



Original Article

**DUE DILIGENCE NOTARY PRACTICES BEFORE AND AFTER THE COMPANY'S
CAPITAL MARKET LISTING AS A LEGAL ENTITY**

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ABSTRACT

Background. Businesses must finish the required paperwork and submit registration statements to the Capital Markets and Financial Institutions Supervisory Agency, which is assisted by organizations and experts, in order to participate in the capital market, which involves the public offering and selling of securities from publicly traded companies. The purpose of this research purpose was to determine the use of due diligence notaries before and following the company's legal entity listing in the stock market.

Research Method. This research was qualitative, normative, and descriptive-analytical, which explains information and facts about the use of the openness principle and notary due diligence both before and after the Limited Liability Company's listing on the Capital Market.

Findings. The implementation of notary due diligence requires the use of the capital market's openness concept. This implies that the notary confirms the company's information, which would be included in the deed he drafts, prior to performing his obligations in creating deeds. Making changes to the articles of organization, minutes of the general meeting of shareholders, deeds of agreement for public offers, and registration with the Capital Markets and Financial Institutions Supervisory Agency are among the notary's duties both prior to and following listing.

Conclusion. Notaries must make sure that a deed has the right intent, content, and purpose while abiding by all applicable laws, statutes, rules, and the code of ethics.

Keywords: Capital market, Company, Due diligence, Legal entity, Notary.

BACKGROUND

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

By the Decree of the Chairman of Capital Markets and Financial Institutions Supervisory Agency Number Kep-37/PM/1996, dated January 17, 1996, and Regulation Number VIII.D.I. An authentic deed was a deed made by a Notary, and its authenticity continues even after his death. His signature at the time of the deed still has power. Although he can no longer convey information about events at the time of making the deed. If the notary is temporarily dismissed or dismissed

from his position, the deeds still have the power as authentic deeds, but the deeds must have been made before the temporary dismissal or dismissal was imposed in connection with the Notary profession as one of the supporting professions in the capital market [5]. The notary will do all the work specified by the Law and its implementing regulations, and has responsibility for the work carried out in the context of a company's public offering[6].

A Notariat is a legal institution that serves as the integrity of assurance assigned by the general power (*openbaar gezag*) to provide authentically strong written proof when and when the law thus demands or as requested by the community. The need for Notary services as an authentic deed maker in Indonesia has been recognized since the Dutch East Indies colonial rule[7]. Whereas in Anglo-Saxon countries, the development of Notaries is different from that in continental countries, where Notaries do not function as deed makers.

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

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

The genuine deed basically incorporates the formal truth of what is communicated to the notary, according to the general explanation of Law No. 30/2004 on Notary Position Law[10]. The notary must, however, state that the parties have truly comprehended and agreed to the terms of the notarial deed by reading it to make the contents understandable and by granting access to information. As a result, the parties have the freedom to accept or reject the provisions of the actual deed they signed. In this instance, if the notary has followed the legal procedures for creating the deed, he is protected legally in the event that an issue arises that makes the deed difficult to complete.

A company that will be listed, then the company must make preparations until it goes public. In this case, a Notary, as a capital market support professional, is needed because it is a requirement proposed by law and whose duties and responsibilities have been regulated in law. For companies that will trade in the capital market before listing, the duties and responsibilities of the Notary are at the pre-emission stage, where the Notary provides due diligence to the company that will conduct a public offering, and if the articles of association are altered after listing, the Notary must make every deed.

RESEARCH METHOD

The research approach includes a qualitative review of legal papers, regulatory frameworks, and industry data about the company's listing process and due diligence methods.

This qualitative research used a normative juridical approach as the main approach and an empirical approach to economics [11]. The descriptive-analytical normative approach is intended to explore and examine the laws and regulations as a basis for researching the issue, which is then based on this, the researcher sees empirically in the practice of its implementation. This comprises an examination of the company's financial statements, listing regulations, and applicable legal precedent. The research employs a comparative method to examine the application of due diligence notary procedures before and following the listing of a company in the stock market. This architecture enables a detailed analysis of changes in due diligence methods and their impact on the company's operations and stakeholders.

Participants in this research were legal and financial experts involved in the PT listing process, including notaries, attorneys, and financial analysts. These experts offer significant insights into the actual implementation of due diligence notary procedures, as well as the problems they experience during the listing process.

The data sources for this research are 1) Financial statements for PT, including reports on the company's financial structure and ownership; 2) Regulatory frameworks and listing laws for Indonesia's capital market; 3) Industry studies and publications on the capital markets' listing procedure and due diligence practices; 4) Legal papers and precedents governing the application of due diligence notary techniques.

The data analysis consists of a thematic analysis of qualitative data gathered from law texts, regulatory frameworks, and industry reports. This research examines similarities and themes in the adoption of due diligence notary procedures before and following PT's listing on the stock market. Furthermore, the research employs a normative legal analysis to assess the efficacy of due diligence notary procedures in maintaining openness and accountability in the company's activities.

FINDINGS

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

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

Notary, as a capital market supporting profession, will not be separated from its duties and profession as an official who is the only authorized to make authentic deeds as stated in Article 1 of the Notary Position Law. It is stated that a notary is a public official authorized to make authentic

deeds and other documents as referred to in this law [13]. Whereas in Article 1 of the Notary Position Regulatory, it is stated that As long as the making of the deed by a general regulation is not assigned or excluded to another official or person, a notary is a public official who is the only one authorized to make authentic deeds required by a general regulation or by the interested party desiring to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, provide a grosse, copy, and citation [14].

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

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

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

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

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

DISCUSSION

The implementation of activities in the capital market, if there is a violation of the laws and regulations, is prone to be done by the parties involved in the capital market[18]. Violations in the field of capital markets are administrative technical violations. There are three patterns of violations that commonly occur, namely: a) Offenses committed individually, b) Offenses committed in groups, and c) Violations committed directly or based on the order or influence of another party.

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

According to the law, a notary is a public servant with the authority to create legitimate deeds about any acts, agreements, and clauses that must be included in a deed to comply with legal requirements and/or the wishes of the parties involved. The intention is for the deed to eventually be a powerful piece of evidence in the case of a disagreement between the parties or a lawsuit from a different party. If this occurs, the Notary may be called as a witness or, depending on how the Notary made the deed, as a suspect. [19,20].

Notaries make deeds after researching company documents in preparation for a closed limited liability company to a public limited liability company[21]. If the Notary does it by the code of ethics and regulations, the Notary can get out of the problem or case if there is a dispute over the deed they made. In Chapter XI of the sanction provisions, both Articles 84 and 85 of the Notary Position Law do not regulate violations of Article 16 paragraphs. Letter l and paragraph (7). Neither in the Civil Code nor the State Financial Law are there clear sanctions against violations of Article 16 paragraph (1) and paragraph (7), except that the deed concerned only has evidentiary power as a deed under hand as stipulated in Article 16 paragraph (8) of the Notary Position Law? However, in the Capital Market Law, there are 3 types of sanctions applied in the event of a violation[22].

Administrative sanctions are sanctions imposed by the Capital Markets and Financial Institutions Supervisory Agency on parties deemed to have violated the laws and regulations in the capital market sector. Parties that can be sanctioned are a) Parties licensed by the Capital Markets and Financial Institutions Supervisory Agency, b) Parties that obtained approval from the Capital Markets and Financial Institutions Supervisory Agency, and c) Parties that register with the Capital Markets and Financial Institutions Supervisory Agency. The types of administrative sanctions that can be imposed by Capital Markets and Financial Institutions Supervisory Agency on the parties mentioned above are a) Written warning, b) Fines (obligation to pay a certain amount of money), c) Restriction of business activities, d) Suspension of business activities, e) Revocation of business license, f) Cancellation of consent, g) Cancellation of registration.

Articles 103 to 110 of the Capital Market Law threaten any party proven to have committed a criminal offense in the capital market sector with a prison sentence varying from one to ten years. Based on the description above, it can be analyzed that if a Notary conducts activities in the capital market without first registering with the Capital Markets and Financial Institutions Supervisory Agency, a fine can be imposed by the Capital Markets and Financial Institutions Supervisory Agency but if in the case of making a deed, the Notary participates in falsifying the deed, criminal sanctions will be imposed. In carrying out their positions, Notaries are expected to always work professionally (mastering legal materials, laws, and regulations), especially when carrying out activities in the capital market, and also mastering the procedures for making deeds so that they will be able to minimize problems with the deeds they make in the future.

The research makes a useful contribution to the implementation of due diligence notary practices before and following the company's capital market listing. The findings emphasize the

necessity of comprehensive due diligence methods in guaranteeing the transparency and accountability of a company's activities, particularly during the listing phase. The study's findings can help regulatory authorities and industry professionals understand the importance of strong due diligence methods in maintaining investor confidence and protecting the capital market's integrity. The research's shortcomings include the use of secondary data sources, which may not fully represent the subtleties of the listing process and due diligence methods. Furthermore, the research's emphasis on the company may not be indicative of all companies listed on the stock market.

CONCLUSION

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

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