

THE URGENCY OF A NOTARY DEED IN CHANGING A INDIVIDUAL COMPANY INTO A CAPITAL PARTNERSHIP COMPANY

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Abstract

The Urgency of Notarial Deed in Changing a Sole Proprietorship to a Capital Partnership Company. This study aims to determine and analyze how a sole proprietorship changes to a capital partnership company and the urgency of a notarial deed in changing a sole proprietorship to a capital partnership company. This legal research uses a normative legal research type, the research approach used is the Statutory approach and the Conceptual Approach. A Sole Proprietorship is required to convert to a capital partnership company if the shareholder is more than one person and/or has exceeded the UMK qualification limit. as regulated in Article 9 of PP No. 8 of 2021 where the change in status is carried out through a notarial deed and registered electronically with the Minister of Law and Human Rights, if two Sole Proprietorships want to merge, it cannot be done through a formal merger as regulated in Law No. 40 of 2007. Because there are no regulations governing the process of changing additional shares through a merger between a Sole Proprietorship and another Sole Proprietorship. The change in legal form from a Sole Proprietorship to a Capital Partnership has significant legal and administrative consequences, thus requiring the formal involvement of a notary. The notarial deed is very important in this process because it is the legal basis needed to validate the existence and new structure of the company which is no longer owned by a single person based on Article 9 paragraph (2) of PP No. 8 of 2021.

Keywords : Notarial Deed, Changes to Sole Proprietorship, Capital Partnership

INTRODUCTION

A notarial deed is created through the direct involvement of the parties appearing before the notary. They are the primary actors in drafting the deed, resulting in an authentic deed. A notary's deed authentically describes all acts, agreements, and stipulations witnessed by the parties and witnesses. In carrying out their duties in drafting a deed, a notary is responsible for the deed as a realization of the parties' wishes in the form of an authentic deed.

However, it is not uncommon for the existence of an authentic deed prepared by a notary to be disputed by one or more parties who feel they have been harmed by the authentic deed. This can be done through denial of the contents of the deed, the signatures included in the deed, the presence of the parties before the notary, or even allegations of false statements contained in the authentic deed. Because of these circumstances, notaries are often named as defendants or co-defendants, or as witnesses or even suspects or defendants. Consequently, notaries are summoned by law enforcement investigators, public prosecutors, or judges to appear for examinations, prosecutions, or trials to provide information regarding legal issues related to the deeds they have drawn up.

In practice, the Notary Honorary Council often refuses to grant permission for notaries to be questioned. This, of course, creates legal uncertainty for both the complainant and the reported party (suspect/defendant), as their cases are delayed. Article 66 paragraph (1) of Law No. 2 of 2014 contradicts the legal objective of justice. The phrase "with the approval of the Notary Honorary Council" contradicts the principle of equality before the law, a fundamental principle in a state based on the rule of law. Preferential treatment of notaries creates unequal standing before the law.

This leads to injustice for other citizens. Furthermore, this regulation also has the potential to create injustice for Indonesian citizens whose constitutional rights are violated by the actions of notaries. Notaries will face legal challenges because the examination must be authorized by the Notary Honorary Council. Furthermore, the Notary Honorary Council, in exercising its authority to "give" or "withhold" approval, sometimes touches on the realm of evidence/conclusion in a case. In fact, the act of concluding a case should be the domain of the Panel of Judges.

The judicial process by investigators, public prosecutors, or judges to retrieve documents held by a notary and summon a notary to appear for an examination related to the documents they have prepared, which can only be conducted with the approval of the Notary Honorary Council, falls within the group of regulations that should not contain disparate treatment that contradicts the principle of equal protection as guaranteed by Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely equality before the law and government.

RESEARCH METHODS

The Republic of Indonesia as a state based on the rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, guarantees legal certainty, order and protection for every citizen as stated in Article 27 paragraph (1) of the 1945 UUDNRI which states that "All citizens have equal standing before the law and government and are obliged to uphold the law and government without exception" and Article 28D paragraph (1) of the 1945 UUDNRI which states that "Everyone has the right to recognition, guarantees, protection and legal certainty that is fair and equal treatment before the law".

The rapid development of trade in Indonesia has resulted in many entrepreneurs no longer acting alone, but rather forming partnerships or corporations. The purpose of these partnerships is to collaborate regularly to facilitate the achievement of their common goal, namely running a company to maximize profits. These partnerships can take the form of Civil Partnerships (Maatschap), Firma Partnerships, Limited Partnerships (Commanditaire

Vennontschap), or Limited Liability Companies.

In this regard, the government has implemented a new innovation outlined in Law No. 6 of 2023. This regulation explains that a single person can establish a limited liability company, also known as a sole proprietorship.

This change is related to the ease of doing business for micro, small, and medium enterprises (MSMEs), as defined in Article 1, number 1 of Law No. 6 of 2023. Consequently, 10 articles have been inserted into Law No. 6 of 2023 concerning sole proprietorships, in accordance with the standards for Micro and Small Enterprises (MSMEs) stipulated in Law No. 20 of 2008. With the enactment of Law No. 6 of 2023, the government hopes that it will serve as a driving force for structural economic progress, which could subsequently impact various other sectors, achieving the expected economic growth benchmark of 5.7% to 6%.

The emergence of Sole Proprietorships, born out of Law No. 6 of 2023, in Part Five concerning Limited Liability Companies, namely Article 109, has amended several provisions in Law No. 40 of 2007, some of which are based on the provisions of Article 153A paragraph (1), which states that a company can be established by one person, provided it meets the business capital criteria. Article 6 paragraphs (1) and (2) of Government Regulation No. 8 of 2021 also emphasizes that a sole proprietorship must be established by an Indonesian citizen aged at least 17 (seventeen) years and legally competent by completing a Statement of Establishment in Indonesian.

Furthermore, Article 153A paragraph (2) of Law No. 6 of 2023 states that: "The establishment of a company for micro and small businesses as referred to in paragraph (1) shall be carried out based on a statement of establishment drawn up in Indonesian." The establishment of a Sole Proprietorship does not need to be stipulated in a notarial deed (suffices to have a statement of establishment electronically registered with the Ministry of Law and Human Rights by filling in the required format).

The notarial deed still appears in Article 9 of Government Regulation No. 8 of 2021, explaining that if a sole proprietorship wishes to change its status to a capital partnership, a sole proprietorship must change its legal status to a limited liability company if it no longer meets the following criteria:

1. The number of shareholders increases to more than 1 (one) person; and/or
2. The lack of compliance with the criteria for micro and small businesses as stipulated in the laws and regulations concerning micro and small businesses.

Before becoming a capital partnership, a sole proprietorship changes its status through a notarial deed and is registered electronically. While we know that the establishment of a sole proprietorship initially did not require a notarial deed, the author believes that the regulations governing the conversion from a sole proprietorship to a capital partnership are still lacking. Clearer regulations are needed in the preparation of notarial deeds so that notaries can apply the principle of prudence in drafting amendments, ensuring the accuracy of the documents and the founders' identities.

This legal research uses normative legal research or library legal research. The research studied by the author in this research is a prescriptive research, namely research aimed at knowing and analyzing the change of a sole proprietorship into a capital partnership and to know and analyze the urgency of a notarial deed in changing a sole proprietorship into a capital partnership. The approach to this research uses a statutory approach and a conceptual approach. This research uses Primary, Secondary and Tertiary Legal Materials. The technique used to collect primary, secondary and tertiary legal materials is a literature study. In literature studies, more emphasis is placed on document tracing (document study), namely written materials containing information classified into primary legal materials, secondary legal materials and tertiary legal materials. Literature research is used to obtain legal materials in the form of laws and regulations, relevant legal literature for the legal research conducted, namely law books,

legal journals, legal articles, legal research results, scientific publications both printed and electronic. Literature studies are conducted with a card system.

RESULT AND DISCUSSION

Change of Status of a Sole Proprietorship to a Capital Partnership with More Than One Shareholder and Merger of Shares Between Sole Proprietorships

The Sole Proprietorship (Private Partnership) for MSMEs is an innovative step by the Indonesian government to provide small business owners with more options for managing their businesses. MSMEs often choose to operate as sole proprietorships or establish a CV (Company Limited Liability Company). This option is often chosen due to its ease of establishment and simpler administration. However, with the introduction of the Sole Proprietorship (Private Partnership) as a new option, it is hoped that MSMEs will have greater flexibility in managing their businesses.

MSMEs play a crucial role in the Indonesian economy, as almost all operate in sectors closely related to people's daily needs. Therefore, strengthening the role of MSMEs can have a significant impact on strengthening the national economy. With the Sole Proprietorship option, it is hoped that more MSMEs will be able to establish their businesses legally and in a structured manner, thus more easily accessing the necessary legal support and protection to grow their businesses.

Furthermore, the Sole Proprietorship can also help increase transparency and professionalism in business management, which ultimately can improve the competitiveness and sustainability of MSMEs in Indonesia. This convenience is one of the innovations introduced in Law No. 6 of 2023. Previously, establishing a limited liability company in Indonesia required a minimum of two individuals. However, with this amendment, individuals can now establish a limited liability company.

Article 109 paragraph (2) of Law No. 6 of 2023 states that a limited liability company can be established by one person. This is further regulated in Government Regulation No. 8 of 2021, as referred to in Article 109 paragraph (2) of Law No. 6 of 2023. A sole proprietorship (SPO) that becomes a legal entity must meet the criteria for a micro, small, and medium enterprise (MSE), have a deed of establishment electronically registered with the Minister of Law and Human Rights, be established by a legal entity consisting of shareholders and directors, and have approved capital. Thus, a limited liability company established by a single person can provide more flexibility to business actors, including MSEs, in establishing and managing their businesses.

Individual legal entities that meet the criteria for micro and small businesses are recognized by Law No. 6 of 2023 as Limited Liability Companies. Previously, the definition of a Limited Liability Company was contained in Article 1, number 1 of the Limited Liability Company Law, which states: "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity constituting a capital association, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, and meeting the requirements stipulated in this law and its implementing regulations."

In Law No. 6 of 2023, the concept of a company has been expanded, introducing the new term "Personal Liability Company." The definition of a Individual Limited Liability Company, based on Article 109, number 1 of Law No. 6 of 2023, states: "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity constituting a capital association, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, or an individual legal entity that meets the criteria for Micro and Small Businesses as stipulated in the laws and regulations concerning Micro and Small Businesses."

The addition of the phrase "an individual legal entity that meets the criteria for Micro

and Small Enterprises as stipulated in the laws and regulations concerning Micro and Small Enterprises" implies a new regulation authorizing an MSE with one shareholder to establish a legal entity. A Limited Liability Company (PT) can be established by one person as both shareholder and director.

As enacted by Law No. 6 of 2023, this significantly facilitates the ease of establishing a business. Individual PTs can only be established for micro and small enterprises, in accordance with Government Regulation No. 7 of 2021. Micro businesses are defined by a maximum business capital of IDR 1 billion, excluding land and buildings, or a maximum annual sales turnover of IDR 2 billion. Meanwhile, small businesses are defined by capital ownership of more than IDR 1 billion to IDR 5 billion, excluding land and buildings, or annual sales turnover of more than IDR 2 billion to IDR 15 billion. An Individual PT is a legal entity that meets the criteria for Micro and Small Enterprises as stipulated in the laws and regulations concerning Micro and Small Enterprises, established by a maximum of one person. Important Elements of an Individual PT In the definition of PT in Law No. 6 of 2023

Even though it is founded by only one person, it is important to emphasize that an Individual PT remains a legal entity, just like the PT we are familiar with, with a minimum of two founders and shareholders. The status of an Individual PT as a legal entity is affirmed in Article 1 of Government Regulation No. 8 of 2021, which states that "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity that is a capital association, established based on an agreement, conducting business activities with authorized capital entirely divided into shares or an individual legal entity that meets the criteria for micro and small businesses as regulated in laws and regulations regarding micro and small businesses. Government Regulation No. 8 of 2021 further stipulates that the criteria for micro capital are businesses with capital below IDR 1,000,000,000.00 (one billion Rupiah) and small businesses with capital between IDR 1,000,000,000.00 (one billion Rupiah) and IDR 5,000,000,000.00 (five billion Rupiah).

During its journey, a Sole Proprietorship can be transformed into a Capital Partnership Company. The process of changing the status of a Sole Proprietorship to a Capital Partnership Company does have several provisions that must be met in accordance with applicable regulations. One of these is the provision that stipulates that a Sole Proprietorship must be transformed into a Capital Partnership Company if it has more than one shareholder and/or has exceeded the UMK qualification limit.

Regarding the concept of changing a Sole Proprietorship to a Capital Partnership, there are still obstacles in the status change process related to whether the Sole Proprietorship must first be dissolved or not. This presents a challenge, as the status change process involves significant changes to the company's structure and governance.

According to the current system, converting a Sole Proprietorship to a Capital Partnership requires a notarial deed, while the establishment of a Sole Proprietorship does not require a notary. The principle of establishing a Sole Proprietorship has long been recognized in various countries, such as the United States, the United Kingdom, Singapore, and several others. However, the concept of a Sole Proprietorship in these countries is not a legal entity, but rather a non-legal entity.

To overcome these obstacles, coordination may be necessary between the Sole Proprietorship owner and the relevant authorities, such as the Ministry of Law and Human Rights (Kemenkumham) or other relevant institutions. Furthermore, the authorities can also provide clearer guidance or direction regarding the status change process to ensure it is carried out smoothly and in accordance with applicable regulations. The change in status is effected through a Notarial Deed and registered electronically in accordance with the provisions of the capital partnership law. In other words, the sole proprietorship undergoes the mechanism for establishing a capital partnership from scratch.

The legal entity theory forms the basis for regulating individual PTs and their amendments. Individual PTs, as legal entities, have certain limitations that necessitate a change in status when the business expands and requires a more complex structure. This change ensures compliance with the law and allows for more sustainable business growth. The legal entity theory explains how and why an entity (body) is considered a legal subject, possessing rights and obligations similar to those of a human being (an individual legal subject). The relationship between the change in a sole proprietorship and the legal entity theory is that when the change occurs, the change from a sole proprietorship to a capital partnership changes the structure and management of the entity, even though both are legal entities. The theory of legal entities remains relevant in explaining the sustainability of legal entities. According to the fiction theory and the organ theory, legal entities continue to exist even if there are changes in the form or composition of organs. Transfer of will and responsibility. In the organ theory, the will of the legal entity moves from one person (sole owner) to collective organs (directors, commissioners) and legal liability. Legal entities remain independently responsible for their obligations, regardless of who manages them.

Thus, from a legal perspective, a takeover is an agreement between the party being taken over and the party taking over. The legal act of takeover does not result in the Company whose shares are being taken over being dissolved or ending. The Company continues to exist and be valid as before. Only the shareholders are transferred from the original shareholders to the party taking over. The legal consequences are limited to the transfer of control of the Company to the party taking over. Regarding the requirements for a takeover, Article 126 paragraph (1) of Law No. 40 of 2007 and Article 4 paragraph (1) of PP No. 27 of 1998 in principle a takeover cannot be carried out if it will harm the interests of certain parties, the takeover must also be prevented from the possibility of monopoly or monopsony in various forms that are detrimental to the community.

Even though there is only one founder, it needs to be emphasized that the status of an Individual PT remains a legal entity, just like the PT that we have known so far, with a minimum of 2 founders and shareholders. If the share merger involves two Individual PTs, then the process is a transfer of shares from one Individual PT to another Individual PT which will become a Capital Partnership PT, not a merger or consolidation.

The Existence of a Notary in Changes to a Sole Proprietorship

A notary has the position as a public official who is authorized to make authentic deeds and other authorities regulated in the UUJN. A notary provides legal certainty for the parties to the deeds he makes. The function which is also the authority of a notary as a public official is to make authentic deeds regarding all actions, agreements, and provisions required by laws and/or which are desired by the interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which are as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by law.

Deeds prepared by a notary in accordance with their authority include minutes of deeds, grosse deeds (e.g., acknowledgments of debt), copies of deeds, extracts of deeds, original deeds (e.g., payments of rent, interest, and pensions, offers of cash payments, proceedings for non-payment or non-receipt of securities, powers of attorney, certificates of ownership, and other deeds based on statutory regulations). Notaries also provide free legal services to the poor and prepare deeds for objects deemed to have a social function (e.g., deeds of foundation establishment, deeds of school establishment, deeds of waqf land, deeds of establishment of houses of worship, or deeds of establishment of hospitals).

In carrying out these functions and authorities, notaries must act honestly, carefully, independently, impartially, and safeguard the interests of all parties involved in the legal act.

Notaries provide services in accordance with applicable laws and regulations, namely, the UUJN, unless there is a reason to refuse. The grounds for refusal here are those that would render the notary impartial, such as a blood or marriage relationship with the notary themselves or their spouse.

Notaries must also maintain confidentiality regarding the deeds they draft and all information obtained for the purposes of drafting them. This is done to protect the interests of all parties involved in the deed, ensuring legal certainty. Therefore, a notary is a public official authorized to draft authentic deeds. A notary is not a civil servant, state official, advocate, or currently holding any other position. Notaries are domiciled in the district or city. Their jurisdiction covers the entire province from where they are domiciled.

According to Article 1, number 2 of the UUJNP, a notary public is a public office authorized to draw up deeds related to agreements requested by the parties. These deeds are drawn up based on specific and detailed provisions stipulated by law, possessing complete evidentiary power and validity. Due to the existence of complete evidentiary power and recognized validity, a notarial deed, also known as an authentic deed, is specifically required for the establishment of entities or institutions, as well as business entities regulated by law, such as limited liability companies.

The practice of establishing a sole proprietorship can be seen in Article 7 paragraph (1) of Law No. 40 of 2007, which states that "the establishment of a company must be carried out by two or more persons with a notarial deed drawn up in Indonesian." However, since the enactment of Law No. 6 of 2023, new regulations and concepts have emerged specifically regarding the concept of legal entities, namely the existence of sole proprietorships specifically for micro, small, and medium enterprises (MSMEs).

This form of business can be a legal entity established by only one founder or shareholder, and its establishment is based on a statement of establishment drawn up in Indonesian, not a notarial deed. Prior to Law No. 6 of 2023, Article 1 of Law No. 40 of 2007 stated that "a limited liability company is a legal entity constituting a capital association, established based on an agreement and conducting business activities, with its authorized capital divided into shares and meeting the requirements stipulated in this law and its implementing regulations, which constitutes the fundamental definition of a limited liability company."

However, under Law No. 6 of 2023, specifically for companies that meet the criteria of micro or sole proprietorships, the establishment of a deed of establishment does not require a notary. Therefore, the establishment of this entity does not require a notary in the agreement between the parties or in submitting an application for legal entity approval.

This status change is regulated by Article 153H of Law No. 6 of 2023, which requires a limited liability company to change its status to a capital partnership if it no longer meets the criteria for a micro, small, and medium enterprise (MSE). Government Regulation No. 8 of 2021 further stipulates that a sole proprietorship, before becoming a capital partnership, must undergo a status change through a notarial deed and be electronically registered with the Minister. The change in status from a sole proprietorship to a capital partnership is implemented in accordance with the laws and regulations concerning companies. Therefore, the mechanism for this status change refers to the provisions for capital partnerships as stipulated in the Limited Liability Companies Law.

Since the enactment of Law No. 6 of 2023, the status change of a company that meets the criteria for a MSE to a capital partnership has been in place and is in effect. The expectation of the enactment of Law No. 6 of 2023 is that MSE businesses registered as sole proprietorships should be encouraged to promptly change their status. This is an indication of the business actor's success in developing their sole proprietorship business.

However, based on a release from the Directorate General of General Legal

Administration's web portal, the service for changing the status of a sole proprietorship to a capital partnership was only accessible starting January 10, 2024. This is certainly a new issue for notaries, as public officials providing services to the public. Providing legal services and creating legal certainty, order, and protection for the public is a crucial role of notaries.

Regarding the notary's role in the process of changing the status of a sole proprietorship to a capital partnership, it is necessary to determine the basis or reason for the change. This is crucial to ensure that the steps taken comply with the stages stipulated in several provisions, including Law No. 40 of 2007, Law No. 6 of 2023, Government Regulation No. 7 of 2021, Government Regulation No. 8 of 2021, and Minister of Law and Human Rights Regulation No. 21 of 2021.

In carrying out their profession, notaries not only exercise the authority granted by law, but also have obligations that must be fulfilled as part of their inherent responsibilities. Salim stated that a notary's obligations in English are called "notary obligations" or "liabilities notary," while in Dutch they are called "passive notaris," meaning things that must be carried out by the notary. Obligations, also called "duties," "responsibilities" (English) or "verplichting" (Dutch), are conceptualized as something that must be carried out by individuals or legal entities (legal subjects) in establishing legal relations with other parties. Article 1 of the UJNP states that "A notary is a public official authorized to draw up authentic deeds and exercise other authority as referred to in this Law."

This authority is more clearly stated in Article 15 paragraph (3) of the UJN, which states: "Notaries are authorized to draw up authentic deeds regarding all acts, agreements, and stipulations required by statutory regulations and/or desired by the interested parties to be stated in authentic deeds, guarantee the certainty of the date of the deed's creation, store the deed, provide a grosse, copies, and extracts of the deed, all of which are provided that the creation of the deed is not assigned or excluded to another official or other person determined by law."

In addition to the authority to draw up authentic deeds, notaries also act as public officials with a role in providing legal services to the public. In the context of public service, particularly in legal traffic related to all legal acts related to the authentic deeds described above, notaries who are appointed and dismissed based on the UJN (in this case by the state through the government). As public officials, notaries carry out state offices and carry out state duties to serve the public with the authority granted and the obligations entrusted to them.

Therefore, notaries participate in exercising the power and authority of the state, distinguishing them from other officials. Notaries, like other public officials, serve the public. Their role is crucial, based on the authority and responsibilities granted directly by law. According to Kriekhoff, professional responsibility encompasses three aspects: gaining trust, honor, and trustworthiness.

He further stated that there are three types of responsibility: moral responsibility, technical professional responsibility, and legal responsibility. The provisions of the UJN (National Law) impose limitations on notaries in carrying out their roles, but this does not mean they can refuse every need that comes their way. The notary profession must play a prominent and beneficial role for the public, as notaries are sworn in to serve the public.

The change of a sole proprietorship into a capital partnership is one of the small things in the dimension of the implementation of the duties and responsibilities of a notary, but this needs to be considered so that every service provided does not have an impact or implication of new legal problems. The role of a notary in the process of changing the status of a sole proprietorship into a capital partnership is to make an authentic deed containing changes to all of the company's articles of association, this is done considering that a sole proprietorship does not use an authentic deed. In addition to making a deed, the Notary also plays a role in ensuring business capital and shares, ensuring the Company's Organs, submitting applications for approval from the Minister of Law and Human Rights and providing legal counseling.

The Urgency of a Notarial Deed in Changing a Sole Proprietorship to a Capital Partnership

The importance of a deed or document is inseparable from the public's interest in proof. In Civil Procedure Law, several forms of evidence are recognized, as stipulated in Article 1866 of the Civil Code (hereinafter referred to as the Civil Code), including written evidence, evidence from witnesses, allegations, confessions, and oaths. Written evidence is divided into two types: authentic deeds and private deeds. Discussion of the authenticity of a deed is inseparable from Article 1868 of the Civil Code.

This article states that an authentic deed is "a deed drawn up in the form prescribed by law by or before an authorized public official at the location where the deed is drawn up." Article 1868 of the Civil Code is the source of the origin of authentic deeds. Based on this article, several elements can be formulated:

1. The deed is drawn up by or before a public official.
2. The deed is drawn up in the form prescribed by law.
3. The public official who prepares the deed must be authorized to do so.

An authentic deed is binding evidence, where the information contained in the deed must be considered true and trusted by the judge. An authentic deed is perfect evidence because, in its use as evidence, no additional evidence, such as witnesses, is required. An authentic deed is a valid document and can serve as perfect evidence.

Perfect here means that the judge considers everything contained in the deed to be true, unless another deed can prove the contents of the first deed to be false. Sjaifurrachman, in his book, defines a deed as a signed document that contains legal events or acts and is used as evidence. Notarial deeds have legal certainty and are perfect evidence in court.

An authentic deed has perfect evidentiary force and is binding on anyone bound by the deed, as long as the contrary cannot be proven by a court decision. Regarding authentic deeds, an authentic deed is one that must meet the following criteria:

- a) Its form complies with statutory regulations;
- b) It must be drawn up before an authorized public official;
- c) It must have full evidentiary force.

A notary is the sole public official authorized to draw up authentic deeds concerning acts, agreements, and provisions required by statutory regulations and/or those desired by the interested party to be stated in an authentic deed. It also guarantees the certainty of the date of the deed's creation, stores the deed, provides a grosse, copies, and extracts of the deed, all of which are performed as long as the creation of the deed is not delegated or excluded to another official or individual.

The concept of protecting basic human rights in Indonesia is realized through the principle of legality. This means that laws must be consciously formulated and formalized. To ensure the protection of rights through legal certainty, society requires evidence that clearly defines a person's rights and obligations as a legal subject in society.

Article 16 paragraph (1) letter m states that "the reading of the Deed in the presence of the appearer and in the presence of 2 (two) witnesses or 4 (four) witnesses specifically for the preparation of a private will Deed, and signed at that time by the appearer, witnesses, and Notary." Then Article 16 paragraph (7) states that if the appearer wishes that the deed not be read because the appearer has read it himself, knows, and understands its contents, with the provision that this is stated in the closing of the Deed and on each page of the Minutes of the Deed initialed by the appearer, witnesses, and Notary.

The emphasis on these two provisions is stated in Article 16 paragraph (9), which states that if the conditions as stated in these two provisions are not met, it will result in the demotion of the Notarial Deed's evidentiary force to be equivalent to the evidentiary force of a private letter. If it can later be proven that there are aspects or requirements of a deed that are not met

in Court, then the related deed only has evidentiary force as a private deed. The degradation of a deed's evidentiary force is also in line with the provisions of the UUJN.

The UUJN stipulates that violations of the provisions of Articles 38, 39, and 40 of the UUJN result in the deed having only the evidentiary force of a private deed. The importance of a notarial deed is also implied in Article 1869 of the Civil Code, which states that a deed drawn up by an incompetent or unauthorized official, or one whose form is defective, is deemed invalid or does not meet the formal requirements of an authentic deed. Therefore, it only has the force of a private document.

A notarial deed plays a crucial role in the continuity of a limited liability company (PT). Law No. 40 of 2007 stipulates that certain acts are required to be drawn up in a notarial deed, including the establishment of a PT, amendments to the articles of association, direct acquisition of shares from shareholders, mergers, amalgamations, takeovers, or separations, and the dissolution of a PT. Not only the provisions concerning these matters, but also the provisions concerning the Company Register, the requirement for the signatures of the meeting chairperson and at least one shareholder appointed by and from among the GMS participants on the minutes of the meeting is eliminated if the minutes of the GMS are prepared by a Notarial Deed.

In addition to the provisions of Law No. 40 of 2007, prior to the enactment of Law No. 6 of 2023, Minister of Law and Human Rights Regulation No. 1 of 2016 was enacted as an implementing regulation. Minister of Law and Human Rights Regulation No. 1 of 2016 states that legal acts such as the establishment or amendment of the establishment, amendments to the articles of association, mergers, amalgamations, takeovers, separations, changes to company data, and dissolution of the company require a Notarial Deed, the minutes of which must be kept by a Notary Public. This demonstrates the importance of a Notarial Deed in the continuity of a PT, not only during the establishment process, but also in the process and continuity of the PT as a legal entity, a legal subject capable of performing legal acts.

Legally, a Sole Proprietorship is considered a legal entity. The definition of a Sole Proprietorship as a legal entity is not explicitly defined in Article 1 of Law No. 40 of 2007 in conjunction with Article 109 of Law No. 6 of 2023. The term Sole Proprietorship appears in Government Regulation No. 8 of 2021, which states that "Companies that meet the criteria for micro and small businesses consist of: Sole Proprietorships established by 1 (one) person." Previously, the term also appeared in Article 1 number 253 of Government Regulation No. 8 of 2021, but did not provide an explanation of the meaning of the term "Sole Proprietorship." The term Sole Proprietorship is also not explicitly stated in Law No. 6 of 2023.

The law recognizes the term "Company for Micro and Small Enterprises." This term is used several times, namely in Articles 153A, 153C, 153D, 153E, 153F, 153G, 153H, 153I, and 153J. However, it should be emphasized that "Company for Micro and Small Enterprises" does not specifically refer to Sole Proprietorships. This is because, as stipulated in Government Regulation No. 8 of 2021, a Company established by 2 (two) or more individuals can also be categorized as a "Company for Micro and Small Enterprises" as long as the Company meets the criteria for micro and small enterprises.

Article 9 paragraph (2) of Government Regulation No. 8 of 2021 stipulates that a sole proprietorship must change its status before becoming a capital partnership company through a notarial deed and be registered electronically with the Minister. Prajitno explained that notarial deeds, according to law, have specific characteristics, language, form, sections, and specific techniques. Notarial deeds are authentic, so their validity is beyond question because the process and the authority of the official are in accordance with the Notary Law.

The preparation of an authentic deed containing the change in status from a sole proprietorship to a capital partnership is carried out because the change in status is always based on a contract, regardless of the cause of the change. A capital partnership requires at least two

people to enter into a binding agreement, which then contains a deed containing the agreement of the shareholders.

The establishment of a sole proprietorship is carried out without the need for an authentic deed or deed of incorporation. The Job Creation Law provides an exception, whereby MSMEs can register their business by submitting a legal application for approval independently without the involvement of a notary. Therefore, a sole proprietorship only requires a statement of incorporation containing detailed company data. The change in status from a sole proprietorship to a capital partnership is made based on a statement by the founders, whose legal standing is equal to that of a GMS. The founders' statement declaring this change in status then serves as the basis for the notary to draw up the deed of amendment.

Therefore, a sole proprietorship changing its status to a capital partnership requires articles of association as a mandatory requirement for becoming a capital partnership. The deed of amendment that must be drawn up by a notary must contain the entire articles of association of the PT. Furthermore, in the deed comparison, the notary must explain the company's history, stating that the PT originated from a change in status from a sole proprietorship to a capital partnership.

Changing the legal entity form from a PT Perorangan to a PT Persekutuan Modal has significant legal and administrative consequences, requiring the formal involvement of a notary. A notarial deed is crucial in this process because it serves as the legal basis required to validate the existence and new structure of the company, which is no longer owned by a single individual. It's important to understand that a PT Perorangan is owned by only one individual and does not require a notarial deed upon establishment, as it is simpler and has only one board of directors and no commissioners.

However, a PT Persekutuan Modal is a more complex legal entity and is regulated by Law No. 40 of 2007. Under this provision, the establishment of a PT must be conducted through a notarial deed, which is then approved by the Ministry of Law and Human Rights. When someone wishes to change the status of a PT Perorangan to a PT Persekutuan Modal, they cannot simply change data in the system or make a unilateral statement. This change must be based on a legal document in the form of a notarial deed that records all significant changes, such as the number and names of shareholders, the structure of the board of directors and commissioners, and changes to the articles of association.

This deed will also serve as an official document submitted to the Ministry of Law and Human Rights to obtain approval for changes to the company's legal entity. From a business perspective, a notarial deed determines the legality and credibility of a new company. Without a notarial deed, the legal entity in question is not legally recognized by the state, and all its activities may be deemed invalid.

This directly impacts the company's ability to enter into contracts, open accounts in its name, receive investment, or participate in formal projects from both the private sector and the government. A notarial deed also protects shareholders by formally specifying the rights and obligations of each party. In the long term, this will help prevent conflicts and ownership disputes, and ensure transparency of legal relations within the company. In the event of a future dispute between the parties or an audit by a financial institution, the deed of establishment and amendments prepared by the notary will serve as valid evidence in court or a dispute resolution institution. Furthermore, a notarial deed serves to ensure that the changes made comply with applicable laws and do not conflict with other regulations, such as taxation, OSS-RBA, or specific business sector regulations. According to the theory of legal certainty, the law must provide certainty, clarity, and protection to all parties. The creation of a notarial deed in the conversion of a PT ensures the existence of a valid official document that can be used as a legal basis by both internal (shareholders, directors) and external (investors, banks, business partners). Without a deed, the legal status of a business entity becomes unclear or uncertain,

potentially giving rise to disputes. A notary public acts not only as a registrar but also as a legal advisor and ensures that all documents have been drafted correctly. Therefore, in the transition process from an Individual PT to a Capital Partnership PT, the creation of a notarial deed is not merely a formality, but a crucial part of strengthening the legal structure, protecting the business, and establishing the legal basis for the company's future operations.

Ignoring a notarial deed in this process can result in serious legal and financial losses. As stated in the explanation of the UUJN, an authentic deed, as the strongest and most complete form of evidence, plays a vital role in every legal relationship in society.

CONCLUSION

A Sole Proprietorship is required to convert to a capital partnership if it has more than one shareholder and/or has exceeded the UMK qualification limit, as stipulated in Article 9 of Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises, where the change in status is carried out through a notarial deed and registered electronically with the Minister of Law and Human Rights. In the case of a sole proprietorship as referred to in Article 9 paragraph (1) letter a where there is more than one shareholder, if two Sole Proprietorships wish to merge, it cannot be done through a formal merger as stipulated in Law No. 40 of 2007 concerning Limited Liability Companies. Because there are no regulations governing the process of changing additional shares through a merger between a Sole Proprietorship and another Sole Proprietorship, the process is carried out alternatively, namely by Transfer of Shares and Change of Status from a Sole Proprietorship to a Capital Partnership Company.

A Notarial Deed is a deed that plays an important role in the continuity of a Capital Partnership Company. The change in the legal form of a sole proprietorship to a Capital Partnership Company has significant legal and administrative consequences, thus requiring the formal involvement of a notary. The notarial deed is very important in this process because it is the legal basis needed to validate the existence and new structure of the company which is no longer owned by one person only based on Article 9 paragraph (2) of Government Regulation Number 8 of 2021. An individual company before becoming a company as referred to in paragraph (1) must change its status through a notarial deed and be registered electronically with the Minister.

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