

Juridical Analysis of The Process of Making Share Acquisition / Acquisition Deals To Realize Healthy And Fair Business Competition Practices (Research Study at The Office of The Business Competition Supervisory Commission In Batam)

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ABSTRACT

For the notary profession, the acquisitions carried out by companies have affected the work of the notary so that the role and burden of responsibility of a notary in being responsible for the documents that have been published in the acquisition process is very important. This paper aims to find out how the role of a notary in the process of making the deed of acquisition of a limited liability company in terms of the law and how the responsibilities of a notary in making the deed of acquisition of a limited liability company. The method used is Normative and Empirical research methods. In this stage, the morality and ethics of the Notary is at stake in the form of its transparent performance to the parties as well as to the stakeholders associated with the making of the acquisition deed in terms of the cost and time of execution of the acquisition deed, both regarding the application for registration of changes to the articles of association, this study aims to find out the process of making the deed of share takeover/acquisition in order to realize fair and fair business competition practices and to know the implementation, obstacles and solutions in carrying out these processes. This research uses empirical legal research which is supported by normative legal research. The research method uses sociological normative juridical. The results of the study explain that the role of a Notary in the process of making a Limited Liability Company acquisition deed is very important, especially at the stages before, implementation and after the acquisition. Notaries in carrying out their functions, namely making shares takeover deeds, must prioritize the principle of prudence and the principle of accuracy so that the deed they make does not become a problem in the future.

Keyword : - Notaries, Takeovers and Acquisitions

INTRODUCTION

A limited liability company as one of the companies recognized in the Indonesian legal system, in its business activities a limited liability company often performs corporate actions based on certain considerations that are considered to be able to provide benefits for the limited liability company itself, as well as other related parties. One form of corporate action of a limited liability company as referred to is Acquisition, either acquisition of shares or acquisition of assets owned by other Limited Liability Companies or other legal subjects.

The term "acquisition" comes from the English language "Acquisition" is a take made by a company by buying a majority share of the company so that it takes over capital control over another company.

Juridically, the way to take over a company is to buy shares, either partially or completely, of the company. Company takeovers or acquisitions can be done internally and externally, internal acquisitions are acquisitions of companies within their own group, while external acquisitions are acquisitions of companies outside the group or companies from other groups. Acquiring companies are usually large companies that have strong funds, good management, and extensive networks and are grouped in conglomerates.

This means that, although in principle mergers, consolidations and acquisitions are aimed at creating fair business competition by increasing efficiency and increasing technological growth rates, in reality these mergers, consolidations and acquisitions, on the bad side, can create economic distortions. It's not wrong if some people say that "Big is Beautiful", but being too big is sometimes also not good or not good, not only for the "big" itself but also for the surrounding environment. This means that there must be guidelines or at least an outline that can be used by entrepreneurs in assessing whether later a merger, consolidation and acquisition action that will be carried out by them will have an impact on unfair business competition or may lead to monopolistic practices. Because mergers and acquisitions can take the form of merging activities horizontally, vertically or conglomerate.

Mergers, consolidations and acquisitions can be a tool for business actors to get rid of their competitors. Therefore, even though the merger law is justified, consolidation and acquisition will become legal when the merger, consolidation and acquisition have a positive impact on business competition and the public interest.

From the provisions of the Notary Position Regulations and the Notary Position Act above, it can be concluded that the main task of a notary is to make authentic deeds, where an authentic deed according to Article 1870 BW (Burgelijk Wetboek) gives to the parties who make it an absolute agreement. This is where the importance of the notary profession lies, namely that notaries are authorized to create absolute evidence by law, in the sense that what is stated in the authentic deed is basically considered true. This is very important for parties who need evidence for a purpose, either for personal interest or for the benefit of a business, namely activities in the business sector.

The legal basis on the existence of a notary/notary institution is contained in the Fourth Book of the Civil Code on Proof and Expiration. Known for the existence of written evidence, the most powerful written evidence is in the form of authentic deeds. The meaning of an authentic act based on the provisions of Article 1868 of the Civil Code is an act in the form prescribed by law, made by or in the presence of officers / public officials authorized for it and in the place where the act is made.

For the notary profession, the actions of mergers, consolidations, and acquisitions carried out by companies are very closely related to the main tasks of the work function of a notary, especially in the context of making a notarial deed related to the legal consequences arising from these activities, but in its implementation the notary and the notary The policy holders in the company are sometimes negligent with certain provisions that must be carried out both at the preparation, implementation and after the legal action is carried out.

In the process of the company conducting the acquisition, to produce written evidence in the form of an official report and authentic deed in the process of carrying out the acquisition, the notary requires documents that will be the basis for the process of making the deed of acquisition, so that the deed of acquisition he makes does not cause legal consequences in the form of claims and/or or lawsuits from parties who feel aggrieved, and to find out further and to what extent the role of a Notary as a public official who has the authority to make authentic deeds, especially those relating to the deed of takeover of shares and what are the stages that must be carried out in the process of taking over shares, then The author is interested in putting it into a scientific paper in the form of a thesis with the title, JURIDIC ANALYSIS OF THE PROCESS OF MAKING A SHARE ACQUISITION/ ACQUISITION DEED TO REALIZE HEALTHY AND FAIR BUSINESS COMPETITION PRACTICES (RESEARCH STUDY AT THE OFFICE OF THE COMMISSION FOR SUPERVISION OF BUSINESS COMPETITION).

FORMULATION OF THE PROBLEM

1. How is the Legal Arrangement for the Process of Making the Deed of Share Takeover/Acquisition to Realize Fair and Fair Business Competition Practices (Research Study at the Office of the Business Competition Supervisory Commission in Batam).?
2. How to implement and implement the Process of Making Shares Takeover/Acquisition Deed to Realize Fair and Fair Business Competition Practices (Research Study at the Office of the Business Competition Supervisory Commission in Batam). ?
3. What factors are the obstacles/obstacles in the Process of Making the Deed of Share Takeover/Acquisition to Realize Fair and Fair Business Competition Practices (Research Study at the Office of the Business Competition Supervisory Commission in Batam). ?

LITERATURE REVIEW

The sources of literature in this study include the collection of legal materials consisting of primary, secondary and tertiary legal materials by taking into account their validity and reliability. Primary legal materials are collected by collecting legal products and laws and regulations relating to limited liability company law, including those relating to it. Secondary legal materials are collected by searching, finding and examining the results of

previous researches related to this research. And for tertiary legal materials in the form of books on law, be it legal dictionaries, encyclopedias and articles related to supporting materials for research analysis related to agrarian law, including those relating to it.

RESEARCH METHODOLOGY

The specification of this research only analyzes to the level of detection, that is, analyzes and presents facts systematically so that it can be easier to understand and conclude. Specifically, according to the type, nature and purpose of Soerjono Soekanto's specification of legal research, it is divided into normative legal research and empirical or sociological legal research.

In writing this thesis the author uses empirical legal research methods that are supported by normative legal research methods. Normative legal research is also referred to as library research or document study, this is because it is mostly carried out on secondary data, besides that normative legal research is research that studies more laws. From the results of the study, it will be conceptualized into a norm or rule that applies in a community environment. Empirical Legal Research is also often referred to as sociological research or field research, where the research is based on primary data, where the data is obtained directly from the community through field research. This study also links the law to efforts with the intention of fulfilling the wishes of the community in understanding the intent of the title written by the author. Based on the explanation above and taking into account several variables and problem formulations in this thesis, it is related to the type/specification of the research, that this thesis research is normative legal research, supported by sociological/empirical legal research.

The approach method is an explanation of what methods will be applied by researchers in the research to be carried out. In this study, the authors used the Normative Juridical Approach and Sociological Juridical Approach. First, the Normative Juridical Approach Method is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles, articles and laws and regulations related to research that is related to its application in practice.

Second, the Sociological Juridical Approach Method, which is a legal research carried out by researching and examining existing facts, with field observations and then reviewed based on laws and regulations related to references to solve problems .

DISCUSSION

1. HOW IS THE LEGAL ARRANGEMENT FOR THE PROCESS OF MAKING THE DEED OF SHARE TAKEOVER/ACQUISITION TO REALIZE FAIR AND FAIR BUSINESS COMPETITION PRACTICES

Law Number 30 of 2004 concerning the Position of a Notary in Article 1 provides a definition of a notary which states that a notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this law. Based on the definition mentioned above, a Notary as a public official is a public office, in this case the public which means law, not the public as the general public. The term notary according to the common law system with the civil law system adopted in Indonesia is either a public official or public officer or openbaar ambtenaar.

Another understanding of the notary definition was also put forward by H.R. Purwanto Gandasubrata states that "a notary is a public official appointed by the government including elements of law enforcement who provide services to the public". In his job, the notary applies the law in his deed as an authentic deed which is a strong and absolute tool of evidence so as to provide perfect proof to the parties who made it.

The definition given by UUJN refers to the duties and authorities carried out by a notary. This means that a notary has the duty as a public official and has the authority to make authentic deeds and other authorities regulated by UUJN.

Thus, if in the laws and regulations for a legal act it is required to have an authentic deed, then it can only be done by a notary deed, unless there is a statutory regulation that states explicitly, or some are the only ones authorized to do so.

The notary profession has an important meaning because notaries are given the authority to create perfect and absolute evidence by law, in the sense that what is stated in the authentic deed must be considered true. This is very important for those who need evidence for a purpose, either for personal interest (individual) or for the benefit of a business, regarding personal interests, for example, is to make a testament, acknowledge children born out of wedlock, give and receive grants, hold inheritance and so on. While for the interest of a business, for example, the deeds in establishing a PT (Limited Company), Firma, CV (Comanditer Vennotschap) and others as well as deeds concerning transactions in the business and trade fields, job chartering, credit agreements and others. etc.

A deed that can be made by a notary is an authentic deed. As for what is meant by an authentic deed is as regulated by Article 1868 of the Civil Law (KUHPer), which is a deed in the form prescribed by law, made by or in the presence of public officials authorized to that's where the deed was made.

Notaries, in addition to being authorized to make authentic deeds either by or in his presence, which is their main duty according to the regulations in force for their position, Notaries also have a role.:

1. Acting as a legal advisor, especially concerning civil law issues in a broad (private) sense;
2. Perform registration (waarmerking) on deeds or conditions under hand and documents (strukken);
3. Legalize signatures;
4. Make and ratify (waarmerking) copies or derivatives of various documents (copy collationee);
5. Seeking to be certified by bodies such as Limited Liability Companies and foundations in order to obtain approval as a legal entity from the Minister of Justice and Human Rights;
6. Make a statement of the rights of heirs;
7. Other works related to juridical services and tax counseling, such as stamp duty regulations, land and building rights acquisition fees (BPHTB) Income Tax (PPh) and Land and Building Tax (PBB).

2. HOW TO IMPLEMENT AND IMPLEMENT THE PROCESS OF MAKING SHARES TAKEOVER/ACQUISITION DEED TO REALIZE FAIR AND FAIR BUSINESS COMPETITION PRACTICES.

From the point of view of the legislation, the role of a Notary in the acquisition process is very clear, especially in Government Regulation Number 27 of 1998 concerning Merger, Consolidation, and Takeover of Limited Liability Companies, and also in Government Regulation Number 28 of 1999 concerning Mergers, Consolidations, and Bank Acquisition, which explicitly states that the party authorized to make the deed of merger is a Notary.

Acquisition is the purchase of a company by another company or by a group of investors. Acquisitions are often used to maintain the availability of raw material supplies or guarantee products will be absorbed by the market, Basically an acquisition is a legal transaction carried out by a company to take over another company in order to increase the company's competitiveness. Therefore, the acquisition transaction in its implementation must pay attention to the applicable legal rules and must be stated in the form of an authentic deed in order to create legal certainty for the parties.

The role of the Notary is very much needed during the preparation, in the implementation process, and at the time after the takeover of shares. Therefore, the position of a Notary becomes very important in the acquisition process in Indonesia, while the procedure for conducting the Acquisition refers to Government Regulation no. 27 of 1998 which basically regulates the acquisition of companies in Indonesia in the following stages:

2.1 Preparation Stage

In the preparation stage, a Notary is required to have or hold the principle of prudence, considering that at this stage a Notary is directly related to his duties and functions as regulated in UUJN, namely assisting and providing legal advice to clients or Directors of each Company, Directors of each company that will take over and that is being taken over is obligated to prepare a plan for the takeover of shares and can only be submitted to the General Meeting of Shareholders after obtaining prior approval from the Commissioner. In the proposed share takeover plan made by each of the Directors, it must at least contain :

- a) The name and domicile of the company and other legal entities, or the identity of the individual who carries out the takeover;
- b) The reasons and explanations of each company's Board of Directors, management of legal entities or individuals who carry out the takeover
- c) Annual reports, especially the annual calculation of the last financial year of the company and other legal entities that carry out the takeover;
- d) The procedure for converting shares of each company that carries out the takeover if the payment for the takeover is made in shares;
- e) Draft amendment to the Company's Articles of Association resulting from the takeover;
- f) Number of shares to be taken over;
- g) shares to be taken over;
- h) Funding readiness;

The combined pro forma balance sheet of the company after the takeover prepared in accordance with financial accounting standards, as well as estimates regarding matters relating to profits and losses and the future of the company based on the results of independent expert assessments;

- a) How to settle the status of employees of the company that will be taken over;
- b) Estimated period of execution of the takeover
- c) Reports on the state and running of the company and the results that have been achieved;
- d) The company's main activities and changes during the current financial year;
- e) Details of problems that arise during the current financial year that affect the company's activities;
- f) Names of members of the Board of Directors and Commissioners;

2.2 Implementation Stage

At the stage of implementing this acquisition, it begins with the making of the Deed of Acquisition of shares before a Notary so that the concept of the deed of takeover of shares which has been approved by the GMS of each company becomes the basis for the Notary to make the concept of the deed into an Authentic Deed of takeover or commonly called an acquisition.

After the deed of acquisition of shares is made by a notary, the next action that must be taken by the board of directors in the context of implementing the acquisition will depend on the substance of the changes that occur in the deed of acquisition. In connection with the changes that will occur in the Deed of Acquisition, if the amendment to the articles of association in the implementation of the acquisition meets the provisions stipulated in Article 26 of Law Number 40 of 2007 concerning Limited Liability Companies, the acquisition of shares shall take effect from the date of approval of the amendment to the Articles of Association by the Minister. The requirements must be approved by the Minister for changes to the company's Articles of Association which include:

- a) Company name;
- b) Purpose and objectives of the company;
- c) Company business activities;
- d) The period of establishment of the company if regulated in the articles of association
- e) The amount of authorized capital;
- f) Reduction of issued and paid-up capital; or
- g) issued and paid-up capital; or;
- h) The status of a closed company becomes a public company or vice versa.

2.3 Stage After

In general, acquisitions result in changes to the company's articles of association because the acquisition has a significant impact, including on the capital structure and management (management) and control of the acquired company. Article 32 paragraph (1) Government Regulation Number 27 of 1998 states:

If the takeover of the company is carried out by making changes to the Articles of Association as referred to in Article 15 paragraph (2) of Law Number 1 of 1995 concerning Limited Liability Companies, then the takeover will take effect from the date of approval of the amendment to the Articles of Association by the Minister."

Based on the provisions of Article 32 paragraph (1), paragraph (2) and paragraph (3) above, it is the duty of a notary to make a deed of share acquisition and register it with the Ministry of Law and Human Rights if there is a change in the Articles of Association of the company.

3. WHAT FACTORS ARE THE OBSTACLES/OBSTACLES IN THE PROCESS OF MAKING THE DEED OF SHARE TAKEOVER/ACQUISITION TO REALIZE FAIR AND FAIR BUSINESS COMPETITION PRACTICES

3.1 Completeness of Company Legality

In practice, there are also obstacles and obstacles for a Notary to carry out the process of making a deed of share acquisition in a limited liability company, one of which is the completeness of the legality documents owned by the company. This will certainly hinder the notary in carrying out the deed of acquisition and the deed of change of company as well as registration with the Ministry of Law and Human Rights which existed after the acquisition.

The completeness of the legality of the company affects the obstacles in making the deed of acquisition by the Notary, both from the completeness of the company's articles of association and the company's operating permit. Companies that exist are relatively complete with all the legalities, some of the things that become obstacles in making a takeover deed are the incomplete legality of the company that will be taken over or acquired.

3.2 Completeness of Asset Ownership Legal Documents

Another obstacle or obstacle in the practice of implementing the acquisition of a limited liability company is the completeness of legal documents for asset ownership. This will hinder the making of the deed of acquisition and the deed of change of the company that existed after the acquisition.

The completeness of the legal documents of ownership of the company's assets affects the obstacles in making the deed of acquisition by the Notary, from the completeness of the legal documents of ownership of assets. Companies that exist are relatively complete with all of these requirements, several things that become obstacles in making the acquisition deed are the incomplete legal documents for ownership of the assets in the merged company.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The legal arrangement of the process of making the deed of share takeover/acquisition in order to realize fair and fair business competition practices is explicitly regulated in Law Number 30 of 2004 concerning the Position of a Notary in Article 1 providing a definition of a notary which states that a notary is a public official authorized to make authentic deed and other authorities as referred to in this law.

Implementation of the Process of Making the Deed of Share Takeover/Acquisition to Realize Fair and Fair Business Competition Practices is divided into 3 (three) stages, namely:

- a. Preparation Stage;
- b. Implementation Stage;
- c. Stage After.

Constraints in the Process of Making the Deed of Share Takeover/Acquisition to Realize Fair and Fair Business Competition Practices, namely the lack of legal documents for the legal entity of the company that will take over and the lack of documents on the title of land title from the company that will carry out the takeover of shares

SUGESTION

The government should have revised the laws and regulations regarding the procedures for the acquisition or acquisition of shares considering that the old rules are no longer relevant when viewed from the current development of the business world;

In connection with the role of the Notary which is quite important in the process of implementing the takeover of shares, in order to minimize the occurrence of errors in the making of the deed, it is necessary to have a special education in the form of upgrading or debriefing for Notaries to master the issue of the takeover of shares;

The role of a notary is required by providing direction and explanation regarding matters relating to the establishment of the PT and it is hoped that the parties will be able to understand the rules or regulations governing the Limited Liability Company so that the acquisition does not result in unfair business competition practices due to company acquisition.

REFERENCES

1. Anshori, Abdul Ghofur, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, UII Press, Yogyakarta, 2009
2. Gandasubrata, H.R. Purwanto, *Renungan Hukum, IKAHI Cabang Mahkamah Agung RI*, Jakarta, 1998
3. Haryani, Iswi dkk, *Konsolidasi, Akuisisi, dan pemisahan Perusahaan, Visimedia*, Jakarta selatan, 2011.
4. Idham, *Paradigma Politik Hukum Pembentukan Undang-Undang Guna Meneguhkan Prinsip Kedaulatan Rakyat dan Indonesia Sebagai Negara Hukum*. Bandung: Alumni, 2010
5. Notodisejo, R. Soegando, 1982, *Hukum Notariat Di Indonesia Suatu Penjelasan*, CV. Rajawali, Jakarta, 1982
6. Saliman, Abdul R, *Hukum bisnis Untuk Perusahaan*, Kencana Perenada media group, Jakarta, 2005
7. Situmorang, Victor M, *Grosse Akta Dalam Pembuktian dan Eksekusi*, Rineka Cipta, 1993
8. Soekanto, Soerjono dan Sri Mamuji, 1985, *Penelitian Hukum Normatif-Suatu Tinjauan Singkat*, Rajawali press, Jakarta
9. _____, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1996
10. Suhartono Irawan, *Metode Penelitian Sosial Suatu Teknik Penelitian Bidang Kesejahteraan Sosial lainnya*, Remaja Rosda Karya, Bandung, 1999
11. R. Tjitrosudibio dan Subekti, *Kitab Undang-Undang Hukum Perdata, Cet. 31*, PT. Pradnya Paramita, Jakarta, 2001
12. <http://supanto.staff.hukum.uns.ac.id/2010/06/18/kode-etik-notaris-ringkas> diakses pada tanggal 10/04/2021, pukul 13:00 WIB
13. https://id.wikipedia.org/wiki/Merger_dan_akuisisi diakses pada tanggal 08/05/2021 pukul 16.33 WIB.
14. Wawancara :Vidia Cherria Chairunnisa, S.H., M.Kn., Notaris Kota Batam pada tanggal 15 Juni 2021 pukul 10:00 WIB