

Legal protection of a limited liability company established based on a deed of establishment that is legally defective

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Abstract

This research focuses on seeking protection and remedies given to legal acts and deeds of establishment of limited liability companies, which are established based on deeds of establishment that are legally defective or do not fulfill the provisions of the establishment of limited liability companies, as stipulated in Article 110 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, that the Board of Commissioners is an individual, not a legal entity. The research method that will be used is a normative research method with a statutory approach, is an approach using legislation and regulations from laws and regulations and a conceptual approach, is referring to legal principles that can be found in legal doctrine or the views of legal experts. This problem will be examined using the theory of legal protection according to M. Isnaeni, the second legal protection, namely external legal protection, is legal protection made by the authorized government made in legislation products. In terms of protection regarding negligence in not fulfilling the requirements for the appointment of the Board of Commissioners, it is regulated in Article 112 paragraph (2) of the Limited Liability Company Law, the article explains that if it is known that there is an error in the appointment of the Board of Commissioners, the Board of Directors is given 7 (seven) days to notify the Minister. Then the validity of the legal action is explained in paragraph (3), that the legal action remains binding and becomes the responsibility of the Company.

Keywords: Legal protection, limited liability company, legal defect, deed of establishment, board of commissioners

Introduction

An agreement to be agreed has legal conditions, which have been stipulated in the Civil Code, "In order for a valid agreement to occur, four conditions need to be fulfilled; 1. their agreement that binds them; 2. the ability to create an agreement; 3. a particular subject matter; 4. a cause that is not prohibited." (Article 1320 Civil Code). An agreement that does not comply with these conditions will give legal consequences to the existence of the agreement which are different from any legal conditions, even though the parties who mutually promised each other acknowledge the existence of the agreement. (Rekma & Dwi, 2022) ^[28].

In article 1233 of the Civil Code it is stated that "Engages are born out of an agreement or because of the law" this agreement or agreement is one source of law provided that the agreement or agreement has fulfilled the conditions regulated by the Law, then in Article 1313 it states "An agreement (agreement) is an act in which one or more people commit themselves to one or more other people." An agreement made between one or more people and one or more people constitutes a legal act, and creates a legal relationship between the parties which involves the emergence of interrelated rights and obligations. (Supeno, 2020) ^[31].

Focusing on the legal conditions numbers 3rd and 4th, these legal conditions are the objective conditions in the agreement. These objective conditions are those regarding the object of the agreement or the legal engagement that occurs. (Astuti, 2016) ^[4].

In practical terms, a legal entity involved in entering into an agreement is a limited liability company, hereinafter will be referred to as "PT". This type of legal entity is established through an agreement made by the parties involved in the agreement, indicating the presence of at least two individuals or parties participating in the agreement. This

arrangement is governed by Article 1313 of the Civil Code, also known as the "KUH Perdata". (Theresia & Fajri, 2022) ^[33].

Rudy Prasetyo explained that a Limited Liability Company can be defined as a fusion of two terms: "Company," referring to the capital in the form of stocks or shares, as outlined in Article 1, paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (abbreviated as PT Law). The second term is "Limited," indicating the shareholders' responsibility, which is restricted to the nominal value of the shares they own, as specified in Article 3, paragraph (1) of the PT Law. PT is a legal entity established through an agreement, constituting a capital association where capital is pooled, and each founder is required to hold shares during the company's establishment. (Mulyoto, 2021) ^[15].

In the context of contract law, the establishment of a Limited Liability Company is considered a legal entity that arises as a result of an agreement. In this case, it means that the establishment of a PT has a "Contractual" or "Contract Based" nature, that this legal entity exists because of the formation of an agreement. Apart from these two characteristics, there is also the "Consensual" characteristic, which is an agreement to carry out the agreement from the founding of the company. (Theresia & Fajri, 2022) ^[33].

Referring to Article 110 paragraph (1) of the PT Law, remark about those who can be appointed as members of the Board of Commissioners are individuals, but then there is a case with PTs where in their deed of establishment those appointed as Commissioners are legal entities, this is contrary to the provisions of that Article and certainly deviates from the objectively valid requirements of an agreement which can result in the deed being null, void and not legally recognized. It is essential to consider the fourth legal condition of the agreement, which is a lawful cause. In

this context, a lawful cause implies that the cause does not contravene the law, public order, and morality. (Mulyoto, 2022a) ^[16].

This problem can also have an impact on the PT's acting skills, because it must pay attention to the term of office of the Directors or Commissioners and be supported by documents starting from the deed of establishment and all deeds of changes to the AD or PT data. (Mulyoto, 2016) ^[15]. This of course has an impact on all legal actions carried out by the PT, and whether there is protection for the founders of the PT regarding this issue. Please note that the Board of Commissioners is an organ within the Company which has the task of carrying out supervision both generally and specifically in accordance with the provisions in the articles of association, as well as providing advice to the Board of Directors. (Supriyatin & Herlina, 2020) ^[32]. The aim of the commissioner's duties is to achieve balance between the role of the Board of Commissioners and to create a transparent, accountable and professional Company management atmosphere. The Board of Commissioners is responsible for overseeing management policies, as well as general management, both in relation to the Company and the whole business matters. (Nicky, 2013) ^[20].

Basically, a law has a legal aim, that is to provide legal certainty, benefits and justice for society. Book III KUH Perdata contains provisions that regulate parties in an agreement or agreement to achieve legal certainty. The provisions in Book III KUH Perdata provide flexibility so that they can be used as an engagement framework. This flexibility ensures that the law can develop over time, keeping up with changing times which also lead to updates in the law regarding formulating an agreement. Legal flexibility in formulating agreements must be balanced with strong accountability and reflect a legal identity that has the power to uphold the dignity of justice. The aspects of justice and legal certainty are interrelated, where the strong existence of the justice aspect also has implications for the reflection of the legal certainty aspect. (Setiawan *et al.*, 2021) ^[30].

As per Satjipto Raharjo's perspective, legal protection is a measure to organize diverse interests within society, preventing conflicts between these interests and enabling all parties to enjoy the rights stipulated by the law. Satjipto Raharjo sees legal protection as an essential component of the overarching concept of the purpose of law, as outlined by Fitzgerald. This purpose involves the integration and coordination of societal interests by establishing regulations for the protection and limitations of these interests. (Luthvi, 2016) ^[12].

Thus, from the definition of legal protection, the elements that must be present in legal protection are: 1) The existence or form of protection or the purpose of the protection. 2) Legal subject. 3) Object of legal protection. The purpose of legal protection is related to providing services to the community. Roscoe Pound posited that law serves as a tool for social engineering. According to him, the interests of society are imperative demands that humans must safeguard and fulfill within the legal realm. In this context, the law is perceived as a guardian of human interests, distinguished from other norms due to statutory regulations encompassing directives, prohibitions, as well as the allocation of rights and obligations. The delineation of rights and obligations among individuals is crucial for sharing authority and establishing mechanisms for resolving legal issues while

upholding legal certainty. In its role as the protector of societal interests, the primary objective of law is to instill order and equilibrium within society, with the hope that the maintenance of this balance will ensure the ongoing protection of societal interests. (Nurhayati, 2020) ^[21].

The focus of the discussion in this writing is the protection of PTs where the PT is established based on the PT's deed of establishment or the PT's articles of association which do not comply with the provisions stipulated by the PT Law. The provisions regarding the preparation of a PT's articles of association are standard and have been stipulated in the PT Law. (Lismayanti *et al.*, 2023) ^[11]. If one of the elements in an agreement is not fulfilled, it will result in different legal consequences. In applying the legal conditions of the agreement, if the objective legal conditions are not met, the situation of the agreement is as if there had never been a legal agreement between the parties involved. (Astuti, 2016) ^[4]. Legal protection for the PT needs to be carried out in order to recover the losses suffered by the PT in the PT's deed of establishment because the deed of establishment or articles of association will later become the legal basis for the PT in carrying out any legal actions. From the focus of this discussion, the issue that will be discussed is whether or not there is legal protection for PTs that are already running and carrying out legal actions with the PT's deed of establishment which is legally flawed.

Based on the introduction above, the problem formulation for this paper is: What is the legal protection for Limited Liability Companies whose deed of establishment is legally flawed?

Research Method

The research methodology employed in this study will use a normative research method with a statutory approach. This involves examining legislation and regulations to derive insights. Additionally, a conceptual approach will be incorporated, referring to legal principles found in legal doctrines or the perspectives of legal experts. While these principles may be present in statutory regulations, researchers must comprehend the concepts through existing views or doctrines when identifying them. (Peter, 2021) ^[23]. Normative research in law explores written laws from multiple angles, encompassing theory, history, philosophy, comparison, structure, composition, material coverage, consistency, general explanation, article by article analysis, formality, and the binding force of a law, including the language employed. This type of research, however, does not delve into the practical implementation or application of the law. This method is known as the normative method or doctrinal method. There are two characteristics of normative legal research, the first is Legal Identification/Legal Exploration, at the initial stage and basic level, researchers utilize a simple approach in examining the essence of legal material. Legal Review, included in the type of descriptive research where the researcher exposes the positive and negative aspects of a law or regulation being investigated, in this case it means referring to the PT Law, Law Number 2 of 2014 concerning the Position of Notaries and Civil Code, includes identification of weaknesses, deficiencies and advantages contained therein. (Dr. Ani Purwati, 2020) ^[5]. The data that will be used in the research is Secondary Data, which obtains data from library materials and secondary

legal materials in the form of theories from Library works. (N. U. Putri *et al.*, 2022) ^[26]. Secondary data refers to information derived from written materials and is gathered through library research on legal materials, encompassing both primary and secondary sources. The process of searching for legal materials involves activities such as reading, reviewing, paying attention to, or exploring legal documents available on the internet or various websites. (Muhaimin, 2020) ^[13].

Results and Discussion

A Limited Liability Company (PT) is a term derived from the combination of two words: "Company" and "Limited." The term "Company" pertains to capital represented by holdings or shares, as outlined in Article 1, paragraph (1) of the PT Law. On the other hand, "Limited" indicates that shareholders' liability is restricted to the nominal value of their shares, as specified in Article 3, paragraph (1) of the PT Law. According to Article 1 of the PT Law, for an entity to be recognized as a PT, it must meet the requirement of being established based on an agreement. (Zainal & Wira, 2018) ^[36].

In the context of contract law, the establishment of a Limited Liability Company is considered a legal entity that arises as a result of an agreement. The position of the agreement in the formation of the PT legal entity is an important stage. This is due to the nature of a Limited Liability Company as a business entity consisting of holdings, and each founder has limited responsibility as far as the capital they contribute. (Wahyuni, 2022) ^[35]. In this case, the establishment of a PT has the character of "Contractual" or "Based on Contract," indicating that this legal entity exists because of the formation of an agreement. Apart from the contractual and contract-based nature, there is also the "Consensual" nature, which reflects an agreement to carry out the agreement from the founding of the company.

The PT Law explains that basically a company is formed based on an agreement, a relationship between a person and another person that is deliberately created can be said to be a relationship created because of an agreement. (Peter, 2020) ^[22]. So an agreement must fulfill both of conditions for the validity of the agreement, which are subjective and objective legal conditions. These legal requirements are explained in Article 1320 of the Civil Code:

1. their agreement that binds them;
2. the ability to create an agreement;
3. a particular subject matter;
4. a cause that is not prohibited.

Legal requirements number 1st and 2nd are subjectively valid requirements, namely regarding the subject or person entering into the agreement, while legal requirements number 3rd and 4th are objectively valid requirements, namely regarding the object of the agreement or legal engagement that occurs. The establishment of a PT initiates with the creation of a written agreement among the involved parties, which is subsequently documented in an authentic deed prepared before a notary. This authentic deed serves as the foundation for establishing a Limited Liability Company and encompasses the articles of association along with other

essential details needed in the establishment process of a Limited Liability Company. (Prasetyo, 2018) ^[24].

Focusing on the legal requirements objectively, because the issue of the problem taken is that the deed of establishment of the PT is not in accordance with the provisions of the PT Law, if it is not fulfilled it will result in the law of the agreement becoming null and void or the agreement being deemed to have never existed and no legal engagement has ever occurred. (Astuti, 2016) ^[4]. This is certainly a loss experienced by the founder of the PT because the deed of establishment is the legal basis for the PT to be recognized as a legal entity and the basis for the PT to carry out legal actions.

Notary Liability Referring to The Deed of Establishment of a Limited Liability Company

The establishment of a PT according to Article 7 paragraph (1) of the PT Law is established by a notarial deed. In the process of establishing a PT, the Deed of Establishment regulates aspects that are considered correct and does not require additional evidence. This document is then submitted as part of the application for ratification of the deed of establishment of PT. (Andhita Dewi & Novy Purwanto, 2021) ^[2]. As we know, the validity of a Limited Liability Company depends on the authenticity of its deed of establishment which must be made in the presence of the notary. (Febriani *et al.*, 2023) ^[8]. So it can be concluded that the deed of establishment of a PT must be made notarially or as an authentic deed, the authentic deed made by a Notary has certainty of content, date and identity of the parties involved, the deed is complete and binding evidence. This evidence does not need to be doubted by the judge, or in other words, it must be considered reliable by the judge reviewing the case without requiring additional evidence. To achieve perfect and binding evidentiary value, the evidentiary strength of an authentic deed must be completely fulfilled. This is in accordance with the assessment of notarial deeds or authentic deeds which must be carried out using the Principle of Presumption of Validity (*Vermoeden van Rechtmatigheid*). (Vivien, 2018) ^[34].

The notary's responsibility for the deed he makes is based on fault of liability, so the notary is obliged to be responsible if there is an error or intentional violation in the deed. However, on the other hand, if the error originates from the person appearing, the notary cannot be held responsible as long as the notary exercises his authority in accordance with the provisions of the Law. Analyzing the definition of a notary, we find that a notary is a public official vested with the authority to create authentic deeds concerning all acts, agreements, and arrangements mandated by general regulations or sought by concerned parties to be documented in an authentic deed. The notary is tasked with guaranteeing the accuracy of the deed's date, preserving the document, and furnishing the grosse, copy, and excerpt as needed. All this is done as long as general regulations do not assign or exclude such duties to other officials or individuals. (Napitupulu & Saron, 2022) ^[19]. The notary is only tasked with recording all the information provided by the presenters. In essence, a Notary is not held accountable for the substance of the deed created in their presence, as the deed's content is determined by the agreement and desires of

the involved parties. The Notary's responsibility is confined to the formalities of the authentic deed, aligning with the legal provisions. The Notary can only be subject to liability or civil claims in cases of alleged unlawful acts. (Arsy *et al.*, 2021) ^[3].

In principle, a Notarial Deed functions as evidence that has perfect evidentiary power, as long as the material (substantive) and procedural (formal) requirements in its preparation are met and there are no procedural errors. (Fauziah *et al.*, 2018) ^[7].

The involvement of a notary in a legal case can be caused by an error in the deed he made, whether caused by an error originating from the notary himself or an error from the party who came to make the deed. (Fitrah *et al.*, 2021) ^[9].

It needs to be seen, the application for ratification of the PT's deed of establishment in the past. A copy of the deed was sent to the Ministry of Law and Human Rights and then corrected by a proofreader. If there are errors, they will be scribbled out and a correction note will be given next to the scribbles. The copy will then be returned and sent back to the notary's office to be justified. After the notary has finished correcting it according to the proofreader's instructions, it will be sent back to the ministry, only after that will the deed of establishment be approved by the Minister. It can be seen that in the past the Ministry helped ensure the overall correctness of the deed. However, currently everything is being done practically, quickly, efficiently, and avoiding face to face contact, with the aim of avoiding collusive practices and so on, a Legal Entity Administration System (SABH) has been implemented where everything is online and electronically via the internet. With the implementation of SABH, every notary is now required to always be careful and precise regarding the deed he or she will make and is required to master the law and techniques for making deeds. (Mulyoto, 2022b) ^[17].

Subsequently, an assessment will be conducted to determine if the Notary can be held entirely responsible for the issue. With reference to Law Number 2 of 2014 concerning the Position of Notary (referred to as "UUJN"), the problem is linked to inaccuracies in the deed's content, specifically the violation of Article 20 of the Closing Provisions in the Deed of Establishment of PT. According to Article 110 paragraph (1) of the PT Law, the inclusion of legal entities as PT commissioners is against the regulations, and this falls outside the scope of the Notary's responsibilities. This is due to the fact that Article 15 paragraph (2) letter e of UUJN only states that "Notaries have the authority to provide legal counseling in connection with the making of Deeds", furthermore In Article 38 paragraph (3) letter c "the contents of the Deed constitute the wishes and wishes of the interested parties" therefore the Notary only confirms the wishes of the parties as stated in the contents of the deed. It needs to be seen again that, in making a notarial deed, be it a relaas deed or a party deed, requires the existence of a wish or will (*wilsvorming*) and a request from the parties. Without these elements, the notary will not make this deed. (Julia *et al.*, 2022) ^[10].

In this case, the notary is also not indicated to have committed irregularities because he has fulfilled his obligations, having carried out readings. The notary has read the deed to the parties before signing it, and at the time of ratification the witnesses stated in the deed are also present. So this is in accordance with the contents of the Notary's

deed which states that "after I, the Notary read this deed to the presenters and witnesses, this deed will immediately be signed by the presenters, witnesses, and I, the Notary."

This is also in accordance with the Notary's obligation to convey the contents of the deed to the parties so that the parties correctly understand the contents of this deed when they sign it, and so that in the future the parties cannot deny and demand from the notary that he was not aware of the existence of the clause, which is detrimental to him because when making the deed he has read and understood the contents of the deed, from this the parties are also required to know the provisions of the applicable laws and regulations, one of which is the PT Law because the parties want to make a deed of establishment of the PT. Concerning the examination of this deed, it implies that the deed's contents align with the intentions of the involved parties. Reading detail of the deed is crucial so that, before the parties affix their signatures, they are cognizant of the stipulations in the deed of establishment and whether it aligns with their desires. If any party deems a clause to be incongruent with their wishes, they possess the right to request modifications to the clause. Acquiring knowledge about the deed's contents grants the parties the autonomy to decide whether they consent or dissent with the deed's contents. (K. M. Putri *et al.*, 2022) ^[26].

As per Asnahwati H. Herwidi, S.H., fundamentally, a Notary is not accountable for the substance of the deed crafted in their presence because the deed's content essentially reflects the will and agreement of the involved parties. The Notary's role is confined to transforming the agreement into the form of an authentic deed, so that the Notary's responsibility in this case is focused on the formal aspects of the authentic deed in accordance with the provisions of the law. Rusna Suryadi suggests that, excluding the contents of the deed, any action performed by a Notary can be subject to accountability in the event of a breach leading to losses for the involved parties. Essentially, a Notary's function is limited to documenting or formalizing the legal actions of the parties within a deed. (Afifah, 2017) ^[1].

Furthermore, according to Sri Peni Nughrohowati, if there is a problem in the deed made by the Notary which is caused by the parties involved, then this is the responsibility of the parties and the Notary does not need to be involved in the problem, because the Notary is not the party involved in the deed. Notaries can only be sued civilly if the parties commit related violations sort of: (Afifah, 2017) ^[1].

1. Current day, date, month, year facing;
2. Time when facing;
3. Signature included in the minutes;
4. Feeling never faced;
5. The deed is not signed in front of a Notary;
6. The deed is not read; And
7. Other reasons based on the formality of the deed.

Based on the matters above, the parties involved are expected to produce adequate evidence. UUJN stipulates that if there is a suspicion of a Notary's involvement in a legal matter related to a deed he or she has made or before him or her, the investigator, public prosecutor or judge who summons the Notary must first obtain approval from the Notary Honorary Council (MKN).

Based on the material explained above, the error in Article 20 of the PT Establishment Deed violates the provisions of

the PT Law, namely that the Commissioner must be an individual, not a legal entity, the Notary cannot be blamed and held responsible.

Examine The Legal Protection For The Deed Of Establishment As Well As The Legal Acts Of Limited Liability Companies Based On A Deed Of Establishment That Is Legally Defective.

In addressing this issue, the legal protection theory will be applied. The legal protection extended to Indonesian citizens embodies the implementation of the principle of acknowledging and safeguarding human dignity, rooted in Pancasila and the rule of law principles grounded in Pancasila. Every individual is entitled to legal protection. Virtually all legal relationships must be safeguarded by the law. (Dwi, 2021) ^[6]. Legal protection is all efforts to fulfill rights and provide assistance and security to legal subjects.

As per Satjipto Raharjo, legal protection involves offering safeguards for human rights (HAM) that may be infringed by other individuals or entities. It also involves ensuring that the community can fully exercise all the rights granted by the law. Additionally, Satjipto Raharjo highlights that legal protection serves as a mechanism to regulate diverse interests within society, preventing conflicts between these interests and facilitating the enjoyment of rights by all parties. In accordance with Satjipto Raharjo, legal protection is an essential component of the overarching purpose of law, as posited by Fitzgerald. This purpose revolves around integrating and coordinating the diverse interests within society. Through the regulation of protection and limitations concerning these interests, legal protection plays a crucial role in achieving this overarching objective. (Luthvi, 2016) ^[12]. Furthermore, Maria Theresia Gene elucidates that legal protection entails the actions of a state to establish exclusive laws, aiming to offer assurances for the rights of individuals or specific groups. (Nurhayati, 2020) ^[21].

The theory of civil legal protection, according to M. Isnaeni, suggests that legal protection in terms of its source can be divided into two, namely: (Dwi, 2021) ^[6].

1. Internal Legal Protection, which is basically the legal protection itself created by the parties when making an agreement. When formulating contract clauses, both parties strive to accommodate their respective interests based on mutual agreement. The same thing applies to efforts to overcome various risks through drafting clauses that are made based on an agreement, so that both parties will receive balanced legal protection in accordance with their mutual agreement. By forming an agreement, the parties can create their own legal protection as desired in accordance with the agreement. (Nahak *et al.*, 2020) ^[18]. Internal legal protection like this can be realized when the legal positions of the parties are relatively equal, meaning they have equal bargaining power. With the principle of freedom of contract, each party can freely express their wishes according to their interests. This approach is the basis when both parties draft the clauses of the agreement being made, so that the legal protection of each party can be clearly realized on their own initiative. This approach is used as the basis when the parties draft the clauses of the agreement they are drafting, so that the legal protection of each party can be clearly realized according to their own wishes. (Setiawan *et al.*, 2021) ^[30].

2. External legal protection, which is regulated by the government through regulations for the benefit of weak parties, in accordance with the principle that legal rules should be fair and impartial, must also be provided in a balanced manner and as quickly as possible to other parties. This is regulated in such a way because in practice, at the start of an agreement, one of the parties has relatively greater power than the other party. However, in implementing the agreement, the previously strong party can fall into the trap and experience injustice. (Setiawan *et al.*, 2021) ^[30]. So this external legal protection comes from statutory regulations which are products of the government. (Nahak *et al.*, 2020) ^[18].

Basically, an agreement that is considered null and void by law means that the agreement is deemed to have never been formed in the first place or that no agreement was formed from the start. Therefore, in the process of making an agreement, the parties must be careful in stating the legal clauses or content that are clear and in accordance with the provisions of the laws and regulations. (Pratiwi *et al.*, 2021) ^[25].

From the explanation of legal protection when viewed from the source according to M. Isnaeni, external legal protection will be examined, namely by statutory regulations. Legislative regulations according to Article 1 point 2 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, namely, "Legislative Regulations are written regulations that contain generally binding legal norms and are formed or stipulated by state institutions or officials who authorized through the procedures stipulated in the Legislative Regulations." It can be seen that this statutory regulation is a product created by the government, one of which is to provide a legal protection for legal subjects.

Basically, legislation has a legal aim of providing legal certainty, benefits and justice for society. (Setiawan *et al.*, 2021) ^[30].

Based on the theory put forward by M. Isnaeni, there is no specific mention relating to legal protection for the deed of establishment/articles of association of a PT from applicable laws and regulations, nor is there any specific regulation regarding the protection of the validity of legal acts after the deed of establishment of a PT that has been obtained approval from the Minister, regarding protection regarding negligence in not fulfilling the requirements for the appointment of the Board of Commissioners as regulated in Article 112 paragraph (2) of the PT Law, which states, "Within a period of no later than 7 (seven) days from the time it is known, the Board of Directors must announce the cancellation of the appointment of members The relevant Board of Commissioners in the Newspaper and notify the Minister to be recorded in the Company register." This article explains that if an error is discovered in the appointment of the Board of Commissioners, the Board of Directors will be given at least 7 (seven) days from the time it is discovered to notify the Minister. Then the validity of the legal actions is explained in paragraph (3), "Legal actions that have been carried out by members of the Board of Commissioners as referred to in paragraph (1) for and on behalf of the Board of Commissioners before their appointment is cancelled, remain binding and are the responsibility of the Company."

Settlement Efforts Against The Deed Of Establishment And Legal Actions of Limited Liability Companies Based On A Deed of Establishment That Is Legally Defective

In connection with what has been explained above, there are efforts to resolve problems if the PT's deed of establishment contains errors related to this problem.

The essential element of an agreement lies in the lawful cause or purpose of the agreement, emphasizing that the contents of the agreement must be halal or not prohibited. This is crucial for the validity of the agreement, as the implementation of the agreement hinges on the permissibility and lawfulness of its contents. *Essentialia* is an element of an agreement that must always be present, it is absolute and if this element is not present then it is impossible for the agreement to exist. One of the essential elements for the formation of an agreement is "lawful causes". Article 1337 of the Civil Code further explains Article 1335 that a cause is prohibited if it conflicts with the law, morality and public order. So logically, if you want to see if the cause is in conflict with the law, all you have to do is look at the applicable law to see whether it is in conflict or not, in this case, the PT Law.

It can be seen that one of the clauses in the deed of establishment of the PT is contrary to the provisions of Article 110 paragraph (1) of the PT Law, but in his book J Satrio explains that in principle an annulment has no more influence than just so that the law and morality can be implemented. So, in terms of an agreement, if you remove the part that is contrary to the PT Law (the part that has illegal causes), the deed of establishment can still be executed as an agreement, then the rest of the agreement is left as it was when the deed of establishment was ratified, as long as it is still valid that can be considered in accordance with the wishes of the parties. (Satrio, 1991) ^[29].

Consequently, the concerned Notary has the capacity to provide advice to the shareholders post the Minister's approval of the deed of establishment. Since the authority to amend the Articles of Association of the PT rests with the shareholders who originally founded the PT, the Notary can recommend promptly convening an Extraordinary General Meeting of Shareholders (RUPS). During this RUPS, amendments to the Company's Articles of Association regarding changes to the Board of Commissioners can be proposed. These changes merely necessitate notification to the Minister, as stipulated in Article 21 paragraph (3) of the PT Law. (Mulyoto, 2021) ^[16].

This needs to be done, because it is important to pay attention if the legal consequences that are intended to be achieved by carrying out the legal action in question cannot be achieved because of the obstacle of invalidity but there is a legal action that is not contradictory and its implementation is appropriate and in accordance with statutory regulations, therefore the first legal action must be changed into a different legal act that is in accordance with the provisions of the legislation. Because if the parties clearly know that their legal action will not achieve the legal consequences they aim for, they will choose the amended legal action which will provide the legal consequences that can be achieved. (Satrio, 1991) ^[29].

Conclusion

Based on the results and discussion as mentioned above, the error in Article 20 of the PT Establishment Deed which violates the rules stipulated in the PT Law that the

Commissioner must be an individual, not a legal entity, cannot be blamed entirely on the Notary, because the Notary's role is only limited to writing an agreement in the form of an authentic deed, so that the Notary's responsibility in this case is focused on the formal aspects of the authentic deed, Sri Peni Nughrohowati if there are problems in the deed made by the Notary caused by the parties involved, then this becomes the responsibility of the The party and the Notary do not need to be involved in this problem, because the Notary is not a party involved in the deed. A notary can only be sued civilly if the parties commit a related violation, Day, date, month, year of the appearance, Time of the appearance, Signature included in the minutes, Feeling that they have never appeared, The deed was not signed in front of the Notary, The deed was not read, and other reasons based on the deed formalities. Based on this, the PT founders cannot take refuge by blaming the Notary for errors in the contents of the deed. So in this case, it will be studied using the theory of legal protection according to M. Isnaeni, formulating that legal protection is divided into two, internal legal protection, namely legal protection of the clauses agreed upon by the parties making an agreement, then secondly, namely protection External law, it is legal protection created by the authorized government, is created in legislative regulations. Based on the theory explained by M. Isnaeni, there is no specific mention relating to legal protection for the deed of establishment of a PT from applicable laws and regulations, regarding protection regarding negligence in not fulfilling the requirements for the appointment of the Board of Commissioners as regulated in Article 112 paragraph (2) In the PT Law, in this article it is explained that if it is discovered that there is an error in the appointment of the Board of Commissioners, the Directors are given at least 7 (seven) days from the time it is discovered to notify the Minister. Then regarding the validity of the legal actions after the deed of establishment of the PT has received approval from the Minister, it is explained in paragraph (3), "Legal actions that have been carried out by members of the Board of Commissioners as intended in paragraph (1) for and on behalf of the Board of Commissioners before their appointment are void, remain binding, and will be the responsibility of the Company." In connection with the things that have been explained, there is a solution to the problem if the deed of establishment of the PT contains errors. J Satrio explained that in terms of an agreement, if you remove the part that is contrary to the PT Law (the part that has illegal causes), the deed of establishment can still be implemented as an agreement, then the rest of the agreement is left as it was when the deed of establishment was initially ratified, as long as it can still be considered in accordance with the wishes of the parties. The Notary involved in this matter has the ability to provide advice to shareholders subsequent to the Minister's approval of the deed of establishment. This is due to the fact that the authority to make amendments to the PT's Articles of Association lies with the shareholders who initially founded the PT. The Notary can recommend promptly organizing an Extraordinary General Meeting of Shareholders (RUPS). During this Extraordinary General Meeting of Shareholders, adjustments to the Company's Articles of Association regarding changes to the members of the Board of Commissioners can be proposed. It is important to note that these changes only require notification to the Minister in accordance with the provisions of Article 21 paragraph (3) of the Company Law.

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