

Authority of a Notary in Legalizing the Establishment of a Limited Liability Company After the Job Creation Law Was Passed

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Abstract. *The legal basis for Limited Liability Companies in Indonesia has changed with the enactment of Law No. 6 of 2023 concerning Job Creation which replaced Law No. 40 of 2007. Capital partnership businesses and limited liability companies are now two parts of limited liability companies. As a result of these changes, this research aims to examine the authority of notaries in validating the establishment of limited liability companies after the ratification of Law No. 6 of 2023 concerning Job Creation. This research uses a normative juridical approach method through literature study techniques. Based on research findings, the presence of a notary is still needed when a company must change its legal status to a capital partnership company after the Job Creation Law is passed. This situation arises if the number of shareholders exceeds one person and/or the company no longer meets the criteria as a Micro and Small Enterprise. Before an individual company can change its status to a capital partnership company, this status transition must be carried out through a notarial deed and then registered electronically with the Minister.*

Keywords: Authority; Company; Individual.

1. Introduction

In general, the majority of individuals or entities involved in the business environment face requirements that require interacting with a notary, both in carrying out certain tasks and to complete legal transactions. The involvement of a notary has high significance due to the great demand for written documents that can provide strong evidence in various situations. The function of notaries has a vital role in fulfilling this need because they have the responsibility to make

authentic deeds that have received recognition for their validity and legal force.¹ Notary is a profession in the field of law who occupies a position as a public official and is given the authority to make authentic deeds.² The rules explained in UUJN indicate that the main function of a Notary lies in the phase of drafting and making valid deeds. Article 1870 BW (Burgelijk Wetboek) regulates that authentic documents have significant implications in binding all parties involved in the agreement.

One of the deeds made by a notary is the deed of establishment of a limited liability company. Due to its authenticity, a deed made by a notary plays an important role in creating legal certainty which is used as a condition for the legal legality of a limited liability company.³ Legal legality is very important, considering that a limited liability company is a legal entity. An authentic deed made by a notary can be perfect legal evidence if a legal problem occurs. Limited liability companies have become a well-known form of commercial entity, especially in the business realm. Limited liability companies have become an important choice for individuals involved in the business world to manage their economic activities. Because they help reduce financial risks that may arise, limited liability companies have high popularity among entrepreneurs. In fact, the basic principles of a limited liability company indicate that it is an economic entity formed by pooling funds from shareholders, thereby limiting their financial obligations based on the amount of capital they contribute.⁴ In the conceptual context of a limited liability company, basically, individuals who own shares are referred to as partners, while corporate entities that issue shares are referred to as corporations or Persero.⁵

The formation and operation of a limited liability company is essentially bound by the realm of civil law and is subject to the criteria set out in Article 1320 of the Civil Code, which describes the circumstances that make an agreement effective. The Job Creation Law made significant reforms to advance job creation, including changes and additions to important provisions in the Company Law.⁶ The main objective of the promulgation of the Job Creation Law is to stimulate the creation of local and international investment in Indonesia. This was achieved by

¹ Kusuma, IM, & Susilawati, LP (2020). Legal Protection for Parties Who Have an Interest in Notarial Deeds. *Jurisprudence: Journal of Legal Studies*, Vol. 02, No. 2, p. 110.

² Yustica, A., & Ngadino., & Sukma, N (2020). The Role of Notary Professional Ethics as a Law Enforcement Effort. *NOTARIUS*, Vol. 13, No. 1, p. 65.

³ Prasetyo, B., & Setiawan, A. (2019). Functions and Responsibilities of a Notary in the Process of Establishing a Limited Liability Company. *Journal of Law & Justice*, Vol. 28, No. 1, p. 48.

⁴ Sulisty, H., & Pratama, B. (2019). Analysis of Legal Aspects of Limited Liability Companies. *Journal of Law & Justice*, Vol.28, No.2, p. 179.

⁵ Santoso, R. (2017). *Limited Liability Company Law in Indonesia: Theory and Practice*. PT Gramedia Widiasarana Indonesia.

⁶ Ardiansyah, MR, & Mustafa, M. (2021). Legal Analysis of Changes in the Limited Liability Company Concept After the Job Creation Law. *Amanna Law Science Journal*, Vol.16, No.2, p. 127.

simplifying laws in various industries that were previously considered to be hampering the progress of the Indonesian economy, especially those regulating Limited Liability Companies (PT).⁷

Even though there have been no direct changes to the regulations described in the Law on Notary Positions, the Job Creation Law has indirectly affected several aspects related to notaries. This impact comes from the separation of limited liability companies into two groups after the passing of the Job Creation Law, namely capital partnership companies and individual companies. Each individual company category can only be accessed by micro or small business types.⁸

Individual companies do not require a Notarial deed in the process of establishing them. According to Article 153A paragraph (2) and Article 153B paragraph (2), the formation of individual companies for micro or small scale businesses can now be realized by filling out a digital statement form, without requiring intervention from the notary. An explanation of these requirements is presented in Government Regulation Number 8 of 2021. This provision is enforced by the implementation of the Job Creation Law.⁹

The problem that becomes a problem is when the shareholder of an individual company becomes more than 1 (one) person or the company no longer meets the criteria for being a micro and small business. This will be a problem because the company no longer meets the requirements as a micro or small business and must change to a capital partnership company. Therefore, this research aims to analyze the authority of a notary in validating the establishment of a limited liability company according to the Job Creation Law.

3. Result and Discussion

3.1. Company Establishment According to the Job Creation Law

After the enactment of the Job Creation Law, the term "company" now refers to individuals who meet the criteria for Micro and Small Enterprises, or legal entities that raise capital through an agreement to run a business in accordance with this separation. This adjustment makes it reasonable that a company can take a different legal entity form. The implementing regulations for the Job Creation Law, including Government Regulation Number 8 of 2021, further detail the

⁷ Andhita Dewi, Putu Inten., & Novy Purwanto, I Wayan. (2021). "The Role of Notaries in the Establishment of Limited Liability Companies Post-Job Creation Law." *Acta Comitas*, Vol. 6, No. 03. matter. 552.

⁸Ibid, p.129.

⁹ Salim Fauzan. (2020). The Role of Notaries in Ratifying the Establishment of Limited Liability Companies through the Legal Entity Administration System (SABH). *RECITAL REVIEW*, Vol. 2, No. 2, p. 152.

requirements for MSE companies. Companies in this regulation that meet MSE standards include:¹⁰

- a. Capital partnership company established by 2 (two) or more people;
- b. Individual company founded by 1 (one) person.

Inclusion in the establishment of individual companies is acknowledged to be aimed at supporting efforts to facilitate business activities. According to the regulations of the Company Law, the formation of a limited liability company previously required a minimum of 2 (two) people or more as founders. Then, with the enactment of the Job Creation Law, opportunities for small businesses were wide open, allowing the establishment of companies in the form of limited liability companies by one individual.¹¹ Through the expansion implemented in the Job Creation Law, the category of limited liability companies is currently divided into two, namely capital partnership companies and individual companies.

A capital partnership company is a type of legal entity with capital established under a contract and running a business by mobilizing all of its capital in the form of shares. On the other hand, an individual company is a separate legal entity that meets the micro and small business standards as set forth in the relevant laws and regulations. The concept of an individual company in the Limited Liability Company Law (UU PT) is reinterpreted in the Job Creation Law by including 2 (two) additional parts, namely the individual element and the requirements for micro and small companies.¹² This element refers to the fact that there is only one founder in an individual company and the importance of separation between personal assets and the corporate entity.

Article 32 paragraph 1 of the Company Law which previously regulated this matter stated that the authorized capital of a company must be at least IDR 50,000,000 (fifty million rupiah) before it can be established. Government Regulation Number 29 of 2016 concerning Changes in Limited Liability Company Authorized Capital then amended this rule, eliminating the minimum amount requirement and allowing founders to determine the authorized capital

¹⁰Yahya Wasyafi Hardiyono. (2021). "Legitimacy and Legal Consequences of Establishing Micro and Small Companies Established Based on Law No. 11 of 2020 Concerning Job Creation." *Dynamics of the Journal of Legal Studies*. Vol.2, No.8, p.1087.

¹¹Kenny, Jusup. (2021). "Juridical Analysis of Establishment and Changes to Limited Liability Companies that Meet the Criteria for Micro and Small Enterprises Based on Law No. 11 of 2020 Concerning Job Creation." *Pelita Harapan University*.

¹² Pangesti, Shinta. (2021). "Strengthening Regulations on Individual Limited Liability Companies for Micro and Small Enterprises to Support Economic Recovery During the Covid-19 Pandemic." *Rechts Vinding Journal*. Vol. 10, No. 4. p. 117.

according to their own policies. This rule was later reaffirmed in the Job Creation Law.¹³

The requirements for establishing a sole proprietorship company are different from those for establishing a capital partnership company. For example, a company must be established in accordance with the requirements of micro and small enterprises and must go through a statement of incorporation. In addition, only one person can set up a sole proprietorship, and citizens must do so. The Indonesian citizen concerned must meet the requirements, including being at least 17 (seventeen) years old and legally competent, as well as submitting a statement of establishment in Indonesian.¹⁴

Furthermore, the founder must fill out a form that is filled online using the AHU Online Directorate General System platform. After the contents of the format are complete, the Minister will issue a decree digitally. The legal status of a business entity is obtained after obtaining the decision letter, in accordance with the amendments to Article 7 paragraph (4) of the PT Law, which was amended by the Job Creation Law. Before changes are made, the legal status of legal entities has been verified with the approval of the Minister through the issuance of a Ministerial Decree.¹⁵

If the company is going to change its establishment, modifications can be made by completing the change format in Indonesian. The changes can be applied as many times as needed. The change format must include the elements already contained in the statement of establishment, such as name and location, duration of establishment, aims and objectives, and other components. In addition, changes in the statement of establishment have legal status equivalent to the GMS.¹⁶

Based on this limited liability company classification, it can be noted that the Limited Liability Company Law (UU PT) only includes procedures, criteria and requirements relating to the establishment of a company in the form of a capital partnership company. In contrast, the Job Creation Law seeks to widen the range of types of limited liability companies by including regulations regarding individual companies, to provide guidelines for the formation of these types of companies. The implementation of the Job Creation Law changed the regulations of the Company Law related to the registration process and the prerequisites for establishing a limited liability company, especially those that apply to individual

¹³Ibid, p. 120.

¹⁴Ibid, p. 121.

¹⁵ Kusuma, IGA, & Wijaya, IK (2020). The Role of Notaries in Registration of Limited Liability Company Establishments in Indonesia. *Novelty Law Journal*, Vol.11, No. 2, p. 194.

¹⁶Ibid., p. 195.

companies.¹⁷This adaptation occurs because the provisions for the registration of a capital partnership company and an individual company have differences in the requirements that apply.

3.2. Authority of a Notary in Legalizing the Establishment of a Limited Liability Company after the Job Creation Law Was Passed

With the introduction of the idea of an individual company based on Micro and Small Business criteria as a manifestation of the government's commitment to supporting Micro and Small Enterprises, the Job Creation Law and its implementing regulations, such as Implementing Regulation Number 8 of 2021, have changed this law, the framework for limited liability companies in Indonesia. Furthermore, the idea of the Job Creation law was adapted to changes in the limited liability company law. The new interpretation of the provisions of the Job Creation Law states that anyone can now set up a limited liability company by meeting the comprehensive micro and small business standards. The formation of a private company does not rely on an agreement or notarial deed as its basis.¹⁸

Based on Article 153 of the Job Creation Law, if an individual company undergoes a transformation, then the individual company will no longer meet the standards of being a Micro and Small Business. It is necessary to change the status of an individual company to become a capital partnership company in accordance with the requirements stipulated in the laws and regulations if it no longer fulfills the requirements to be determined as a Micro and Small Enterprise.¹⁹According to the Company Law, the establishment of a limited liability company must be supported by a notarial deed. Therefore, parties who wish to change the status of the Company must make changes as stipulated in the Company Law. In this scenario, the Notary is once again given the authority as a public authority to draw up a "Deed of Establishment", which includes ensuring subjective determination criteria. The rules of the Limited Liability Company Law require that a limited liability company be formed based on the original deed.²⁰

In circumstances like this, the role of a Notary is very important to ensure the fulfillment of all legal obligations in accordance with the provisions of the Civil Code and applicable legal regulations. To prevent legal defects from arising in a Notarial deed which could endanger its integrity, the role of the Notary remains important in ascertaining and guaranteeing the elements of authenticity, legality,

¹⁷Kenny, Jusup. Op. Cit.

¹⁸Ardiansyah, MR, & Mustofa, M. Op.Cit. p. 128.

¹⁹Asshiddiqie, J. (2015). Indonesian Corporate Law. Graphics Light.

²⁰ Trisna, Ida AK (2017). The legal position of a limited liability company that is not in accordance with Law no. 40 of 2007 concerning Limited Liability Companies.

and factors that can cause a deed to be invalidated. Considering the possibility that the loss of authenticity and cancellation of a notarial deed could have negative impacts on the parties concerned, the presence of a notary helps ensure the validity and preservation of the deed.²¹

Based on the explanation above, with the introduction of a unique company concept that meets the requirements of Micro and Small Enterprises, the Job Creation Law and its implementing regulations, especially Implementing Regulation Number 8 of 2021, have changed the legal basis for companies in Indonesia, this can be seen from the explanation above. In accordance with the Principle of Legal Certainty which emphasizes that laws must be able to become rules that must be obeyed, this transformation also provides legal certainty regarding the authority of Notaries.²² A notarial deed is not required for the establishment of an individual company. A statement of incorporation, or the format for establishing a sole proprietorship created by 1 (one) person online, is all that is required for a single entity.

Notaries can now make deeds if an individual company has to change its status to become a capital partnership company after the Job Creation Law comes into force. If the number of shareholders increases beyond 1 (one) and/or the business does not meet the requirements for Micro and Small Businesses. To change the status of an individual company business, a notarial deed must be used before it can become a capital partnership company, and must be registered electronically with the Minister.²³

4. Conclusion

The need for a notarial deed arises when there is a change in an individual company, so that an individual PT no longer meets the criteria of being a micro and small business. It is sufficient for an individual business entity to submit a statement of incorporation, namely the establishment of an individual company electronically by 1 (one) person. The need for a notarial deed arises if a change occurs in an individual company, so that the Individual Company no longer meets the criteria as a micro and small business. It is sufficient for an individual business entity to submit a statement of incorporation, namely the establishment of an individual company electronically by 1 (one) person. The need for a notarial deed

²¹ Sari, IP, & Setiawan, B. (2020). Notary's Authority in Making Authentic Deeds According to Indonesian Law. *Journal of Law & Justice*, Vol. 29, No. 1, p. 78.

²² Diyan, Isnaeni. (2021). The Role of a Notary in the Establishment of PT Usaha Mikro Kecil, *Journal of Law and Notary*. Vol. 05, No. 2.

²³ Aryajayaputri, Bernanti., & Mekka Putra, Mohamad Fajri. (2022). The Role of a Notary in the Establishment of a Limited Liability Company After Law No. 11 of 2020 Concerning Job Creation. *PALAR (Pakuan Law Review)*. Vol. 08, No. 01.

arises when there is a change in an individual company, so that an individual PT no longer meets the criteria of being a micro and small business.

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Government Regulation Number 8 of 2021 concerning Company Authorized Capital