

## The Role of Notaries in Making Limited Liability Company Legal Entity Deeds through the General Legal Administration System

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**Abstract.** *Registration of limited liability company legal entity deeded from a manual system to an electronic system or online is expected so that the registration or validation can run more efficiently and more effectively. Similar to the previous provisions, until now the process of making a request for registration into the General Law Administration System still requires the role of a notary. The purpose of this paper is to analyze: 1) The role of the notary in drawing up limited liability company legal entity deeds through the general legal administration system in Blora Regency. 2) The effectiveness of making and registering limited liability company legal entity deeds by a notary through the general legal administration system in Blora Regency. The approach method in this research is a sociological juridical approach. The specification of the research used is descriptive analysis research. Types of data using primary data and secondary data. Data collection by interview method and literature study. The data analysis method used is qualitative analysis. The research problems were analyzed using the theory of legal certainty and the theory of legal effectiveness with the results of the research concluding: 1) The role of the notary in making legal entity deeds of limited liability companies through the General Legal Administration system in Blora Regency, namely making deeds and making applications electronically through the general law administration system, because a notary deed that functions as an authentic deed must provide certainty and legal protection for the community and function as the most perfect means of evidence. 2) The effectiveness of making and registering limited liability company legal entity deeds by a notary through the General Legal Administration System in Blora Regency is the registration of limited liability company deeds through the General Legal Administration System by a notary directly which strongly supports a faster and more effective registration completion process.*

**Keywords:** Administration; Company; Entity; System.

## 1. Introduction

A notary is a public official who has the authority to create and provide authentic documents (deeds). Based on this role, notaries are very much needed in the world of entrepreneurs in particular and the wider community in general. This includes entrepreneurs who wish to have a Limited Liability Company Legal Entity Deed drawn up.

Limited Liability Company (PT) is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely in shares, and meets the requirements stipulated in this Law and its implementing regulations.<sup>1</sup>

The establishment of a Limited Liability Company, hereinafter referred to as a PT, must be carried out by means of a notarial deed. Several people together appear in front of a notary and explain their intention to establish a PT by submitting a plan of the articles of association of the company to be established. The Deed of Establishment made by a notary, containing the articles of association of the company being established, must be considered as a contract or agreement, where each company member who is involved in establishing the company makes an agreement with other company partners who are also present before the notary.<sup>2</sup>

The requirement for a company deed to be in the form of a notarial deed, not only functions as proof of the agreement establishing the company, but the notarial deed based on Article 7 paragraph 1 of the Company Law, also has the character and function of a solemnity causa, that is, if it is not made in the form of a notarial deed, the company deed does not fulfill conditions, so that approval is not given by the Government, in this case the Minister of Law and Human Rights.<sup>3</sup>

The granting of limited liability company (PT) legal entity status must meet certain requirements, namely after the company deed has received approval from the Ministry of Law and Human Rights as stated in Article 7 paragraph (4) of the Limited Liability Company (PT) Law which states as follows: " The Company obtains legal entity status on the date of publication of the Ministerial Decree regarding the ratification of the Company's legal entity", which will be accessed in

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1Article 1 paragraph (1) Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies.

2Subekti, 2001, Principles of Civil Law, Second Printing, Internusa, Jakarta, Page. 203.

3M. Yahya Harahap, 2009, Limited Liability Company Law, Second Printing, Sinar Graphics, Page 169.

the general legal administration system by the notary as the attorney for the applicants for the establishment of a limited liability company.

The Ministry of Law and Human Rights of the Republic of Indonesia, especially the Directorate General of General Legal Administration, has a work unit which provides services to the public, namely legal services to the public in the field of legalization of legal entities in the form of companies. These services are carried out in a system called the Legal Entity Administration System which is now enhanced with AHU Online. AHU Online is refined from the Legal Entity Administration System which was previously called Sisminbakum which has various meanings. Sisminbakum is a computerized system in the process of ratification/approval of the establishment of a legal entity by the Directorate General of General Legal Administration of the Ministry of Law and Human Rights.<sup>4</sup>

The online operation of the AHU system can only be accessed by the Notary, so that the only person who can request ratification of notarial deeds is the notary himself and no longer can service bureaus or other people and even people within the company take part directly in the ratification process. . However, in practice, the fields in the Online General Legal Administration System (AHU) often experience changes, both the data that must be filled in and the list of aims and objectives of the Company, which happens almost every year. This means that notaries have to frequently study or update the developments in the registration form in the AHU Online system. So that in conveying what requirements are needed by the Founders and/or presenters in terms of making a Limited Liability Company Legal Entity Deed in particular, it can be maximized.

## **2. Research Methods**

The approach method in this research is a sociological juridical approach, namely legal research that uses secondary data as initial data, which is then continued with primary data or field data, in the form of interviews with 3 (three) notaries who have served for more than 5 years and are still active up to now, in order to look for relationships (correlations) between various symptoms or variables as a data collection tool consisting of document studies, observations and interviews. The research specification used is descriptive analysis research. Data types use primary data and secondary data. Data collection using interview and literature study methods. The data analysis method used is qualitative analysis.

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4Muhammad Azhari and Rudi Indrajaya. 2001. Getting to know Sisminbakum, Cet.II. Bandung: CV Dinamika Putera. p. 17.

### **3. Results and Discussion**

#### **3.1. The Role of Notaries in Making Limited Liability Company Legal Entity Deeds through the General Legal Administration System**

In the business world in particular and/or society in general, carrying out activities or legal acts requires the services and role of a Notary, this is motivated by the need for written evidence, where the notary is able to fulfill this need, because the notary has the function of making and provide authentic documents (deeds) as strong evidence, so that it is hoped that they will be able to provide legal protection for the holder and parties with an interest in the documents (deeds).

This is as described in Article 15 paragraph (1) of the Notary Position Law which provides provisions regarding the definition of a notary and what the duties of a notary are, namely:

"Notaries have the authority to make authentic deeds regarding all deeds, agreements and provisions required by law and/or which are desired by interested parties to be stated in authentic deeds, guarantee certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed , all this as long as the making of the deeds is not also assigned or excluded to other officials or other people as determined by law."<sup>5</sup>

One of the Notary's duties is to serve the public to make every "agreement" desired by the parties to be stated in an authentic deed, where the deed creates written evidence and has an authentic character for the parties.<sup>6</sup>One form of such deed is the deed of establishment of a Limited Liability Company (PT).

The notary also plays a role in registering the name of the Limited Liability Company and as the proxy for the founder in obtaining legal entity status from the Deed of Establishment of the Limited Liability Company until the Company is announced in the State Gazette of the Republic of Indonesia.<sup>7</sup>This is reinforced by the existence of a legal basis, namely based on Article 2 paragraph (1) PERMEN No. M.HH-02.AH.0110 of 2009 concerning Procedures for Submitting Applications for Legalization of Company Legal Entities, Approval of Changes to the Articles of Association, Submission of Notifications for Changes to the Articles of Association and Changes to Company Data (hereinafter referred to as PERMEN

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<sup>5</sup>Article 15 paragraph (1) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary in the State Gazette of the Republic of Indonesia Number 3 of 2014 and Supplement to the State Gazette of the Republic of Indonesia Number 5491 (UUJN).

<sup>6</sup>Nico, 2003, Responsibilities of Notaries as Public Officials, CDSBL, Yogyakarta, p. 47.

<sup>7</sup>Interview with Notary Elizabeth Estiningsih, SH, on November 1 2022, at 16.00 WIB

No. M.HH-02.AH. 01-01 of 2009 and PERMEN No. M.HH-03.AH.01-01 of 2009 concerning Company Registration, as well as PERMEN No. M.02.HT.01.10 of 2007 concerning Procedures for Announcement of Limited Liability Companies in the Supplement to the State Gazette of the Republic Indonesia), that the person who has the right to submit the application for the founder authorizes the Notary so that the person who formally submits the application is the Notary "in the quality and capacity as proxy" of the founder.<sup>8</sup>

The word "company" refers to its capital which consists of holdings (shares) while the word "limited" refers to the liability of shareholders which does not exceed the nominal value of the shares subscribed and owned.

According to Law number 40 of 2007 concerning Limited Liability Companies, Article 1 is as follows:

"A Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and fulfills the requirements stipulated in this Law and its implementing regulations."<sup>9</sup>

In Article 1 of the Law it is clear that a Limited Liability Company (PT) is a legal entity established based on an "agreement". Because it is an "agreement", there are parties who make the agreement, which means there is more than one or at least two people or two parties to the agreement, as stated in Article 1313 of the Civil Code.<sup>10</sup>

The "agreement" on the establishment of a Limited Liability Company (PT) established by the founders is stated in a notarial deed called the "Deed of Establishment". This Deed of Establishment basically regulates the various rights and obligations of the company founders in managing and running the limited liability company. These rights and obligations which constitute the contents of the agreement are hereinafter referred to as the company's "Articles of Association" as confirmed in Article 8 paragraph (1) of the Limited Liability Company Law.

Indonesia itself has a Limited Liability Company Law (UUPT) Number 40 of 2007 which previously also issued Limited Liability Company Law Number 1 of 1995,

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8M. Yahya harahap, Limited Liability Company Law cet.6, Sinar Graphics, Jakarta, 2016, p. 35.

9Article 1 paragraph (1) Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies in the State Gazette of the Republic of Indonesia of 2007 Number 106 and Supplement to the State Gazette of the Republic of Indonesia Number 4756 (UUPT).

10IG Rai Wijaya, 2000, Company Law, second printing, Bekasi, Kesaint Blanc, p. 134.

which UUPT Number 40 of 2007 contains complex matters relating to the provisions regarding Limited Liability Companies when compared with the provisions contained in the Commercial Code (KUHD) which was born earlier and is a legal product inherited from the Dutch colonial era.

The establishment of a Limited Liability Company, hereinafter referred to as a PT, must be carried out by means of a notarial deed. Several people together appear in front of a notary and explain their intention to establish a PT by submitting a plan of the articles of association of the company to be established. The Deed of Establishment made by a notary, containing the articles of association of the company being established, must be considered as a contract or agreement, where each company member who is involved in establishing the company makes an agreement with other company partners who also appear before the notary.<sup>11</sup>

The requirement for a Deed of Establishment to be in the form of a notarial deed, not only functions as evidence of the company's founding agreement, but the notarial deed is based on Article 7 paragraph 1 of the Company Law, as well as having the character and function of a solemnity causa, that is, if it is not made in a notarial deed, the company's deed of establishment is not meets the requirements, so that approval is not given by the Government, in this case the Minister of Law and Human Rights.<sup>12</sup>

The granting of legal status to a Limited Liability Company (PT) must meet certain requirements, namely after the deed of establishment has received approval from the Minister of Law and Human Rights as specified in Article 7 paragraph (4) of the Limited Liability Company (PT) Law which states as follows: "Company obtain legal entity status on the date of publication of the Ministerial Decree regarding ratification of the legal entity of the Company", which will be accessed in the legal entity administration system by the notary as the attorney for the applicant for the establishment of a limited liability company.

The Ministry of Law and Human Rights of the Republic of Indonesia, especially the Directorate General of General Legal Administration, has a work unit that provides services to the public, namely legal services to the community in the field of ratifying legal entities in the form of Companies. These services are carried out in a system called the Legal Entity Administration System which is now enhanced with AHU Online. AHU Online is refined from the Legal Entity Administration System which was previously called Sisminbakum which has various meanings. Sisminbakum is a computerized system in the process of

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11Subekti, 2001, Principles of Civil Law, Second Printing, Internusa, Jakarta, p. 203.

12M. Yahya Harahap, 2009, Limited Liability Company Law, Second Printing, Sinar Graphics, p. 169.

ratification/approval of the establishment of a legal entity by the Directorate General of General Legal Administration of the Ministry of Law and Human Rights.<sup>13</sup>

The Legal Entity Administration System is referred to as a form of service to the public provided by the Ministry of Law and Human Rights of the Republic of Indonesia by using a computerized system in processing requests for ratification of the deed of establishment and requests for approval and acceptance/reports of changes to the Company's articles of association, which can be done online. Accessed by all notaries on the site <http://www.sisminbakum.com>. Now accessing the Legal Entity Administration System has changed to <http://www.ahu.go.id>. since its operations were taken over by AHU Online.

Thus, the only person who can request ratification of Notarial deeds is the Notary himself, and no longer can service bureaus or other people or even people within the company take part in direct management of the ratification process. However, in practice, the fields in the Online General Legal Administration System (AHU) often experience changes, both the data that must be filled in and the list of aims and objectives of the Company, which happens almost every year. This means that notaries have to frequently study or update the developments in the registration form in the AHU Online system. So that in conveying what requirements are needed by the Founders and/or presenters in terms of making a Limited Liability Company Legal Entity Deed in particular, it can be maximized.

That related to the online making of Limited Liability Company deeds by Notaries and the obstacles experienced by these notaries, were also experienced by Notaries in Blora Regency. This research aims to understand and analyze the role of Notaries in providing legal counseling to applicants in the context of making a Limited Liability Company Legal Entity Deed; and then examine in more depth the role of Notaries in making Limited Liability Company Legal Entity Deeds through the General Legal Administration System in Blora Regency.

Based on the theory of Legal Certainty, what the Notary in Blora Regency has done in this case has demonstrated legal certainty because the PTs have been registered in the System of the Ministry of Law and Human Rights of the Republic of Indonesia. In carrying out their role in submitting applications electronically through the General Legal Administration System, notaries must be thorough and careful, because the notarial deed that has been made functions as an authentic deed to provide legal certainty and protection for company owners in particular and the wider community in general.

### **3.2. Effectiveness of making and registering Limited Liability Company legal entity deeds by a Notary through the General Legal Administration System**

The Limited Liability Company registration process in the Decree of the Minister of Justice and Human Rights Number M-04 HT.01.01 of 2001 is carried out manually. In line with the development of the times which require speed in processing an administration and in line with current technological developments, the manual method is considered no longer efficient and effective because the process takes a long time because the process takes months. Based on these reasons, the Government issued new provisions in the form of Decree of the Minister of Justice and Human Rights Number M-05 HT.01.01 of 2002 concerning the Implementation of the Legal Entity Administration System at the Directorate General of General Legal Administration of the Ministry of Justice and Human Rights of the Republic of Indonesia,<sup>14</sup>

The Legal Entity Administration System (SABH), which is an internet-based legal product issued by the Ministry of Law and Human Rights of the Republic of Indonesia, in its implementation is subject to the rules contained in Law Number 40 of 2007 concerning Limited Liability Companies as the legal basis for implementing the electronics system. The Legal Entity Administration System (SABH) basically must be synchronized with the rules contained in Law Number 40 of 2007 concerning Limited Liability Companies. Every Notary who wants to access SABH must register himself with the service provider whose representatives are located in the Department of Law and Human Rights. Next, the Notary is given a keyword or password consisting of a series of letters or numbers which can be changed according to the Notary's wishes. Apart from that, the Notary is also equipped with a user ID or name of the user, usually the name of the Notary himself, to be used in opening or starting access on the SABH website located at <http://www.ahu.go.id>. Thus, the only person who can request ratification of Notarial deeds is the Notary himself, and no longer can service bureaus or other people or even people within the company take part in direct management of the ratification process.<sup>15</sup>

The change from a manual system to an electronic or online system is expected so that registration or validation can run more efficiently and more effectively. No different from the previous provisions, this new provision still requires the role of a notary in its implementation. The role of a notary in online limited liability company registration is to enter limited liability company data, check all data that

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14 Erina Permatasari, Lathifah Hanim, Roles and Responsibilities of Notaries in the Implementation of Limited Liability Company Legal Entity Registration Through the Online System, *Journal of Deeds*, Volume 4 Number 3 September 2017, p. 403

15 Dedy Ahmad, Roles and Responsibilities of Notaries in the Certainty of the Legal Entity Legalization Process, *Law Journal*, University of North Sumatra, 2015, p. 5

has been entered to avoid data entry errors, then sign. The role of a notary in registering a limited liability company is limited to examining the applicant's deed data and reading the deed that has been made before it is signed by the notary. The act of checking data carefully and thoroughly is part of the role,<sup>16</sup>

The role of a notary in a Limited Liability Company is not only limited to making deeds, but a notary is also obliged to provide legal advice regarding deeds that will be made by/before him. The advice in question is what things need to be fixed or avoided by company owners so as not to cause problems for clients or other parties, as well as as a safeguard for the notary himself.<sup>17</sup>

Based on the theory of legal effectiveness as put forward by Soerjono Soekanto, it can be concluded that with the existence of this Legal Administration System, the creation of a Limited Liability Company starts from making the deed to access to the Legal Administration System for both the establishment process and changes to the Limited Liability Company which are carried out directly by the notary more effective, faster and exact costs can be notified to clients in advance.

#### **4. Conclusion**

The role of a notary in making deeds of limited liability companies through the General Legal Administration system in Blora Regency is to apply for the establishment, amendment and/or dissolution of the limited liability company's articles of association electronically through the general legal administration system by completing supporting documents obtained from the founders and company organs. Registration procedures must be carried out in accordance with the provisions of Law Number 40 of 2007 concerning Limited Liability Companies and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2001 concerning Requirements and Procedures for Registration for the Establishment, Changes and Dissolution of Limited Liability Company Legal Entities. As a Notary, in carrying out his role in submitting applications electronically through the General Legal Administration System.

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<sup>16</sup> *Ibid.*, p. 405

<sup>17</sup> interview with Elizabeth Estiningsih, SH, Notary in Blora Regency, on July 31 2023

Erina Permatasari, Lathifah Hanim, Peran Dan Tanggung Jawab Notaris Terhadap Pelaksanaan Pendaftaran Badan Hukum Perseroan Terbatas Melalui Sistem Online, *Jurnal Akta*, Volume 4 Nomor 3 September 2017,

I.G. Rai Wijaya, 2000, *Hukum Perusahaan*, cetakan kedua, Bekasi, Kesaint Blanc,

Interview with Elizabeth Estiningsih, SH, Notary in Blora Regency, on July 31 2023

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