) Fines (obligation to pay a certain amount of money), c) Restriction of business activities, d) Suspension of business activities, e) Revocation of business license, f) Cancellation of consent, g) Cancellation of registration.

2. Civil Sanctions

Civil sanctions are mostly based on the UUPT to which issuers or public companies must also comply. UUPT and UUPM provide provisions that allow shareholders to bring a civil lawsuit against company managers or commissioners whose actions or decisions cause losses to the company.

3. Criminal Sanctions

Article 103 to Article 110 of the Capital Market Law threatens any party proven to have committed a criminal offense in the capital market sector with a prison sentence varying from one to ten years.

Based on the description above, it can be analyzed that if a Notary conducts activities in the capital market without first registering with Bapepam, a fine can be imposed by Bapepam but if in the case of making a deed, the Notary participates in falsifying the deed, criminal sanctions will be imposed. In carrying out their positions, Notaries are expected to always work professionally (mastering legal materials and laws and regulations), especially when carrying out activities in the capital market, and also mastering the procedures for making deeds so that they will be able to minimize problems with the deeds they make in the future.

CONCLUSION

Notaries are responsible for conducting due diligence in the capital market, following the Capital Market Law and other regulations. They must also comply with the legal regulation of Notary and the Notary Code of Ethics. The principle of openness is crucial in the capital market, preventing fraudulent acts and benefiting investors. Notaries’ duties include providing information and advice to issuers, making authentic deeds, and amending articles of association and minutes of the GMS. Their responsibility is limited to ensuring the deed's content, intentions, and objectives are correct and do not violate the code of ethics, laws, and regulations. Notaries are protected in deed making, as they are protected by Article 50 of the Criminal Code. However, if a Notary commits or participates in a criminal offense, they may face sanctions.

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