

Prevention of Personal Data Abuse in the Company's Deed of Establishment on the Idx.com Website

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Abstract

During the Initial Public Offering (IPO) process on the capital market, a company must submit a Prospectus to the Financial Services Authority (OJK), which is a document enabling potential investors to make well-informed decisions. The document is essential for adhering to the disclosure principle, which requires that all company information be disclosed to potential investors who wish to invest capital in the company. This study examines the potential for the misuse of personal information resulting from a lack of data review or censorship in the founding documents of a limited liability company, which is also detailed in the Prospectus hosted on the idx.com website, and outlines measures that can be implemented to prevent such data misuse. This paper argues for the censorship of the appearing party's personal details, including address and National Identity Number, in order to prevent their misuse by other parties, as suggested by this research.

1. Introduction

A notarial deed is an authentic deed that is made by or in the presence of a Notary. As stipulated in Article 1868 of the Indonesian Civil Code, an authentic deed is defined as 'a deed made in the form prescribed by law by/or before a public official authorised for that purpose, at the place where the deed is made'. There are three elements that determine the authenticity of a deed, namely: made in a form in accordance with the laws and regulations, made by or before an official, and the official must be authorised to make deeds at the place where the deed is made (Kie, 2000).

Any company that is incorporated within the territorial jurisdiction of Indonesia is required to possess a notarial deed as part of its documentation relating to its establishment. This is due to the fundamental nature of a Limited Liability

Company, which is predicated on a contractual agreement between two or more parties who collectively establish a business entity. Furthermore, the Company may opt to conduct an Initial Public Offering (IPO), should it wish to obtain novel sources of funding from the public.

In the context of universal capital market principles, the concept of information disclosure is of particular relevance. This principle is key for a company that has just sold shares to the public. It ensures transparency on all material information that could affect investors' decisions. Upon its' practice, the principle is divided into three parts, i.e.: pre-disclosure issuance, disclosure during the issuance, and post-issuance disclosure (Wahyuni, 2023). In order to get listed on the stock exchange, a company needs several documents that have to be given to the Indonesian Stock Exchange, which includes the company profile, information in regards to the IPO plan, underwriter, and supporting professionals, and also the deed of establishment of the company (Indonesia Stock Exchange, 2015).

Appearing clauses are parts of a notarial deed. This clause serves to underscore the authority and capacity of a given party to undertake legal actions and assert their right to initiate such proceedings. This section describes the complete identity of the individual in question, which encompasses their full name, place and date of birth, citizenship, occupation, current position, current residence, and the national identity number (Alwesius, 2022a). All of these descriptions fall under the public nature of personal data, which should be private (Kusnadi & Wijaya, 2022). However, in the Indonesian capital market, the personal data of an appearer and witness in the deed of establishment made by Notary is simply displayed.

There are numerous intersections between legal principles and norms in the practice of capital market, specifically in relation to notarial deeds. This paper discusses the necessity of submitting a detailed deed of establishment of a limited liability company on the idx.com website upon its initial public offering. In addition, it analyses the appropriate measures for preventing the misuse of personal data and the legal consequences contained in the notarial deeds that are published on the website.

2. Research Method

This research uses the doctrinal legal research method, which is based on applicable legal regulations and legal doctrines to address the legal issues encountered. With this doctrinal research, the aim is to examine the applicable positive legal norms, namely the prevention of personal data misuse in the company establishment deed. The research approach is conducted with the statute approach as well as the conceptual approach.

3. Results And Discussion

A. The urgency of submitting a detailed deed of establishment of a limited liability company on the Indonesia Stock Exchange website during the Initial Public Offering process and its influence on the decision of potential investors

The deed of establishment of a capital company is a form of notarial agreement made by 2 (two) or more persons, and contains the articles of association and other matters relating to the incorporation of the Company. During its' drafting process, the Notary's role involves documenting every information given by the appearers, which then will be transformed into a deed format (Santira & Soroinda, 2024). The deed is significant as it constitutes the foundation upon which a company attains legal entity status (Alwesius, 2022b). The Company may consider to execute an initial public offering in order to secure further funding and thereby enhance its operating profit margin. This step represents a securities offering, a financial instrument enabling the sale of shares by the issuer to the general public. The main aim of this initiative is to secure long-term financing and improve the company's public reputation (Indonesia Stock Exchange, 2015; Jatmiko, 2009).

However, a public offering also carries with certain obligations, which includes the necessity to adhere to the prevailing capital market regulations. In the context of the capital market, a company is required to disclose all pertinent information in a transparent manner. This principle, also known as disclosure principle, is a general guideline that provides requirements for issuers, public companies, and other parties in providing information to the public regarding all material information that correlates with their business. This information has the potential to influence the decisions of investors in regard to the capitalisation and/or the price of securities.

There are 3 (three) elements in the concept of disclosure: full, true, and plain. Full means that all information relating to the issuer shall be provided in full to facilitate the decision-making of the investor. True indicates that any information provided shall be accurate and honest. Plain indicates that the information given shall be easy to understand. All these elements signify that any information related to the issuer shall be furnished in its entirety to enable investors to make informed decisions.

Given the interest of investors in understanding the intricacies of the company they are considering investing, the role of disclosure is of paramount importance. A substantial amount of research has shown that organisational structure represents a form of non-financial information that holds importance for investors. This is linked to signalling theory, which is a corporate management theory that gives investors insight to the company's expected growth, as reflected by its potential future performance. Potential investors generally link the success or failure of a company by

looking to list on the stock exchange with its internal structure (Certo, 2003). Moreover, institutional theory posits that the level of establishment of an institution can be determined by examining analogous institutions situated within the same environment. It can thus be concluded that the location of an institution within a structured environment results in optimal performance. conversely, a substandard institution is likely to be located in an environment characterised by ineffective management and governance (DiMaggio & Powell, 1983).

In today's fast-paced digital age, where technology is more accessible than ever, internet information dissemination can lead to widespread public accessibility. Studies have uncovered that access to this kind of information is becoming more easily accessible. During the IPO process, maintaining confidentiality is essential, given that the company originated from a private limited liability company with restricted information accessible about its beginnings (Cohen et al., 2021).

The explanation of this subsection starts by stating that the formation of a company is rooted in genuine founding documents. The information about the parties involved and their legal status is found in the deed's documentation. Information typically considered in appearing clauses includes full name, location, date of birth, citizenship, job title, position, and home address. The ability and right to act of an appearer can be granted to himself or to another person on his behalf (Naibaho, 2009). Disclosure about the origin of a company that has gone public through an initial public offering typically includes its articles of incorporation and is publicly available on the idx.com website. The publication of the company's founding documents online raises the issue of whether the disclosure of the parties involved should be treated as a matter of urgency. A closer examination of the previous explanations suggests that the inclusion of the parties' information in the deed is crucial, as it enables investors to gain insight into the complexities of their business transactions. However, there is another interesting issue to discuss: to what extent is information about the parties relevant? Is it important for the public to know their residence and national identification number? This is important to discuss given that residence and civil registration numbers fall into the domain of personal data that should be protected.

As an official responsible for drafting authentic documents, a notary controls personal data, which involves a person obtaining, handling, and storing the appearer's personal information to be included in the relevant section of the deed. In addition to his responsibility as a subject of data protection, the notary is also tasked with confidentiality regarding all information in relation to the authentic deeds, as stipulated on Article 16 (1) of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Office of Notary ("UUJN"). A Notary's duties goes beyond certifying documents for new business formation, as they must also draft particular documents

when a company chooses to go public, which encompasses drafting the record of an Extraordinary General Meeting of Shareholders, an underwriting agreement, and a share administration management agreement. These agreements are documented as authentic deeds, and the Notary should provide assistance to parties seeking information about the Initial Public Offering process, while also upholding the disclosure approach (Jatmiko, 2009).

In principle, there is basically no limit on how far the disclosure principle shall be implemented. Personal data is categorized into two distinct categories: general personal information and specific personal details. A person's general personal data typically comprises of their full name, gender, nationality, religion, marital status, and other combined identifiers necessary for identification. In addition to other data, specific personal details comprises of biometric data, genetics, criminal records, children's data, personal financial data, personal medical information, and other data subject to legal regulation.

There are several criteria that must be satisfied in order to ascertain whether personal data can be publicly disclosed or not, these are: 1) the data subject has intentionally made the data public; 2) there is documentation showing that the data is accessible to the public, and; 3) the data subject has provided explicit consent for the data to made publicly accessible (Dove & Chen, 2021).

Under Article 1 (4) of the Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection ("UUPDP") stipulates that any personal data controllers, such as Notaries, are accountable as both controlling and processing the personal data (Wicaksono, 2023). In accordance with UUJN, the personal data contained in the documents drafted by them shall be kept confidential, as part of the Notary's obligation. A discrepancy is apparent between the regulations of the UUJN and the Capital Market norms. The UUJN stipulates that the Notary shall preserve the confidentiality of the deed, but the principles of the capital market necessitate a comprehensive disclosure of the listing company's affairs. In order to prevent over-disclosure, a limit should be set on how far such information can be shared. The importance of uploading the deed of establishment for a limited liability company to the idx.com during an IPO stems from the principle of full disclosure, which requires the inclusion of this deed in the prospectus. The accessibility of the deed of establishment influences the investor's choice to invest in a recently listed company on the stock market to gather insight into the company's intricacies, as the deed of establishment outlines the company's organisational framework prior to its' initial public offering, a type of non-financial information that impacts the investors' decision-making.

B. Possible legal consequences that arise upon the misuse of personal data from the deed of establishment of a limited liability company contained in the idx.com web.

In the capital market, the principle of disclosure must be adhered to, but there are boundaries that must be observed. Limitations in disclosure should be considered for the personal data owner, the Notary acting as both controller and processor, the platform idx.com, which discloses data of companies seeking to go public, and the Financial Services Authority (“OJK”), the capital market regulator. During a company’s initial public offering process, different parties involved have separate roles and responsibilities. As stipulated in Article 2 (1) of Regulation of the Financial Services Authority of the Republic of Indonesia (“POJK”) No. 31/POJK.04/2015, which regulates the Disclosure of Information or Material Facts by Issuers or Public Companies, public companies must release information or material facts to the public accordingly.

This category of information also encompasses the articles of association, typically drafted in the form of notarial deed. Any company looking to undertake a public stock offering is required to comply with this document. Following this, the document will then be submitted to the Indonesia Stock Exchange and OJK (Indonesia Stock Exchange, 2015).

Submission of the articles of association is a prerequisite for issuers seeking to be listed on the stock exchange. This assertion is founded upon the premise that the OJK exerts control over the personal data enshrined within the deed of establishment of a company that aspires to undertake a public offering. Subsequently, the Indonesia Stock Exchange undertakes the processing of the deed containing the personal data by uploading it onto the idx.com website. In this instance, the Indonesia Stock Exchange assumes the role of personal data processor. As they carry out these obligations, it would be prudent to introduce a compulsory censorship measure for all personal data included within the appearing clauses of the deed of establishment. OJK has enforced the same regulations to the protection of consumer personal data as specified in Circular Letter of the OJK No. 14/SEOJK/07/2014 which deals with the confidentiality and security of consumer personal data and/or information.

If consumer personal data is ensured confidentiality by OJK, similar thoughts should also apply to the identities of the appearer and their personal data contained on the notarial deed. It is crucial to be aware of this because not all data in legal documents should be publicly disclosed. Often, individuals whose data is being processed in certain situations are not aware that their actions can compromise the security of their own personal information. It is vital to acknowledge that disclosure should be considered in conjunction with the understanding that such data may be

accessed to the public (Burn, 2008).

According to the idx.com website's term of use, all information presented on the site is displayed in as is and as available form. Indonesia Stock Exchange disclaims liability for the User's use of information, including any resulting impact and consequences (Indonesia Stock Exchange, n.d.). This is a clear breach of the Indonesia Stock Exchange's duty mandated on Article 36 UUPDP as a data controller, which is to safeguard personal data confidentiality, as the national identity number and address of residence of the appearer featured in the deed uploaded in idx.com can be exploited by other parties. Potential risks include the unauthorized exposure of sensitive personal information encoded in the national identity number being misused for fraudulent online loan applications, and an increased vulnerability to other crimes due to the visible address of residence featured on the deed.

The censorship of personal data has precedent in legal documents posted online, as seen in the case of the Supreme Court. According to the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 2-144/KMA/SK/VIII/2022 concerning the Standard of Public Information Services at the Court, there exists a protocol for concealing case-related data within the Supreme Court. Personal data associated with national identity number and identities of parties, victims, witnesses, judges, public prosecutors, clerks, and other individuals involved in a court case are kept confidential. The obfuscation process involves covering up hardcopy documents, concealing personal information from public view, and substituting pseudonyms for the names of the parties involved. This approach can serve as a suitable illustration for concealing the appearer's personal information within the articles of incorporation document for a company that has been publicly posted on the idx.com website.

The misuse of personal data has significant consequences. In accordance with UUPDP, particularly on Article 57 (2), certain administrative sanctions are applicable in the event of a breach of personal data processing, specifically including written reprimands, temporary halting of operation, deletion of personal data, and administrative penalties. However, the inadequate enforcement of the UUPDP is attributed to a lack of penalties for public institutions. From a state administrative law viewpoint, the government as a public entity has a responsibility to be held accountable for actions that contradict the fundamental principles of good governance. Disclosure is indeed included on the principles, however its' implementation should be balanced with safeguards to protect individual rights, which its' limitation is enshrined on the rights of privacy stipulated on Article 28G (1) of The 1945 Constitution of the Republic of Indonesia as well on Decision of the Constitutional Court of the Republic Indonesia No. 5/PUU-VIII/2011 (Niffari, 2020;

Solechan, 2019).

Since the OJK is classed as a public entity under the UUPDP, any subsequent actions in the public offering process must be structured in a way that avoids contravening the law and human rights. In this instance, the lack of restrictions on disclosure constitutes a form of negligence on the part of OJK in enforcing the protection of personal data, particularly for individuals whose information included in the articles of incorporation of a company. Furthermore, the Indonesia Stock Exchange's failure to censor the identity of the appearer also constitutes a fault in processing personal data accessible on the idx.com web, as stipulated on Article 1 (5) UUPDP.

The potential for tortious actions, specifically the misuse of personal data, arises due to the lack of censorship of personal data information in relation to the individuals on the notarial deed. The party responsible for the misuse of personal data bears only part of the blame, with data controllers and also accountable due to their enabling roles. This article highlights a case of personal data exploitation, where the appearer's identity information is publicly exposed on the internet, without any regulatory oversight from either the OJK as the controller of personal data, or the Indonesia Stock Exchange as the organisation processing personal data. Misusing personal data may cause harm to the appearer, as their data is publicly displayed on the website during the initial public offering process.

4. Conclusion

The principle of full disclosure in the capital market necessitates the inclusion of a limited liability company's founding documents in the prospectus. Accessibility to the company's founding documents also impacts investors' choices to invest in newly-listed companies to gain insight into the company's specifics because the founding document of a limited liability company outlines its organisational framework, a type of non-financial information which affects the investment decisions investors wish to make. Including this deed is fundamentally at odds with the principle of confidentiality which is a key aspect of the Notary's office. Prior to this, the repercussions of the misuse of the appearer's personal data, as recorded in the idx.com site's limited liability company establishment documents, had been limited to the imposition of written warnings, the destruction of personal data, and administrative penalties. Prior to processing personal data related to the Appearer in the deed of establishment of a Limited Liability Company, risk management should be conducted by both the OJK and the BEI. Sensitive information, such as the Population Identification Number and the appearer's home address, is included in the deed of establishment for a limited liability company and should be kept confidential. Therefore, it is recommended to conceal/personalize individual information to prevent its misuse.

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