

The Role of a Notary in The Establishment of a Limited Liability Company Towards Foreign Investors

Hidayatullah Halib¹⁾ & Jawade Hafidz²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: abuaimarhalib24@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: jawadehafidz@unissula.ac.id

Abstract. *The role of a notary in the establishment of a Limited Liability Company (PT) for foreign investors, the role of a notary in this process is very strategic, because the notary does not only function as a public official who pours the will of the parties into an authentic deed, but also as a gatekeeper who ensures that all legal requirements have been met through a proactive role and implementation of due diligence by the notary. The purpose of this research is to analyze: 1) The role of a notary in ensuring the fulfillment of legal requirements for the validity of the deed of establishment of a limited liability company for foreign investors. 2) formulate the contribution of a proactive notary role in minimizing the potential for legal disputes arising from the invalidity of the limited liability deed of establishment for foreign investors. The approach used in this research is a statute approach. This type of research is normative legal research. The data used in this study are secondary data obtained through literature review. The analysis is prescriptive in nature. The results of the study concluded: 1) The role of a notary in the establishment of a limited liability company for foreign investors based on the explanation of Article 1 and Article 15 paragraph (1) of Law Number 2 of 2014 in conjunction with Law Number 30 of 2004 concerning the Position of Notary is not enough to simply express the wishes of the parties, but also requires a proactive role and strategy that must be carried out by the notary at every stage of the establishment of a PT in order to ensure that the legal requirements have been met and minimize disputes that may arise in the future. 2) The legal basis for the establishment of a PT PMA does not only depend on one regulation, but is a combination of several complementary laws and regulations such as: UUPT, Job Creation Law, PP No. 5 of 2021, BKPM Regulations, Presidential Regulations, Permenkumham, although the main pillar that supports all these regulations is Law Number 25 of 2007 concerning Investment. In establishing a PT PMA, various requirements must be met, both material requirements that are directly related to the substance of the company's establishment and formal requirements that*

are procedural and administrative in nature and must be met so that the PT PMA that is established obtains the status of a legitimate legal entity.

Keywords: *Company; Investors; PT PMA; Role of Notary.*

1. Introduction

Indonesia, one of the largest economies in Southeast Asia, has long been a magnet for foreign investment. Its vast market potential, abundant natural resources, and growing population of productive age make it an attractive destination for global investors. However, the dynamics of foreign investment in Indonesia are not always linear, but fluctuate according to changes in domestic policies and global economic conditions. The development of foreign investment in Indonesia is not simply a series of statistics; it reflects the economic transformation and the success of the government's structural reforms after a challenging period in which Indonesia competed fiercely with neighboring countries to attract foreign capital. 2024 marked a significant turning point. Foreign Direct Investment (FDI) surged from US\$764 million in 2023 to US\$2.48 billion in 2024, demonstrating increased investor confidence. In fact, the fourth quarter of 2024 peaked, with growth of over 538% compared to the same period the previous year. Overall, realized foreign investment reached an impressive Rp 900.2 trillion in 2024. Positive impactThe benefits of this wave of foreign investment are multidimensional. First, economically, it contributes directly to GDP growth, increases production capacity, and diversifies the economy. Second, in terms of employment, the creation of new jobs, particularly in labor-intensive and high-tech sectors, can reduce unemployment and increase public incomes. Third, foreign investment often brings advanced technology, modern management practices, and international quality standards that can enhance the competitiveness of domestic industries. Finally, it can also encourage infrastructure development and human resource development through training and skills enhancement.

Although the potential for foreign investment is enormous and continues to grow, the investment process in Indonesia cannot be carried out haphazardly. The Indonesian government has established a clear legal framework to regulate foreign investment activities, one of which is the obligation to establish a specific legal entity. In this context, it is a Limited Liability Company (PT) as mandated by Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 25 of 2007 concerning Investment.¹This regulation is the most crucial and essential form of legality that must absolutely be fulfilled to provide legal protection, credibility, and facilitate the business operations of foreign investors in Indonesia.

¹Law number 40 of 2007 concerning limited liability companies and law number 25 of 2007 concerning foreign direct investment (PMA)

Based on Article 5 paragraph (2) of Law Number 25 of 2007 concerning Investment, it states that foreign investment must be carried out in the form of a Limited Liability Company under Indonesian law.² This regulation is the main umbrella that makes Limited Liability Companies the only legal vehicle for foreign investors, or in other words, without establishing a legal entity in the form of a Limited Liability Company, foreign investors cannot legally operate in Indonesia.

One fundamental aspect of this legal certainty lies in the validity of the deed of establishment of a limited liability company (PT), especially for entities established by foreign investors or with foreign capital participation. The Deed of Establishment of a Limited Liability Company is the legal document that forms the basis for establishing a company. This deed contains important information regarding the identity of the founders, authorized and paid-up capital, organizational structure, articles of association, and the company's aims and objectives. For foreign investors, a valid deed of establishment that meets all legal requirements is the initial guarantee that their company's legal existence in Indonesia is recognized and protected.

To ensure that every deed of establishment of a Limited Liability Company involving foreign investors is legally, completely, and in accordance with applicable laws and regulations, a public official, specifically a Notary Public, who is competent in the applicable regulations is required. A Notary Public is a public official with full authority to create authentic deeds, documents that have the force of proof in the eyes of the law. The existence of this authentic deed is crucial because it provides legal certainty, protects the rights of the parties involved, and prevents future disputes. Without an authentic deed, many transactions and legal events will lack a solid foundation and could lead to future problems. In a business context, the role of a notary is very prominent, especially in the preparation of the deed of establishment of a limited liability company (PT). A Limited Liability Company is established based on an agreement, this indicates that it is an association of people who agree to establish a business entity in the form of a limited liability company. Because the basis for its establishment is based on an agreement, the establishment of a Limited Liability Company cannot be separated from the requirements for the validity of an agreement according to the provisions contained in Article 1320 of the Civil Code. Because the Deed of Establishment is more than just a formality, it is the legal foundation of a company. A notary must ensure that the entire deed-making process, including the deed of establishment of a PT, complies with applicable laws and regulations. This includes verifying the identities of the parties, verifying the legality of supporting documents, and drafting clear clauses that are open to multiple interpretations. Therefore, a

²jurnal online. "syarat penanaman modal asing (PMA) di indonesia menurut undang-undang nomor 25 tahun 2007 tentang penanaman modal" oleh indah sari.

notary's role is not only to "author" the document, but also to safeguard legal certainty and prevent potential legal issues.

2. Research Methods

The research method used is normative through a legislative approach (state approach) with documentary study techniques to obtain primary, secondary and tertiary data which is then analyzed using analytical descriptive depiction.

3. Results and Discussion

3.1. What are the legal requirements for the validity of the deed of establishment of a Foreign Investment Limited Liability Company (PT PMA) according to the applicable laws and regulations in Indonesia?

The legal basis for establishing a PT PMA (Foreign Investment Company) does not rely solely on a single regulation, but rather is a combination of several complementary laws and implementing regulations. The main pillar supporting all of these regulations is Law Number 25 of 2007 concerning Investment (UUPM). This law explicitly states that foreign investment must be conducted in the form of a Limited Liability Company (PT) established under Indonesian law.³ The UUPM serves as a legal umbrella that provides certainty for foreign investors regarding their rights and obligations in Indonesia. Legal experts agree that this UUPM Law serves as a fundamental foundation for all investment activities, both foreign and domestic. As stated by Dr. I Gusti Agung A. Mas Triwulandari and I Nyoman Budiana in their journal, the UUPM is a positive legal provision that regulates various aspects of investment activities.⁴, and this law regulates equal treatment between PMA and PMDN.

However, the UUPM does not stand alone. It is supported by Law Number 40 of 2007 concerning Limited Liability Companies (UUPT).⁵, which regulates in detail the establishment mechanism, organizational structure, shareholder rights and obligations, and corporate governance. The UUPT serves as a technical guideline that ensures every foreign-owned company (PT PMA) meets applicable corporate legality standards in Indonesia.

Over time, the government recognized bureaucratic obstacles that could hinder investment. Therefore, Law No. 11 of 2020 concerning Job Creation was enacted, which was later revoked and replaced by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job

³ Law Number 25 of 2007 concerning Investment

⁴ I Gusti Ag. A. Mas Triwulandari & I Nyoman Budiana, "Perseroan Terbatas Sebagai Bentuk Badan Hukum Perusahaan Penanaman Modal," *Lex Administratum*, Vol. XI/No. 3/May/2023, p. 293.

⁵ Law Number 40 of 2007 concerning Limited Liability Companies

Creation as Law.⁶, which reformed the licensing process by introducing a risk-based Online Single Submission (OSS) system. The Job Creation Law made the process of establishing a foreign-owned company (PT PMA) more efficient and transparent, although substantial requirements remained. This regulation was later clarified through implementing regulations, such as Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing.⁷, and Presidential Regulation Number 10 of 2021 concerning Investment Business Sectors (as amended by Presidential Regulation Number 49 of 2021)⁸.

In addition to the main laws and regulations mentioned above, there are several other relevant and important supporting regulations for foreign investors to understand. These regulations often specify technical and operational details not covered in the parent law. These regulations include Investment Coordinating Board (BKPM) Regulation No. 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.⁹, Minister of Law and Human Rights Regulation Number 21 of 2021 concerning the Requirements and Procedures for Registration of Establishment, Changes, and Dissolution of Limited Liability Company Legal Entity¹⁰. This Ministerial Regulation explains the procedures and requirements that must be met in establishing a PT PMA, including the documents required and the registration process, Minister of Finance Regulation (PMK), and Regional Head Regulation.

The combination of these regulations aims to achieve a balance between investment facilitation and legal protection. Through this combination of regulations, the government strives to create a conducive, transparent investment climate that provides legal certainty for investors, while ensuring that all foreign investment contributes positively to Indonesia's economic development.

⁶Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law,

⁷ Government Regulation Number 5 of 2021 regulates the Implementation of Risk-Based Business Licensing.

⁸Presidential Regulation Number 10 of 2021 concerning Investment Business Sectors (as amended by Presidential Regulation Number 49 of 2021).

⁹Investment Coordinating Board (BKPM) Regulation Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities

¹⁰ Minister of Law and Human Rights Regulation Number 21 of 2021 concerning the Requirements and Procedures for Registering the Establishment, Changes, and Dissolution of Limited Liability Companies

3.2. What is the role of a notary in ensuring that requirements are met legal validity of the deed of establishment of a Limited Liability Company for Investment Foreign Capital (PT PMA) and its contribution in minimizing legal dispute?

Providing legal advice before establishing a Limited Liability Company (PT) is one of the crucial roles played by a notary. This is based on Article 15 paragraph (2) letter (e) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN). It states that one of the notary's special authorities is "to provide legal advice in connection with the preparation of deeds."¹¹ Although this authority is optional, in the practice of establishing a PT, providing legal consultation is an integral part of the notary's responsibility to ensure that the deed he or she makes is valid and in accordance with the law. Because the role of a notary is not only limited to making the deed of establishment, but also ensuring that the PT is established in accordance with applicable legal provisions and avoids potential problems in the future. The importance of legal consultation from a notary has a high urgency, especially for prospective entrepreneurs who may not have a deep understanding of the intricacies of corporate law. In addition, the notary's obligation to verify and validate documents is supported by several laws and regulations, including: Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), Article 16 letter (a) states that in carrying out their duties, notaries are required to act honestly, carefully, independently, impartially, and protect the interests of related parties.¹² This obligation implicitly requires notaries to verify documents to ensure the material truth of the deeds they draft. This emphasizes that notaries are responsible for the validity of the deeds they draft, which begins with document verification and validation. Furthermore, notaries play a crucial central role in the establishment of a Limited Liability Company (PT), particularly in the preparation of draft articles of association. Articles of association are not merely formal documents, but rather the legal foundation that governs all aspects of a PT's operations. The notary's role here is not limited to typing texts, but includes providing legal consultation, drafting appropriate clauses, and ensuring that the articles of association comply with laws and regulations.

The role of a notary in preparing the articles of association of a PT is supported by several strong legal bases, namely, Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), that a Notary has the authority to make "authentic deeds

¹¹Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, State Gazette of the Republic of Indonesia 2014 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 5491.

¹²Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN)

regarding all actions, agreements and determinations required by statutory regulations and/or which are desired by the interested parties to be stated in an authentic deed.¹³ The deed of establishment of a PT is a form of authentic deed that falls under the authority of a notary. According to Sutan Remy Sjahdeini, SH, a notary is a corporate law expert with special expertise. In drafting the articles of association, a notary not only includes standard clauses but also considers the specific needs of a PT, such as share transfer mechanisms, GMS procedures, and internal dispute resolution. This role is very important for creating good corporate governance (GCG).¹⁴

Several notary law experts have placed particular emphasis on this issue. Prof. Dr. Habib Adjie, SH, M.Hum., for example, stated that notaries have extensive responsibilities, both civil, administrative, and criminal, that are cumulative in nature.¹⁵ This opinion suggests that notary negligence can result in multiple sanctions. Similarly, GHS Lumban Tobing emphasized that notaries must be meticulous and thorough in carrying out their duties, as negligence in data verification can be considered an unlawful act that could lead to the cancellation of the deed.¹⁶ Similarly, Prof. Dr. Yahya Harahap, SH, explained that a notarial deed is an absolute requirement (solemnity) for establishing a PT. An invalid deed will result in the Kemenkumham rejecting the application for legalization of the PT's legal entity. This not only harms the founders but also creates legal liability for the notary for their failure to guarantee the legality of the deed.¹⁷

4. Conclusion

Legal Requirements for the Validity of a Deed of Establishment of a Foreign Investment Company (PT PMA) According to Indonesian Laws and Regulations, a company is not subject to a single regulation, but rather to the synergy and hierarchy of interrelated laws and regulations. The main basis is Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), which stipulates the formal and material requirements for establishing a company in general. This UUPT was then strengthened and specified by Law Number 25 of 2007 concerning Investment (UUPM), which specifically regulates policies and treatment for foreign investors. These rules are then elaborated in more detail in Government Regulations, specifically Government Regulation Number 24 of 2018 concerning

¹³Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN)

¹⁴Sutan Remy Sjahdeini, S.H., (2007). *Hukum Perusahaan Indonesia*. Jakarta: Ghalia Indonesia, p. 48.

¹⁵Adjie, Habib. (2009), *Hukum Notaris Indonesia: Tafsir Tematis Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*. Bandung: Penerbit Refika Aditama.

¹⁶Tobing, G. H. S. Lumban. (1996), *Hukum dan Perjanjian Perusahaan di Indonesia*. Jakarta: PT Gramedia Pustaka Utama.

¹⁷Yahya Harahap, S.H., (2016), *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika, p. 25

Electronically Integrated Business Licensing Services (OSS), as well as Regulations of the Investment Coordinating Board (BKPM), which regulate technical procedures, including minimum capital limits and the Negative Investment List (DNI). Therefore, the validity of a PT PMA deed of establishment can only be realized if it meets all the provisions spread across the various levels of these regulations. This study concludes that the legal requirements for the validity of a PT PMA deed of establishment cover two main aspects: formal and material. Formally, the validity of the deed is highly dependent on the deed's drafting process before an authorized notary, the deed's stipulation in Indonesian, and its registration and ratification by the Minister of Law and Human Rights. 1) The role of a notary in ensuring the legal validity of the deed of establishment of a Limited Liability Company (PT PMA) and its contribution to minimizing legal disputes. Notaries play a central role, not only administratively but also substantively. In the context of establishing a PT PMA, the role of a notary goes beyond their duties as a public official who draws up deeds. Notaries act as gatekeepers, ensuring that the deed of establishment meets all applicable legal requirements, both formally and materially. Formally, a notary is responsible for ensuring the establishment process complies with Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), namely by preparing an authentic deed, verifying the identity of the parties, and ensuring approval by the Ministry of Law and Human Rights. Materially, the role of a notary is becoming increasingly crucial. Notaries are required to ensure that the substance of the deed complies with specific investment regulations, such as Law Number 25 of 2007 concerning Investment (UUPM) and BKPM Regulations. This includes verifying the minimum authorized capital, the composition of foreign share ownership that does not violate the Negative Investment List (DNI), and the suitability of the business sector. A notary's failure to ensure these material aspects can result in the deed being null and void or being revoked, thus exposing the notary to significant legal liability. The notary's proactive role significantly contributes to the prevention of future legal disputes. By acting carefully and thoroughly (due diligence), notaries help foreign investors comply with all applicable regulations. This reduces the risk of potential disputes. Despite their vital role, notaries face challenges such as the complexity of frequently changing investment regulations and differing legal perceptions. Therefore, greater synergy is needed between notaries, the Ministry of Law and Human Rights, and the Investment Coordinating Board (BKPM) through a more efficient, integrated licensing system. Continuous training for notaries on the latest investment regulations is also crucial to ensure their competence in serving foreign investors. Overall, it can be concluded that notaries are not merely clerks, but strategic legal professionals in Indonesia's investment ecosystem. Their

active role in ensuring the validity of PT PMA (Foreign Investment Company) deed of establishment is key to providing legal certainty and a conducive investment climate, while effectively minimizing the potential for future legal disputes.

5. References

Journals:

I Gusti Ag. A. Mas Triwulandari & I Nyoman Budiana, "Perseroan Terbatas Sebagai Bentuk Badan Hukum Perusahaan Penanaman Modal," *Lex Administratum*, Vol. XI/No. 3/May/2023

Books:

Adjie, Habib. (2009), *Hukum Notaris Indonesia: Tafsir Tematis Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*. Bandung: Penerbit Refika Aditama.

jurnal online. "syarat penanaman modal asing (PMA) di indonesia menurut undang-undang nomor 25 tahun 2007 tentang penanaman modal" oleh indah sari.

Sutan Remy Sjahdeini, S.H., (2007). *Hukum Perusahaan Indonesia*. Jakarta: Ghalia Indonesia

Tobing, G. H. S. Lumban. (1996), *Hukum dan Perjanjian Perusahaan di Indonesia*. Jakarta: PT Gramedia Pustaka Utama.

Yahya Harahap, S.H., (2016), *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika

Regulation:

Government Regulation Number 5 of 2021 regulates the Implementation of Risk-Based Business Licensing.

Investment Coordinating Board (BKPM) Regulation Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN)

Law Number 25 of 2007 concerning Investment

Law Number 40 of 2007 concerning Limited Liability Companies

Law number 40 of 2007 concerning limited liability companies and law number 25 of 2007 concerning foreign direct investment (PMA)

Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law,

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, State Gazette of the Republic of Indonesia 2014 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 5491.

Minister of Law and Human Rights Regulation Number 21 of 2021 concerning the Requirements and Procedures for Registering the Establishment, Changes, and Dissolution of Limited Liability Companies

Presidential Regulation Number 10 of 2021 concerning Investment Business Sectors (as amended by Presidential Regulation Number 49 of 2021).