

## Analisis yuridis terhadap cacat hukum surat kuasa direksi perseroan terbatas dan implikasi hukumnya

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### Abstrak

Kuasa bertalian dengan adanya asas *nemo plus iuris ad alium transferre potest quam ipse haberet*, yang berarti bahwa seseorang tidak dapat mengalihkan hak kepada orang lain lebih daripada hak yang dimilikinya, sehingga pemberi kuasa tidak dapat memberikan kuasa lebih daripada hak atau kewenangan yang dimilikinya. Kuasa diberikan melalui tindakan hukum sepihak. Sebagai suatu tindakan hukum, tindakan itu hanya dapat dilakukan oleh orang yang cakap hukum. Direksi dalam melaksanakan pengurusan Perseroan harus hati-hati dan penuh tanggung jawab sesuai dengan prinsip *reasonable diligent in all circumstances*. Pada prinsipnya setiap anggota Direksi berwenang memberikan kuasa kepada karyawan perseroan atau orang lain untuk pengurusan kepentingan perseroan apabila tidak bertentangan dengan ketentuan dalam UUPT dan anggaran dasar. Namun, sifat kuasa yang boleh diberikan Direksi berdasarkan ketentuan Pasal 103 UUPT adalah "kuasa khusus" untuk melaksanakan pengurusan kepentingan perseroan, dengan demikian kuasa yang dapat diberikan oleh Direksi hanya terbatas pada surat kuasa khusus untuk perbuatan tertentu. Direksi dalam hal ini dilarang atau tidak dibenarkan memberikan kuasa umum.

Hasil penelitian menggunakan 2 (dua) posisi kasus. Bentuk cacat hukum kuasa Direksi Perseroan Terbatas disebabkan oleh adanya ketidakwenangan bertindak bagi si penerima kuasa dan isi dari kuasa tersebut bertentangan dengan UUPT dan anggaran dasar perseroan sehingga implikasi hukurnnya mengakibatkan akta kuasa tersebut batal demi hukum. Perlindungan hukum terhadap pihak ketiga yang beritikad baik dalam hal ini yaitu Bank, terhadap perbuatan hukum yang didasarkan pada kuasa Direksi yang cacat hukum yakni berdasarkan ketentuan Pasal 1873 Kitab Undang-Undang Hukum Perdata bahwa bentuk perjanjian kredit yang telah dibuat berdasarkan surat kuasa Direksi Perseroan Terbatas yang cacat hukum, tidak batal demi hukum hanya surat kuasanya yang batal demi hukum, karena perjanjian kredit tersebut tidak mengandung kausa yang terlarang tetapi surat kuasanya yang mengandung kausa terlarang.

*The power of attorney is related to the principle of nemo plus iuris ad alium transferre potest quam ipse haberet, which means that one person could not divert the rights to someone else more than his rights, thus the authorizer could not give his power more than his rights or his authority. The power of attorney is given by the unilateral law of action. As the unilateral law of action, the action is only can be done by the competence person. Board of Directors shall be prudent and full liability to do the management of the companies according to the principle of reasonable diligent in all circumstances. Basically, each member of Board of Directors has the authority to give the power of attorney to the employee or some other person(s) if it is not contrary with Limited Liability Companies Act and the article of associations. Nevertheless, the characteristic of the power of attorney that should be given by Board of Directors based on Article 103 of Limited Liability Companies Act (Law Number 40 of 2007) is a "special power of attorney" to do the management of the companies, thus the power of attorney that can be given by the Board of Directors is confined to special power of attorney for special actions. Board of Directors are not allowed or can not be right to give the general power of attorney.*

The end of the research used 2 (two) case position. The form of The power of attorney from the Board of Directors which is having defect in law is caused by the existence of incompetence in act of the attorney and the content of its power of attorney is contrary with Limited Liability Companies Act and the article of associations so that the implication of law has caused the deed is null and void. Law protection for the third party in this case is Bank means the third party which in a good faith toward the power of attorney from the Board of Directors which is having defect in law, based on Article 1873 Indonesian Civil Code that the loan agreement deed and the collateral deed which are made by virtue of the power of attorney from the Board of Directors which is having defect in law are not null and void, only for the power of attorney, and the form of loan agreement afore mentioned is not contain of forbidding motives but only its power of attorney.</i>