

ABSTRAK

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Pendirian suatu perseroan terbatas dilakukan berdasarkan perjanjian antara dua orang atau lebih dengan akta notaris dalam bahasa Indonesia sesuai ketentuan Pasal 7 ayat (2) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas. Prinsipnya, perseroan itu lahir karena perjanjian. Dalam kenyataan, sejak kelahirannya, suatu perseroan terbatas dapat melakukan segala perbuatan hukum dengan pihak ketiga untuk kemajuan perseroan sesuai tujuan dan maksud pendiriannya sebagaimana ditentukan dalam Anggaran Dasar, sekalipun perseroan belum memiliki status persona standi in judicio karena akta pendiriannya belum disahkan oleh Menteri Hukum dan Hak Asasi Manusia Republik Indonesia. Segala perbuatan hukum itu membutuhkan notaris sebagai pejabat umum yang berwenang membuat akta otentik untuk kepentingan masyarakat, dan kewenangannya diberikan oleh Undang-Undang Jabatan Notaris, atau berdasarkan undang-undang lainnya, sesuai Pasal 1 angka 1 UU No. 2 Tahun 2014 Tentang Jabatan Notaris, namun segala perbuatan hukum itu dapat berdampak negatif bagi para pihak. Dalam konteks ini, ada dua permasalahan yang dapat dikemukakan yaitu bagaimana dimensi hukum pertanggungjawaban notaris dalam pembuatan akta untuk perseroan terbatas yang belum memiliki status persona standi in judicio, dan apa konsekuensi hukumnya terhadap notaris apabila muncul kerugian yang dialami salah satu pihak akibat pembuatan akta untuk perseroan terbatas yang belum memiliki status persona standi in judicio.

Penelitian ini merupakan penelitian yuridis normatif, pendekatannya undang-undang, konseptual dan konstruksi kasus. Bahan hukumnya, bahan hukum primer dan sekunder, dan teknik pengumpulannya, studi kepustakaan.

Hasil penelitian menunjukkan bahwa dimensi hukum pertanggungjawaban notaris dalam pembuatan akta untuk perseroan terbatas yang belum memiliki status persona standi in judicio yaitu pertanggungjawaban terhadap kewenangan dan sumpah jabatan notaris berdasarkan Undang-Undang Jabatan Notaris dan Kode Etik Profesi Notaris serta peraturan perundang-undangan lainnya, alasannya karena notaris yang bertindak melampaui batas kewenangan dan sumpah jabatannya maka perbuatannya dapat menimbulkan kerugian bagi masyarakat. Konsekuensi hukum terhadapnya yaitu notaris dapat dijatuhi sanksi administrasi, sanksi perdata dan sanksi pidana, dan segala aktanya dapat dibatalkan karena perseroan itu tidak memenuhi ketentuan Pasal 1320 angka 1 dan angka 2 KUHPperdata/BW sehingga oleh hukum belum dikreasi menjadi *artificial person*.

Sarannya, notaris diharapkan menerapkan prinsip kehati-hatian dan setia melaksanakan kewenangan dan sumpah jabatannya dalam melayani pembuatan akta untuk kepentingan masyarakat demi memberikan keadilan, kemanfaatan dan kepastian hukum kepada masyarakat karena jabatan notaris itu suatu kepercayaan.

Kata kunci: pertanggungjawaban, notaris, akta, perseroan terbatas, persona standi in judicio

ABSTRACT

The establishment of an incorporated company is made according to the agreement between two persons or more with the Indonesian notarial act according to the article 7 verse (2) of the constitutional Law of the Republic of Indonesia number 40 of 2007 about the incorporated company. The principle is that the incorporated company is established by an agreement. But in fact, after it growing and development, the incorporated company can do an juridical act with the third parties for the benefit and the progress of the incorporated company itself according to the purpose and the goal of its establishment as as specified in the statute, although that the incorporated company does not have the state of *persona standi in judicio* (artificial person), and its establishment has not been approved by the ministry of justice and human rights of the republic of Indonesia. All of juridical act need a notary as public official who has the authority to make authentic act for the benefit of the society, and authority is given by law office of notary or other official laws, which are in accordance to article 1 point 1 of the law number 2 of 2014 about the notary office. But all of law actions could have a negative impact for all parties. In this context, there are two issues of problems that could be addressed. The first one is about how the legal dimension of notary liability in act making to the incorporated company that has no the state of *persona standi in judicio*. The second, is about what is the effect of law to the notary if one of party involved the advantaged because act making for incorporated company has no state of *persona standi in judicio*.

This research is about juridical normative research with the constitution approach (statute approach) and conceptual approach, and a case construction. The law materials is about primary and secondary law materials, and the techniques collected used is the literature study.

The results showed that the law dimension of notary liability in act making to the incorporated company that does not have the state of *persona standi in judicio* and therefor the liability to the authority and the oath or vows of the notary office based on the notary law and the professional code of notary conduct, and the other regulations. The reason is that a notary who act beyond the limits of his authority and his oath of office, the actions may cause harm to the society. The juridical consequences to the notary are administrative penalty, civil penalty and criminal penalty. All of the act be canceled because the company did not comply with the provisions of article 1320 point 1 and point 2 of the civil code / BW so by law it can not be created as an artificial person.

The suggestion given to the notary is that the notary is expected to apply the precautionary principle and faithfully in carry out the authority and the oath of his office in the serve of act making for the benefit of the society, the sake of justice, beneficiary and legal certainty to the public because the notary office is a trustable office.

Keywords: liability, notary, act, incorporated company, *persona standi in judicio* (artificial person)