

NOTARY'S ROLE AND AUTHORITY IN THE BUSINESS ENTITY TRANSFER OF THE FIRM INTO LIMITED COMPANY

Maria Febriana Widya Gunawan¹, Mohamad Fajri Mekka Putra²

^{1,2}Master of Notary, Faculty of Law, University of Indonesia, Depok, Indonesia
maria.febriana@ui.ac.id, fajrimekka@gmail.com

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Abstract

This study investigates a notary's function in transferring a Business Entity. This study, which is analytical and descriptive, was conducted using a qualitative research design and is disseminated as a descriptive scientific paper. The statutory and conceptual approaches are used in this research's approach to the issue. Changing a Firm's legal structure to become a Limited Company heavily relies on a notary. The creation of authentic deeds for a variety of deeds, agreements, and stipulations, including the deed establishing a company, is permitted by a notary. Notaries have an essential role in researching the completeness of the files and the number of assets owned by the Firm that will be converted into a Limited Company. As is common knowledge, a Firm Partnership is a business alliance formed by two or more individuals using the same name.

Keywords: Transfer, Business Entity, Notary's Role

INTRODUCTION

Today's business development in Indonesia is increasingly evident in the complexity, competition, change and uncertainty. This circumstance motivates business people to start a company in Indonesia. A business entity is an enterprise that generates goods or services intending to make the most profit possible. There are many different business entities in Indonesia based on shape. Business entities that are legal entities and business entities that are not legal entities are the two main categories into which business entities fall. Business entities that are legal entities are Limited Companies (PT) and Cooperatives. The business entities that are not legal consist of Firm Partnership, Limited Partnership (CV), Sole Proprietorship, or Trading Business (UD).

Business actors typically form firms because economic development does not require them to convert their businesses into legal entities. The establishment process is more straightforward and accessible because starting a business requires more precise requirements and more manageable costs for business actors.

When a businessperson has sufficient capital and a strong desire, they may want to convert their company into a limited liability company, for example. The Firm can convert to a Limited Liability Company to achieve the status of a legal entity. The partnership status will automatically dissolve under the law and transform into a legal entity with the advent of this change in form.

Notaries play a crucial role when this type of business entity is transferred. Notaries are government representatives with the power to create authentic deeds for various deeds, agreements, and stipulations, including the deed establishing a company. The extent to which the documents are complete and the total value of the assets owned by the company that will become a limited liability company are essential questions that notaries must answer. As is common knowledge, a firm partnership is a business partnership formed by two or more people using a common name.

The duties of the partners in this firm partnership can be divided into two categories: internal duties and external duties. The partners' income is balanced with their internal obligations (*inbrenng*). According to Article 18 of the Commercial Code, the partners' external responsibility is a collective personal responsibility. Even if other partners are added, each partner is still liable for all partnership agreements, including those that result from illegal activity.¹

Contrary to a Limited Company, which has assets independent of its founders, the founders are not entirely responsible for their assets. Therefore, the Notary should carefully examine the completeness of the files and the number of assets owned by the Firm that will be converted into a Limited Company. It is hoped that the company's partners will not use this chance to shift the debt from the Limited Company to themselves, thereby evading personal liability.

RESEARCH METHOD

This research is analytical descriptive, and the research method used in this research is qualitative, then presented as a descriptive scientific paper. The problem is being approached from a statutory and conceptual standpoint. The sources of the data used in this study are secondary data made up of the primary legal entities that served as its foundation, namely:

- a. Civil Code;
- b. Commercial Code;
- c. Law Number 30 of 2004 concerning Notary Positions;
- d. Law Number 40 of 2007 concerning Limited Liability Companies;
- e. As well as other regulations related to the role and authority of a Notary in the transfer of a business entity in the form of a firm into a Limited Company.

Then, literature, articles, legal journals, and other materials on the issue are used as a guide for secondary data materials. A literature review was used as the primary data collection method for this study, and a qualitative analysis method was used for data analysis. In a scientific paper, the findings of this study are presented by outlining the outcomes of data processing and data analysis.

RESULTS AND DISCUSSION

The procedure for the transfer of a Firm's Business Entity to a Limited Company

Firms and Limited Companies are essentially two different types of business entities. Article 16 of the Commercial Code explains that "What is called a firm is each union established to run a company under a common name". According to Mollengraff, a business entity must fulfil the requirements listed below in order to conduct business activities:²

¹ Prof. Zainil Asikin, *Hukum Dagang*, Jakarta: PT. Raja Grafindo Persada, 2013, Hlm. 52.

² Herman Susetyo, *Kedudukan Firma dan CV Beserta Anggota Sekutunya Dalam Kepailitan*, Jurnal Hukum Universitas Diponegoro Vol 4, 2021, hlm 72-73.

1. Done continuously;
2. Blatantly;
3. Having a certain position;
4. Aim for profit.

A Limited Company is a legal entity that is a capital partnership established based on an agreement, according to Article 1 of Law Number 40 of 2007. It can sue and/or be sued as a legal entity, just like a private person, to carry out its engagement. The responsibility for carrying out the obligations of the legal entity itself rests with the things that belong to it.³

Business entities come in various shapes, including firms and limited companies. Limited Companies are legal entities, whereas Firms are not. Therefore, two steps must be completed to convert a firm to a Limited Company: the first is to dissolve the Firm, and the second is to form a Limited Company.

Changes in the form of the Firm's business entity to a Limited Company cannot be done directly because the responsibilities of the two business entities are very different. Article 17 of the Commercial Code explains the legal relationship between the Firm and third parties by stating that each partner of the Firm is not prohibited from suing third parties. Article 18 of the Commercial Code, which states that each company is accountable for the totality of all engagements from the company, further supports this. The responsibility, also known as a joint responsibility, is shared by the entire organization. Limited companies, on the other hand, are subject to different obligations, such as absolute limited liability, provided that shareholders, the board of commissioners, and/or the management (board of directors) do not act up. Transferring a Firm Business Entity to a Limited Company involves several steps.

Firm Dissolution

Based on Articles 1646 to 1652 of the Civil Code, it is explained that the reasons for the termination of the Firm are:⁴

1. Failed to establish the civil partnership within the allotted time;
2. The destruction of the goods or the completion of the business, which is the main task of the civil partnership;
3. One or more partners make a will;
4. A partner passes away, is placed in guardianship, or is declared bankrupt;
5. Other factors following the Act's provisions.

A company is dissolved through approval, disengagement, termination, and others. According to the guidelines in Commercial Code Article 31, the dissolution of the Firm must be stated in an authentic deed, and it must be registered and announced in the Republic of Indonesia's Supplement to the State Gazette. Suppose the disbanded Firm's allies neglect the dissolution procedure. In that case, the dissolution is considered non-existent, and the Firm is still standing and bound by a relationship with a third party. In other words, if there is a release of one of the partners either due to quitting, resigning, not meeting the requirements as a partner, either due to criminal sanctions or being placed under custody and dies, if no other partner takes over his share, then The firm partnership can be declared disbanded.

Based on Commercial Code Article 32, if the company is dissolved, each company with the right to manage must settle all the affairs of the former company on behalf of the same Firm. Unless otherwise specified in the agreement, the decision shall be made by majority vote. The District Court must make a decision considering the dissolved company's interests if the number of votes is the same.⁵

Suppose the company's cash balance at the time of dissolution is insufficient to cover all the debts accrued. In that case, those responsible for paying them can collect the funds each partner should have contributed to the partnership following their respective shares.⁶

Limited Company Establishment

According to Law Number 40 of 2007, Article 7 Paragraph 1 states that a company must be founded by 2 (two) or more people with a notarial deed written in Indonesian. Limited Company or PT

³ Gunawan Widjaja, *Seri Pemahaman Perseroan Terbatas, Risiko Hukum sebagai Direksi, Komisaris & Pemilik* Jakarta: PT, Praninta Offset, Agustus 2008, hal. 14

⁴ Abdul R Saliman, *Hukum Bisnis*, Jakarta: Kencana, 2005, hlm 93.

⁵ Indonesia, *Kitab Undang-Undang Hukum Dagang*, Pasal 32.

⁶ Indonesia, *Kitab Undang-Undang Hukum Dagang*, Pasal 34.

only apply to companies formed following the guidelines of Number 40 of 2007. An application for approval of the company name is sent to the Minister of law and human rights.

Applications for approval of the use of names to the Minister may be rejected if the names contain:

- a. The name is identical to or has been legally used by another business;
- b. Incompatible with decency or public order;
- c. The name of an existing company is the same or similar;
- d. Without a permit may appear to be associated with governmental or legally established financial institutions or other international institutions;
- e. Is made up entirely of numbers or groups of numbers;
- f. Is made up entirely of letters or a group of letters that together do not make a word;
- g. Contrary to the purposes and goals of business operations;
- h. A simple location name.

In the establishment of a Limited Company, several procedures must be carried out, namely:⁷

1. The establishment of a Limited Company is stated in an Authentic Deed;
Based on Limited Company Code, Article 7 paragraph (1) explained that the establishment of the Company is carried out by a notarial deed drawn up in the Indonesian language;
2. Ratification by the Minister of Law and Human Rights;
Each founder is obligated to accept shares at the time of its founding. The Ministerial Decree regarding the legalization of the Company's legal entity is issued on the date that the Company becomes a legal entity. The founders jointly apply to the Minister via the electronic legal entity administration system's technical services to obtain a Ministerial Decree regarding legalizing the Company's legal entity. The application must include at least the following information:
 - a. The name and domicile of the Company;
 - b. Period of Establishment of the Company;
 - c. The purposes and objectives and business activities of the Company;
 - d. The amount of authorized capital, issued capital, and paid-up capital;
 - e. The Company Address.
3. Registered in the list of companies no later than 30 days;
Information about a registered company is added to the company register on the same day that:⁸
 - a. The Minister's Decree approving the necessary amendments to the articles of association and ratifying the Company's legal entity;
 - b. Receiving notice of articles of association amendments that do not need approval; or
 - c. Notifying updates to the Company's data that do not involve an amendment to the articles of the association being received.
4. Announced in the Supplement to the State Gazette;⁹
After the Company is registered, the registration will be published in the Republic of Indonesia's State Gazette Supplement, which will include:
 - a. The Company's incorporation document and the Minister's Decree (Article 7, Paragraph 4);
 - b. The Ministerial Decree and the Deed of Amendment to the Company's Articles of Association (Article 21, Paragraph 1);
 - c. Deed of amendment to the articles of association, which the Minister has notified. The Minister makes the announcement no later than 14 (fourteen) days from the date of issuance of the Ministerial Decree.

Role and Authority of Notary in the transfer of Firm Business Entity to Limited Company

The notary is crucial in converting the firm's legal entity to a Limited Company. As previously stated, to establish a Limited Company, at least two people must sign a notarial deed in Indonesian. A deed made in the manner prescribed by law by or before a public official authorized to make the deed is defined as an authentic deed by Article 1868 of the Civil Code.

A deed must have met the criteria listed below in order to be considered authentic:

- a. Made in the manner prescribed by law;
- b. Made to do the deed by or in the presence of an authorized public official;
- c. Produced within the jurisdiction of the appropriate authority.

⁷ Abdul R Saliman, *Hukum Bisnis*, Jakarta: Kencana, 2005, hlm 98

⁸ Niru Agita Sinaga, Hal-Hal Pokok Pendirian Perseroan Terbatas di Indonesia, *Jurnal Ilmiah Hukum Dirgantara*, Volume 8 Nomor 2, Maret 2018, hlm 39.

⁹ *Ibid.* hlm 39.

As stated in Law Number 30 of 2014 concerning Notary Positions, a notary is a public official with the power to create an authentic deed and other powers. A Notary is a public official with authority to create authentic deeds regarding all actions, agreements, and stipulations required by law and/or desired by the interested parties to be stated in an authentic deed, according to Article 1 number (1) *jo*. Article 15 paragraph (1) of the Law on Notary Positions. According to Article 1868 of the Civil Code, the word "all" denotes the principle that a Notary is the only public servant permitted to create an authentic deed..¹⁰

According to Article 15 paragraph (2) of the Law on Notary Positions, a notary has the following additional powers in addition to performing an authentic deed:

- a. By registering the letter in a particular book, you can verify the signature and ascertain the letter's date with certainty;
- b. Keeping the letters under the hand;
- c. Make copies of the original shady letters that contain the information that is written and described in the letter in question;
- d. Verifying the correspondence between the original letter and the photocopy;
- e. Offer legal advice concerning the creation of the deed;
- f. Execute a land-related deed;
- g. Incorporate auction results into a deed.

The law allows notaries to incorporate all actions, agreements, and conditions that the parties desire into a valid deed. Furthermore, as a result, the document he created—in this instance, the Deed of Establishment of a Limited Company—has full legal validity and admissibility. A Notary must rely on the Law on Notary Positions when performing his duties as an authorized representative when creating the Limited Company deed.

According to Section 7(1) of the Limited Company Code, the Limited Companies in its establishment were formed by two or more people with a Notary deed prepared in Indonesian.

Here, notaries play a crucial role in creating the Deed of Establishment of the Company. A notary is required for the Company's Deed of Establishment, which establishes the Company's legality. The Minister of Law and Human Rights must approve the Deed of Establishment of a legal entity company. If a company appears on the list of registered companies, it may be deemed a legitimate business entity.

Based on Article 7 paragraph (4) that the Company gets the status of a legal entity on the date of issuance of the Decree of the Minister of Law and Human Rights regarding the ratification of the Company's legal entity by applying information technology services for an electronic legal entity administration system to the Minister no later than 60 days as of the date the Deed of Establishment is signed by filling out the form as regulated in Article 9 paragraph (1) of the Company Law, must at least contain:¹¹

1. The Company's name and location of incorporation;
2. the duration since the Company's founding;
3. The Company's goals, objectives, and commercial activities;
4. The sum of the paid-up capital, issued capital, and authorized capital;
5. The business' complete address.

Suppose a notary violates a provision of the UUJN while performing his or her duties. In that case, the Notary must take responsibility by accepting sanctions or being subject to sanctions in the form of civil sanctions, administrative sanctions, criminal sanctions, notarial code of ethics sanctions, or a combination of sanctions. As a result, the Notary must take responsibility for the deed he performs.¹²

According to Article 84 of the UUJN, two additional civil sanctions may be imposed on a Notary who violates a particular article, such:

1. Notary deed which has the power of proof as a private deed;
2. The notarial deed is rendered invalid.

¹⁰ Alwesius, *Dasar-Dasar Teknik Pembuatan Akta Notaris*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia), 2021, hlm 2.

¹¹ M. Yahya harahap, *Hukum Perseroan Terbatas cet.6*, Sinar Grafika, Jakarta, 2016, hlm. 35

¹² Siti Fauziah DNS, *Peran Notaris Dalam Proses Pembuatan Akta Pendirian Perseroan Terbatas*, *Jurnal Hukum No.2 Vol.3*, 2018, hm 407-422.

A Notary must adhere to all rules and requirements related to his position in order to avoid breaking any laws. The Notary also determines whether a provision that appears wants to be included in the deed does not violate any relevant laws or regulations. Notaries must know the conditions governing a deed's validity, authenticity, and cancellation.

In particular, the Limited Company Code specifies what the founders must state in the Deed of Establishment in the form of articles of association as required by Article 15 of the Limited Company Code, among other things. Notaries have the responsibility related to the authenticity of the Deed of Establishment of the Company only to the extent of the formal and not material truths, which have been determined in the laws and regulations, including:

- a. The company's name and location of headquarters;
- b. The company's goals and objectives, as well as its business practices, are compliant with all applicable laws and regulations;
- c. The time since the company was founded;
- d. The sum of the authorized, issued, and paid-up capital;
- e. The number of shares, the number of shares meeting any share qualification requirements, the number of shares falling under each classification, the rights associated with each share, and the nominal value of each share;
- f. Name of position and number of members of the Board of Directors and Board of Commissioners; Determination of the place and procedures for holding the GMS;
- g. The steps to be followed in the appointment, replacement, and dismissal of Board of Directors and Board of Commissioners members;
- h. The methods used to use profits and distribute dividends.

CONCLUSION

Business entities come in various shapes, including Firms and Limited Companies. Limited Companies are legal entities, whereas Firms are not. As a result, to convert a Firm into a Limited Company, two steps must be taken: first, a Firm must be dissolved, and second, a Limited Company must be created.

Here, notaries play a crucial role in creating the Deed of Establishment of the Company. A notary is required for the Deed of Establishment of the Company, which establishes the company's legality. The Minister of Law and Human Rights must approve the Deed of Establishment of a legal entity company. If a company appears on the list of registered companies, it may be deemed a legitimate business entity.

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