

## THE FUNCTION OF NOTARIES IN THE ESTABLISHMENT OF INDIVIDUAL COMPANIES POST JOB CREATION LAW

I Putu Adi Adnyana Putra<sup>1\*</sup>, Putu Ayu Sriasih Wesna<sup>2</sup>

<sup>1,2</sup> Faculty of Law, Universitas Warmadewa, Denpasar-Bali, Indonesia  
E-mail: <sup>1)</sup> [adicitoz@gmail.com](mailto:adicitoz@gmail.com), <sup>2)</sup> [ayuwesna@gmail.com](mailto:ayuwesna@gmail.com)

### *Abstract*

*The aim of this research is to analyze the function of notaries in the establishment of individual companies after the Job Creation Law. The type of research used is normative legal research which focuses on primary, secondary and tertiary legal materials and uses a statutory and conceptual approach. The research results show that the notary does not have a function in making authentic deeds for the establishment of individual limited liability companies because the establishment of individual limited liability companies does not require an authentic deed and a statement of establishment that is registered electronically is sufficient. The notary will function when an individual company decides to change to a capital partnership where the notary can provide legal counseling and assess the validity of the documents. The establishment of an individual company is based on the provisions of PP No. 8 of 2021 by making a statement of establishment in Indonesian and registering it via the AHU Online portal. With the change in the function of notaries in making authentic deeds of company establishment, there are still concerns regarding the legal validity and security of the identity of founders, directors and shareholders during the electronic registration process. The government is advised to change the regulations by involving a notary to make authentic deeds and create new regulations that specifically contain provisions relating to individual limited companies.*

**Keywords:** Notary, Individual Company, Job Creation

### 1. INTRODUCTION

After the enforcement of the Job Creation Law, there were significant changes in Law Number 40 of 2007 on Limited Liability Companies, particularly regarding the ease of doing business. These changes are reflected in Article 2, point (1) (c), which explains that "ease of doing business" means creating job opportunities by simplifying, facilitating, and speeding up business processes. This approach is aimed at boosting investment while empowering micro, small, and medium enterprises (MSME) to strengthen the economy, providing broad opportunities for Indonesian citizens to find employment.

A Limited Liability Company or *Perseroan Terbatas* (PT) is a legal entity established through an agreement. This shows that a PT is not simply a business entity created by one individual, but rather the result of an agreement between a group of individuals or parties who share a common goal of forming this legal entity. In this context, it's important to note that the foundation of a PT's establishment is based on an agreement, which serves as the main pillar of its existence (Apriana, 2017). In this context, it's crucial to understand that this process cannot be separated from the requirements necessary to make an agreement valid, as stipulated in Article 1320 of the Civil Code (KUH Perdata). This implies that the establishment of a PT must comply with legal provisions regarding the validity of an agreement, which requires adherence to legal aspects such as the consent of the parties, their legal capacity, a clear purpose, and other relevant factors according to applicable laws. Therefore, a deep awareness and understanding of the legal provisions in the Civil Code are essential in the establishment

of a PT, emphasizing the importance of fulfilling the mandatory legal requirements in this process (Prasetya, 2004).

According to Article 7, paragraph (1) of the Company Law, a Limited Liability Company (PT) must be established by at least two individuals or more. The establishment of a PT involves a formal process that includes creating an official or notarial deed. It is important to emphasize that the establishment of a PT is the result of an agreement between the founders. As an independent legal entity, the PT obtains its existence in a "contractual" manner, meaning that its formation is a direct consequence of the agreement made by the founders. Therefore, establishing a PT involves approval and consensus among all parties involved; it is formally created through a notarial or official deed, which indicates the legality and continuity of the PT (Harahap, 2016).

With the regulatory changes brought about by the Job Creation Law, the concept of establishing a PT has seen significant development. The change is evident in Article 153A of the Job Creation Law, which states that a company meeting the criteria for Micro and Small Enterprises can be established by just one person. The most notable change is the shift in the ownership requirements for a PT, which previously required a minimum of two shareholders, and now allows ownership by only one shareholder in the case of Micro and Small Enterprises (MSE) (Soemadji et al., 2021).

A notary is a public official with special authority to create authentic deeds. This is in line with Article 1, paragraph (1) of Law Number 2 of 2014, which amends Law Number 30 of 2004 on the Notary Position, stating, "A notary is a public official authorized to create authentic deeds and has other powers as stipulated in this Law or based on other laws." According to the regulations, it is clearly stated that the core role of a notary is the drafting and creation of authentic deeds. The legal basis for this can be identified in Article 1870 of the Civil Code, where authentic deeds are known to have significant legal impact and binding force on the parties involved. This indicates that the fundamental role and essence of the notarial profession lie in the notary's authority to create proof instruments with absolute power based on the applicable legal framework.

An authentic deed carries significant implications, indicating that the information contained within it has a high level of validity and provides strong legal certainty for the parties involved. Notaries play a crucial role in ensuring legal integrity, guaranteeing the validity of transactions, and offering robust legal protection to individuals and parties involved in agreements documented in authentic deeds (Sari, 2020).

According to Article 15 of the Notary Law, "A notary is authorized to create authentic deeds regarding all acts, agreements, and determinations required by regulations and/or desired by the interested parties to be documented in authentic deeds, guarantee the certainty of the date of the deed's creation, store the deed, provide the gross, copies, and excerpts of the deed, as long as the creation of the deed is not assigned or excluded to other officials or individuals appointed by law." The deed for establishing a limited liability company (PT) is an example of an authentic deed prepared by a notary. Due to its authentic nature, documents produced by notaries play a crucial role in ensuring the legal certainty required to legitimize a limited liability company. The importance of legal validity is fundamental, given that a limited liability company is a business entity with official legal status. Authentic documents produced by notaries serve as proof with full legal force when addressing situations that question their legal aspects (Prasetyo, 2019).

Significant changes in regulations regarding types of legal entities, specifically concerning individual companies, first appeared in the Job Creation Law. Article 153A

of the Job Creation Law clearly indicates that companies meeting the criteria for Micro and Small Enterprises (SME) can now be established by a single individual. Furthermore, the framework for individual companies related to SME is detailed in Government Regulation No. 8 of 2021 on the Basic Capital of Companies and Registration of Establishment, Changes, and Dissolution of Companies Meeting the Criteria for Micro and Small Enterprises, which is one of the derivatives of the Job Creation Law. This regulation includes provisions related to the basic assets of the company and the registration process needed to ensure that the company meets the requirements to be recognized as an individual company with SME status (Lubben & Mayasari, 2022). The Job Creation Law has created an environment that supports ease of doing business by introducing an innovative type of legal entity: the sole proprietorship with limited liability.

Under this regulation, a company can function as a legal entity established by a single individual or sole owner, known as an individual company. The sole owner's role in this company is not only as the primary shareholder but also as the director, without needing a separate commissioner role (Sumadi, 2022). This means there is no additional management hierarchy, leading to centralized decision-making and operational control. The establishment process for a Micro and Small Enterprise requires a founding statement to be drafted in Indonesian. Provisions in Article 6 (1) and Article 7 (1) of Government Regulation No. 8 of 2021, which detail the establishment of individual PTs, lack clear guidelines on who has the authority to create the founding statement. This can lead to confusion and uncertainty in implementing these regulations.

Such ambiguities can hinder the establishment process for individual PTs and create potential for interpretive discrepancies among involved parties. After the regulatory changes in the establishment process for individual PTs following the enactment of the Job Creation Law, questions arise about potential legal risks that these companies might face, such as unlawful actions that the company might undertake. The presence of notaries in the establishment process previously provided strong legal assurance, but with these regulatory changes, individual companies must face greater challenges in maintaining compliance with applicable laws. The emergence of individual PTs in the Indonesian corporate legal landscape has become a topic of significant interest in recent years.

## **2. RESEARCH METHODS**

The type of research used in writing this journal is normative legal research. Normative legal research is conducted by examining literature and secondary data (Soekanto & Mamudji, 2019). The approaches used are the statutory approach and the conceptual approach. The statutory regulations referenced include Law No. 40 of 2007 on Limited Liability Companies, Law No. 6 of 2023 on Job Creation, Law No. 2 of 2014 amending Law No. 30 of 2004 on the Notary Position, Government Regulation No. 8 of 2021 on the Basic Capital of Companies and the registration of changes and dissolution of companies meeting the criteria for Micro and Small Enterprises, and Minister of Law and Human Rights Regulation No. 21 of 2021 on the Requirements and Procedures for the Registration of Establishment, Changes, and Dissolution of Limited Liability Companies. The legal concepts used are the concept of agreements and the concept of legal entities.

### 3. RESULTS AND DISCUSSION

#### 3.1. Functions of a Notary According to the Notary Position Law

According to the Notary Position Law, a notary is defined as an individual appointed by the government with the authority to draft authentic deeds, carry out legal duties, and ensure the validity and accuracy of the documents they prepare. In their role, notaries play a central role in upholding legal certainty and protecting the interests of parties involved in agreements (Soebekti & Gunawan, 2012).

The function of a notary, as a public official, in creating authentic deeds provides legal certainty for the parties involved in agreements. Notaries are also responsible for the storage and archiving of these deeds, ensuring their accessibility in the future. According to Article 15(2) of the Notary Position Law, notaries have additional powers beyond drafting authentic deeds. These include the authority to certify signatures, establish the date on private documents, verify copies or photocopies against the original documents, and provide legal advice. Regarding the authority granted by the Notary Position Law, notaries are also empowered to provide legal advice to parties, including explanations of the legal implications of agreements and assessing the validity of legal documents presented. Thus, notaries function as legal advisors, helping parties understand the legal consequences of their actions (Satria, 2023).

Article 16(1)(a) of the Notary Position Law emphasizes that in carrying out their responsibilities, notaries must maintain a high level of independence and ensure there is no bias towards any party involved in the agreement process. This requirement aims to create a fair and balanced condition among all parties in legal transactions. Additionally, notaries have a crucial obligation to maintain the confidentiality of all information obtained during the drafting of deeds, unless required by law to disclose such information to authorized parties. These principles emphasize the importance of integrity and secrecy in notarial practice, ensuring justice and trust in the performance of notarial duties.

Notaries play a vital role in creating legal stability and certainty. Through the process of authenticating deeds, providing comprehensive legal advice, and maintaining confidentiality, notaries not only act as guardians of balance and fairness in legal interactions between individuals or institutions but also as stewards of integrity and trust in the entire legal process. The importance of this role is reinforced by the powers granted by law, as detailed in Article 15 of the Notary Position Law (Mulyoto, 2016).

#### 3.2. The Role of Notaries in Establishing Sole Proprietorship Limited Companies Post-Job Creation Law

The deed of establishment for a limited liability company (PT), as an authentic deed created by a notary, plays a crucial role in ensuring the legal validity that is an absolute prerequisite for the legitimacy of a limited liability company. In the legal context that may require assessment, the authentic deed can serve as a proof element with unquestionable legal validity. The role of the notary in the process of creating the PT establishment deed after the enactment of the Job Creation Law can be explained as the provision of authority based on the powers granted by the state. Under the regulatory framework established by the Job Creation Law, notaries are empowered to draft the establishment deed for a limited liability company. According to Article 7, paragraph (1) of the Company Law, which states that a company must be established by two or more individuals with a notarial deed made in Indonesian, this provides strong legal legitimacy to notaries to carry out their duties with full authority and independence, thus ensuring

confidence in the validity and reliability of the company's establishment process (Pranoto, 2023).

Post-Job Creation Law, the classification of limited liability companies has been emphasized into two forms: capital partnership PT and sole proprietorship PT. The process of establishing a capital partnership PT requires the drafting of an authentic deed prepared by a notary as an initial step in the organization of the company. This is in line with the requirement of at least two shareholders in the PT structure as stipulated in Article 7, paragraph (1) of the Company Law. Substantially, the establishment deed of a limited liability company governs the rights and responsibilities of the founders in managing the operations of the PT. All these rights and obligations are the core of the founders' agreement, commonly known as the Articles of Association of the PT. After the completion of the deed preparation process, the notary is required to report the PT establishment through the online system known as the Directorate General of General Legal Administration Online (Ditjen AHU Online), with the aim of obtaining legal validation from the Ministry of Law and Human Rights (Kemenkumham). Once successfully reported to Ditjen AHU Online, the PT will receive the Minister of Law and Human Rights Decree along with the Tax Identification Number (NPWP) that is crucial for the existence and operation of the limited liability company (Santoso, 2023).

In the establishment of a sole proprietorship PT, the need for an authentic deed prepared by a notary is not relevant, given the involvement of only one founder and the business scale limited to micro or small. This is in line with Article 153A of the Job Creation Law, which stipulates that a sole proprietorship PT for micro and small businesses can be established by one person through the submission of a declaration of establishment. The process is further explained in Article 153B, which requires the electronic submission of the establishment declaration to the Minister by filling out the specified form. In the context of establishing a sole proprietorship PT for micro and small businesses, the steps involve filling out the electronic declaration form without the need for a notary. The involvement of a notary is only required if the sole proprietorship PT has more than one shareholder.

Although the notary's role in the establishment of a sole ownership PT is not required, the importance of the notary's function in ensuring the validity of the PT establishment becomes clear after the enactment of the Job Creation Law. This is evident when a sole ownership PT needs to change its status to a capital partnership PT. The phenomenon of changing the status from a sole ownership PT to a capital partnership PT is regulated in Article 153H of the Job Creation Law, Article 9 of Government Regulation No. 8 of 2021, and Article 17 of the Minister of Law and Human Rights Regulation No. 21 of 2021, all of which specifically address the conversion of a sole ownership PT to a capital partnership PT when meeting certain criteria. This process occurs when the number of shareholders exceeds one person and/or the company no longer meets the criteria as a micro or small business. Before a sole proprietorship PT can transition to a capital partnership PT, the status change must be carried out through the creation of a notarial deed and electronic registration with the relevant Minister (Listyowati, 2015).

As the number of shareholders in a company increases, the continuity of the company's operations must be ensured by legal certainty. Thus, the role of the notary extends beyond the initial establishment of a capital partnership PT to include aspects of status change and regulations related to the transformation of the company from a sole proprietorship PT to a capital partnership PT.

#### 4. CONCLUSION

Based on the research findings, the conclusion is that notaries do not have a role in the establishment of a Sole Ownership (PT Perorangan) because its establishment does not require an authentic deed, but only a statement of establishment registered electronically as stipulated in Article 153A (2) of the Job Creation Law. The involvement of notaries arises when a Sole Proprietorship seeks to transform into a Capital Partnership PT (PT Persekutuan Modal) according to the provisions in Article 153H of the Job Creation Law, Article 9 of Government Regulation No. 8 of 2021, and Article 17 of Ministerial Regulation No. 21 of 2021. At this stage, notaries play a crucial role in providing legal advice on the legal implications of the agreements being made and assessing the validity of the submitted legal documents. This involvement supports the transition process of a Sole Proprietorship into a Capital Partnership PT by ensuring that all processes and documents comply with legal requirements.

To ensure legal certainty in the establishment of a Sole Ownership (PT Perorangan), it is recommended that the government amend regulations to involve notaries in the creation of authentic deeds. This would provide complete legal authority and ensure the validity of the Sole Ownership founder's identity. Furthermore, the government should establish specific regulations addressing Sole Ownerships as an extension of the Limited Liability Company Law (UUPT) to ensure that the principles, regulations, and core aspects of Sole Ownerships under the Job Creation Law do not conflict with those of Limited Liability Companies as regulated by the Limited Liability Company Law.

#### REFERENCES

- Apriana, R. A., & Hafidz, J. (2017). Penyimpangan Hukum Dalam Pendirian Perseroan Terbatas. *Jurnal Akta*, 4(4), 745–752.
- Harahap, Y. (2016). *Hukum perseroan terbatas*. Sinar Grafika (Bumi Aksara).
- Listyowati, N. (2015). Tanggung Jawab Hukum Perseroan Terbatas Yang Belum Berstatus Badan Hukum. *E-Jurnal Spirit Pro Patria*, 1(2).
- Lubben, F., & Mayasari, I. D. A. D. (2022). Kepastian Hukum Pendirian Perseroan Perorangan Tanpa Akta Notariil Berdasarkan Undang-Undang Cipta Kerja. *Jurnal Hukum Kenotariatan*.
- Mulyoto. (2016). *Kriminalisasi Notaris dalam Pembuatan Akta Perseroan Terbatas (PT)*. Cakrawala Media.
- Pranoto, L. (2023). Implementasi Notaris dalam Pembuatan Kontrak Bisnis. *Jurnal Hukum Bisnis*.
- Prasetya, R. (2004). *Kedudukan mandiri perseroan terbatas: disertai dengan ulasan menurut UU no. 1 tahun 1995 Tentang Perseroan Terbatas*. Citra Aditya Bakti.
- Prasetyo, B., & Setiawan, A. (2019). Fungsi dan Tanggung Jawab Notaris dalam Proses Pembentukan Perseroan Terbatas. *Jurnal Hukum & Keadilan*, 28(1), 48.
- Santoso, M. (2023). Peran Notaris dalam Memberikan Jaminan Hukum pada Pendirian Perseroan Terbatas. *Jurnal Hukum Bisnis Internasional*.
- Sari, I. P., & Setiawan, B. (2020). Kewenangan Notaris dalam Membuat Akta Otentik Menurut Hukum di Indonesia. *Jurnal Hukum & Keadilan*, 29(1), 78.
- Satria, I. M. (2023). *Aspek Hukum dalam Pelayanan Notaris*. Makmur Jaya.
- Soebekti, R., & Gunawan, D. (2012). Kamus Istilah Hukum: Notariat dan Peradilan.

*Prenada Media, Jakarta.*

- Soekanto, S., & Mamudji, S. (2019). Penelitian Hukum Normatif Suatu Tinjauan. *Singkat, Jakarta: CV. Rajawali.*
- Soemadji, R. T. N., Hoesin, S. H., & Putra, M. F. M. (2021). Peran Notaris Dalam Legalitas Perseroan Pemegang Saham Tunggal Untuk Pembangunan Ekonomi Nasional. *Palar (Pakuan Law Review), Nomor, 2.*
- Sumadi, P. S. (2022). *Sketsa Hukum Ragam Bentuk Perusahaan.* Zifatama Jawa.

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