

Pengawasan terhadap notaris yang berkegiatan di bidang : pasar modal pasca diundangkannya Undang-Undang nomor 21 : tahun 2011 tentang otoritas jasa keuangan = Supervision on notary public who is conducting activities in the Indonesian Capital Market after the enactment of Law No. 21/2011 regarding the financial services authority / Atas Rihajeng

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Abstrak

[Dalam industri pasar modal Indonesia, terdapat banyak profesi penunjang yang terlibat di dalam kegiatan pasar modal, salah satunya adalah notaris. Peran notaris di bidang pasar modal antara lain berkaitan dengan pembuatan akta-akta otentik untuk penerbitan efek dan akta-akta pendukungnya. Akta-akta otentik yang dibuat oleh atau dihadapan notaris memiliki kekuatan pembuktian yang sempurna di muka pengadilan. Melihat pentingnya kedudukan akta otentik yang dibuat oleh notaris, sudah selayaknya dilakukan pengawasan terhadap notaris yang berkegiatan di pasar modal. Selama ini BAPEPAM (Badan Pengawas Pasar Modal) merupakan otoritas tertinggi dalam industri pasar modal yang diberikan mandat atau kewenangan oleh UU No. 8 Tahun 1995 tentang Pasar Modal untuk melakukan pembinaan, pengaturan, dan pengawasan kegiatan di bidang pasar modal. Akan tetapi, pada tanggal 22 November 2011 telah diundangkan UU No. 21 Tahun 2011 tentang Otoritas Jasa Keuangan (􀂳OJK􀂴), yang kemudian menjadi landasan hukum dibentuknya suatu lembaga pengawasan baru seluruh sektor jasa keuangan yang terintegrasi. Dan pada tanggal 31 Desember 2012, fungsi pengaturan dan pengawasan industri pasar modal beralih dari BAPEPAM ke OJK. Tesis ini meneliti dan menganalisis mengenai implikasi yuridis, prosedur, dan mekanisme pengawasan terhadap notaris yang berkegiatan di pasar modal pasca diundangkannya UU No. 21 Tahun 2011 tentang OJK. Penelitian ini dilakukan dengan menggunakan metode yuridis-normatif, melalui studi dokumen dan wawancara dengan pejabat-pejabat BAPEPAM yang berwenang menjalankan fungsi pengawasan tersebut. Hasil penelitian menemukan bahwa implikasi yuridis terhadap pengawasan notaris yang berkegiatan di pasar modal pasca diundangkannya UU No. 21 Tahun 2011 tentang OJK yaitu jika selama ini yang melakukan pengawasan adalah BAPEPAM, maka nantinya pengawasan akan dilakukan oleh OJK. Sedangkan mekanisme dan prosedur pengawasan terhadap notaris yang berkegiatan di pasar modal pasca diundangkannya UU No. 21 Tahun 2011 tentang OJK pada dasarnya adalah sama, atau tidak mengalami perubahan sebagaimana pengawasan yang dilakukan pada masa di bawah BAPEPAM, namun secara teknis untuk memahami dan membaca peraturan terkait pengawasan di bidang pasar modal yang sudah ada saat ini yang harus diubah, jika dalam

peraturan tersebut tertulis kata BAPEPAM, maka nantinya dibaca dan dipahami menjadi OJK., ABSTRAK

In the Indonesian capital market, there are many professionals who is involved in capital market, one of them is notary public. The role of notary public in the Indonesian capital market, among others, is related to drafting authentic deeds in issuing the securities and other its supporting documents. Authentic deeds drawn up in front of or by the notary public shall be conclusive evidence before the courts. Considering the importance of the status of authentic deeds made by the notary public, it is necessary to conduct a supervision to the notary public who is conducting activities in the capital market. Currently, BAPEPAM (The Capital Market Supervisory Agency) is the highest authority in the Indonesian capital market industry which given mandate or authority by Law No. 8/1995 regarding Capital Market to provide the guidance, regulation, and supervision of the capital market. However, on November 22, 2011, The Law No. 21/2011 regarding The Financial Services Authority (􀂳OJK􀂴) was enacted, which then it became the legal basis of the establishment of a new integrated supervisory institution for all financial services sectors. The function of regulation and supervision of capital market transferred from BAPEPAM to OJK on December 31, 2012. This thesis researched and analyzed the legal implication, procedure and mechanism to supervise the notary public who is conducting activities in the capital market, after the enactment of Law No. 21/2011 regarding OJK. The research was conducted using a juridical-normative method, through documents study and interviews with 􀀥􀀤􀀳􀀨􀀳􀀤􀀰􀂶􀁖􀀃 functionaries who has authority to conducting the supervision. The research found that the legal implication on the supervision to the notary public who is conducting activities in the capital market after the enactment of Law No. 21/2011 regarding OJK is, if currently the function of supervision is provided by BAPEPAM, then in the future the supervision will be provided by OJK. Meanwhile, the mechanism and procedure of supervision to the notary public who is conducting activities in the capital market after the enactment of Law No. 21/2011 regarding OJK is basically the same, or no change such as supervision conducted under the BAPEPAM at the time, but technically to understand and read the regulation related with supervision in the capital market which still applicable now that shall be changed, if in the regulation is written BAPEPAM, then it shall be read and understood as OJK.

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ABSTRACT

In the Indonesian capital market, there are many professionals who is involved in capital market, one of them is notary public. The role of notary public in the Indonesian capital market, among others, is related to drafting authentic deeds in issuing the securities and other its supporting documents. Authentic deeds drawn

up in front of or by the notary public shall be conclusive evidence before the courts. Considering the importance of the status of authentic deeds made by the notary public, it is necessary to conduct a supervision to the notary public who is conducting activities in the capital market. Currently, BAPEPAM (The Capital Market Supervisory Agency) is the highest authority in the Indonesian capital market industry which given mandate or authority by Law No. 8/1995 regarding Capital Market to provide the guidance, regulation, and supervision of the capital market. However, on November 22, 2011, The Law No. 21/2011 regarding The Financial Services Authority (􀂳OJK􀂴) was enacted, which then it became the legal basis of the establishment of a new integrated supervisory institution for all financial services sectors. The function of regulation and supervision of capital market transferred from BAPEPAM to OJK on December 31, 2012. This thesis researched and analyzed the legal implication, procedure and mechanism to supervise the notary public who is conducting activities in the capital market, after the enactment of Law No. 21/2011 regarding OJK. The research was conducted using a juridical-normative method, through documents study and interviews with 􀀥􀀤􀀳􀀨􀀳􀀤􀀰􀂶􀁖􀀃 functionaries who has authority to conducting the supervision. The research found that the legal implication on the supervision to the notary public who is conducting activities in the capital market after the enactment of Law No. 21/2011 regarding OJK is, if currently the function of supervision is provided by BAPEPAM, then in the future the supervision will be provided by OJK. Meanwhile, the mechanism and procedure of supervision to the notary public who is conducting activities in the capital market after the enactment of Law No. 21/2011 regarding OJK is basically the same, or no change such as supervision conducted under the BAPEPAM at the time, but technically to understand and read the regulation related with supervision in the capital market which still applicable now that shall be changed, if in the regulation is written BAPEPAM, then it shall be read and understood as OJK.]