

Tanggung jawab direksi dan dewan komisaris dalam pendirian perseroan terbatas

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Abstrak

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Direksi dan Dewan Komisaris perseroan terbatas dalam menjalankan tugasnya untuk kepentingan perseroan harus selalu berpegang pada tiga prinsip yaitu Fiduciary Duty, prinsip Duty Skill and Care, dan Statutory Duties, apabila mereka melanggar prinsip-prinsip tersebut dan menimbulkan kerugian baik bagi pihak ketiga maupun perseroan dapat dituntut pertanggungjawaban sampai kepada harta kekayaan pribadinya. Pokok permasalahan dalam penulisan ini adalah bagaimanakah pertanggungjawaban anggota Direksi dan atau Dewan Komisaris dalam pendirian Perseroan Terbatas?, dan bagaimanakah peranan Notaris dalam pengangkatan anggota Direksi dan atau Dewan Komisaris oleh pendiri perseroan terbatas untuk pertama kali tanpa kehadiran mereka dihadapan Notaris?. Metode penulisan tesis ini bersifat deskriptif dan normatif, dimana penulisan menitik beratkan pada studi kepustakaan pada data sekunder terhadap prosedur dalam pendirian perseroan terbatas. Dari penulisan ini diperoleh kesimpulan bahwa pada saat akta pendirian perseroan terbatas telah dibuat dan ditandatangani oleh para pendirinya dihadapan Notaris perseroan tersebut telah berdiri dan hubungan antara mereka adalah hubungan yang bersifat kontraktuil. Oleh karena itu anggota Direksi dan atau Dewan Komisaris Perseroan Terbatas yang diangkat untuk pertama kali pada saat itu belum dapat menjalankan fungsinya baik berdasarkan anggaran dasar perseroan maupun UUPT, setelah perseroan terbatas berstatus badan hukum dengan sendirinya status badan hukum perseroan tersebut akan membawa akibat perubahan tanggung jawab Direksi dan Dewan Komisaris perseroan dari yang tidak terbatas menjadi terbatas. Dalam membuat akta pendirian perseroan terbatas untuk pertama kali, Notaris harus bersikap aktif, cermat dan hati-hati, apabila anggota Direksi dan atau Dewan Komisaris yang diangkat oleh pendiri tidak hadir dihadapan Notaris, maka Notaris harus secara tegas harus meminta bukti persetujuan tertulis dari mereka. Asas kecermatan dan kehati-hatian wajib dijalankan oleh seorang Notaris, mengingat akta yang dibuat oleh Notaris mempunyai dampak hukum yang luas yaitu terhadap akta itu sendiri atau terhadap Notaris, dan hal itu dapat menjadi alasan bagi pihak yang menderita kerugian untuk menuntut penggantian biaya, ganti rugi dan bunga kepada Notaris

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ABSTRACT

The Board of Directors and the Board of Commissioners of the limited liability company in performing duty in the interest of the company must always stick to the three principles i.e. Fiduciary Duty, Duty Skill and Care, and Statutory Duties. If they violate the principles and create losses, either for the third party or the company, their accountability can be demanded up to their personal assets. The subject matter of this scientific paper is "how is the accountability of the members of the Board of Directors and/or the Board of Commissioners in the Establishment of a Limited Liability Company?" and "how is the role of the Notary Public in the appointment of the members of the Board of Directors and/or the Board of Commissioners by the founders of the limited liability company for the first time without their presence before the Notary

Public?". The method of writing this Thesis is descriptive and normative, in which the writing is emphasized on the study of bibliography in the secondary data against the procedure for the establishment of the limited liability company.

From this writing a conclusion is obtained that at the time the deed of establishment of the limited liability company has been drawn up and signed by the founders before the Notary Public, the company has been established and the relationship among them is the contractual relationship. Therefore, the members of the Board of Directors and/or the Board of Commissioners of the limited liability company who are appointed for the first time at that moment have not been able to perform their functions, both based on the company's articles of association and Law on Limited Liability Company (UUPT). After the limited liability company has received the status of being a legal entity, automatically the status of legal entity of the company will certainly bring the consequence, i.e. the change in the responsibility of the Company's Board of Directors and the Board of Commissioners from unlimited into limited. In drawing up the Deed of Establishment of the limited liability company for the first time, the Notary Public must act actively, carefully and accurately. If the members of the Board of Directors and/or the Board of Commissioners appointed by the founders are not present before the Notary, the Notary Public must categorically request the written approval from them. The principles of accurateness and carefulness are obliged to be implemented by a Notary Public, since the deed drawn up by the Notary Public has far reaching legal impact, i.e. on the deed itself or on the Notary Public, and that matter can become a reason for the party, which suffers the losses to demand for the reimbursement of cost, compensation and interest to the Notary Public.