

Problems of Notary Responsibility for Compliance with Company Capital

Muh. Satrio¹⁾ & Nanang²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: satriomuh63@gmail.com

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

Abstract. *The practice of establishing a Limited Liability Company in reality still shows a discrepancy between the authorized capital and the issued and paid-up capital as stated in the deed of establishment. This condition has the potential to give rise to legal issues related to the validity of the deed and the responsibility of the Notary as a public official authorized to make authentic deeds. This study aims to analyze the responsibility of the Notary in the process of establishing a Limited Liability Company if there is a capital discrepancy, examine its legal implications for the validity of the deed, and identify forms of legal protection for the parties and third parties. This study uses a normative legal method with a statutory, conceptual, and case approach. Legal materials were obtained through literature studies and analyzed qualitatively using deductive reasoning. The results of the study indicate that the Notary is professionally, ethically, and legally responsible for ensuring the formal accuracy of the capital data in the deed, even though the material obligation to deposit lies with the shareholder. Capital discrepancies can cause administrative defects and open up the possibility of civil and ethical liability if negligence is proven. This study concludes that strict implementation of the principle of prudence by Notaries is the key to ensuring legal certainty and protection in the establishment of Limited Liability Companies.*

Keywords: *Authorized Capital; Deed of Establishment; Limited Liability Company; Notary Responsibilities; Paid-in Capital.*

1. Introduction

The guarantee of legal protection as stipulated in Article 28 of the 1945 Constitution of the Republic of Indonesia affirms that the state is obliged to protect the constitutional rights of citizens through the administration of

government based on law. The principle of the rule of law requires that every action of state administrators, including public officials, have a clear legal basis, be carried out according to established procedures, and be legally accountable.¹

²The constitution not only functions as a basic norm for the administration of the state, but also as an instrument for limiting power to prevent arbitrary actions that could potentially harm the rights of citizens.³

The principle of the rule of law places legal certainty as one of the main objectives in organizing social, national and state life.⁴ Legal certainty can only be achieved if every legal act is carried out based on clear legal norms, carried out by authorized officials, and stated in the form of evidence that has valid evidentiary power.⁵ The need for valid and strong evidence is becoming increasingly important as the complexity of legal relations in society increases, especially in the civil and economic fields.⁶

A notary is a public official with a strategic role in ensuring legal certainty and protection for the public. As a public official, a notary is authorized by law to draw up authentic deeds concerning various legal acts, agreements, and determinations as desired by the parties or required by statutory regulations.⁷ This authority is not only administrative in nature, but also carries a large legal responsibility because the deed made by a notary has perfect evidentiary power.⁹

The authority of a Notary is normatively regulated in Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014. This provision confirms that a Notary has the authority to make authentic deeds, guarantee the certainty of the date of the deed's

¹ Anthony Robert Phangestu Abady And Mella Ismelina Farma Rahayu, 'Legal Counseling on Making Deeds by Notaries Based on Law Number 2 of 2014 Concerning the Position of Notaries', *Journal On Education* 5, No. 2 (2023): 4248–58, <https://doi.org/10.31004/joe.v5i2.1087>.

² Indonesia, 'Constitution of the Republic of Indonesia of 1945', 1945.

³ Nikson Gans Lalu, 'Law and Power in the Perspective of Pancasila Legal Philosophy', *To-Ra Law Journal: Law to Regulate and Protect Society* 11, No. 1 (2025): 1–17, <https://doi.org/10.55809/Tora.V11i1.395>.

⁴ Fadly Andrianto, 'Legal Certainty in Legal Politics in Indonesia', *Administrative Law And Governance Journal* 3, No. 1 (2020): 114–23, <https://doi.org/10.14710/alj.v3i1.114-123>.

⁵ Yuyun Sri Wahyuni, 'Legitimacy of Power in Max Weber's Perspective on Contemporary Government', *Journal Transformation Of Mandalika* 6, No. 12 (2025): 592–98, <https://doi.org/10.36312/jtm.v6i8.5706>.

⁶ Diva Rayhan Reydoza Et Al., 'Legal Analysis of Notary's Responsibility for Deed of Establishment of Limited Liability Company with False Data', *Terang: Journal of Social, Political and Legal Studies* 2, No. 1 (2025): 159–67, <https://doi.org/10.62383/terang.v2i1.836>.

⁷ Abiandri Fikri Akbar And Akhmad Budi Cahyono, 'The Role and Responsibilities of Notaries in Making Deeds of Agreement in Foreign Languages Based on Article 1338 of the Civil Code and the Notary Law', *Palar | Pakuan Law Review* 7, No. 2 (2021): 234–51, <https://doi.org/10.33751/palar.v7i2.4098>.

⁸ Putu Inten Andhita Dewi And I Wayan Novy Purwanto, 'The Role of Notaries in the Establishment of Limited Liability Companies Post-Job Creation Law', *Acta Comitatus* 6, No. 03 (2021): 549, <https://doi.org/10.24843/ac.2021.v06.i03.p7>.

⁹ Abady And Rahayu, 'Legal Counseling on Making Deeds by Notaries Based on Law Number 2 of 2014 Concerning the Position of Notaries'.

creation, store the deed, and provide a grosse, copy and extract of the deed as long as the creation of the deed is not assigned or excluded from other officials.¹⁰

¹¹This regulation shows that Notaries have a central position in civil law traffic in Indonesia.

The performance of a notary's duties is not solely limited to the exercise of formal authority as stipulated in law, but also encompasses a social function. This social function is reflected in the notary's role as a mediator between the parties' legal interests, providing legal explanations, and ensuring that legal acts outlined in the deed are carried out consciously, voluntarily, and in accordance with statutory provisions.^{12 13 14}. The moral and professional responsibility of a notary is very important considering that the deed they create will be used as evidence for a long period of time.

An authentic deed drawn up by a notary has binding and complete evidentiary force as stipulated in Article 1847 of the Civil Code. This provision states that an authentic deed provides complete evidence of what is contained therein for the parties, their heirs, or any party who receives rights from them.¹⁵. The evidentiary power places authentic deeds as the main evidence in resolving civil disputes, including disputes related to business activities and legal entities.¹⁶.

A notary's obligation in drafting an authentic deed is not limited to the formal recording of the parties' statements. A notary is obligated to ensure that the parties understand the contents of the deed, that their wishes are correctly reflected, and that the legal acts outlined do not conflict with law, public order, or morality.¹⁷. These obligations are carried out, among other things, through reading deeds, providing legal explanations, and providing access to information

¹⁰ Indonesia, 'Law Number 30 of 2004 Concerning the Position of Notary. State Gazette of the Republic of Indonesia 2004 Number 117.', 2004.

¹¹ Chriselda Febriany Kartika Buana And Paramita Prananingtyas, 'Legal Review of the Establishment of a Sole Proprietorship Limited Liability Company by Micro and Small Enterprises Based on Law No. 11 of 2020 Concerning Job Creation', *Al-Manhaj: Journal of Islamic Law and Social Institutions* 5, No. 2 (2023): 1335–42, <https://doi.org/10.37680/Almanhaj.V5i2.3084>.

¹² Dewi Masitah Et Al., 'The Urgency of a Notarial Deed Regarding the Legality of Establishing a Sole Proprietorship After Law Number 6 of 2023 Concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation Becomes Law, 2023.

¹³ Akbar and Cahyono, 'The Role and Responsibilities of Notaries in Making Deeds of Agreement in Foreign Languages Based on Article 1338 of the Civil Code and the Law on the Position of Notaries'.

¹⁴ Andhita Dewi and Novy Purwanto, "The Role of Notaries in the Establishment of Limited Liability Companies After the Job Creation Law."

¹⁵ Indonesia, 'Civil Code (Burgerlijk Wetboek). Staatsblad 1847 No. 23', 1847.

¹⁶ Dewi Oktavia and Irene Svinarky, 'Legal Analysis of the Position of Capital Deposit Statement Letter as a Substitute for Capital Deposit Evidence in the Establishment of Limited Liability Companies in Indonesia', *Jurnal Ide Hukum* 3, No. 01 (2021): 59–70, <https://doi.org/10.31849/Jgh.V3i01.7504>.

¹⁷ Oktavia and Svinarky, 'Legal Analysis of the Position of Capital Deposit Statement Letter as a Substitute for Proof of Capital Deposit in the Establishment of Limited Liability Companies in Indonesia'.

related to relevant laws and regulations.¹⁸

One type of authentic deed that has an important role in economic life is the deed of establishment of a Limited Liability Company.¹⁹ Limited Liability Company is the most widely used form of business entity in business practices in Indonesia because it limits the liability of shareholders.²⁰ The presence of a Limited Liability Company is not only a means for large-scale business actors, but is also used by micro, small, and medium business actors in carrying out their business activities.^{21 22}

Law Number 40 of 2007 concerning Limited Liability Companies defines a Limited Liability Company as a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and fulfilling the requirements stipulated in the law and its implementing regulations.²³ This definition confirms that the establishment of a Limited Liability Company has the characteristics of a civil legal act that originates from an agreement.

This research also offers novelty because it integrates a normative approach with empirical findings regarding the practice of capital mismatch in the field, particularly in Wakatobi. This research goes beyond a doctrinal analysis of the evidentiary power of authentic deeds, but also examines the potential degradation of the deed's authenticity if the capital data contained does not align with the factual conditions. Thus, this research broadens the discourse on notary due diligence in electronic-based legal entity administration systems and provides a more proportional construction of liability boundaries.

This research is important because the practice of capital mismatch in the establishment of a Limited Liability Company has the potential to cause losses for the company, other shareholders, and third parties in good faith, and can create legal uncertainty in the flow of business activities. The unclear limits of a notary's responsibility regarding the material accuracy of capital deposits also have the potential to give rise to civil disputes, administrative liability, and even ethical and criminal implications if there is an element of error or negligence. Therefore, this research is needed to provide conceptual clarity regarding the scope of a

¹⁸ Dian Putri Pratama and Bambang Eko Turisno, 'Changes in the Regulations for the Establishment of Limited Liability Companies After the Enactment of the Job Creation Law', *Notarius* 16, No. 3 (2023): 1561–76, <https://doi.org/10.14710/nts.v16i3.41266>.

¹⁹ Masitah Et Al., *The Urgency of a Notarial Deed Regarding the Legality of Establishing a Sole Proprietorship After Law Number 6 of 2023 Concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation Becomes Law*, 2023.

²⁰ Pratama and Turisno, "Changes to the Regulations for the Establishment of Limited Liability Companies Following the Enactment of the Job Creation Law."

²¹ Buana and Prananingtyas, 'Legal Review of the Establishment of a Sole Proprietorship Limited Liability Company by Micro, Small, and Medium Enterprises Based on Law No. 11 of 2020 Concerning Job Creation'.

²² Andhita Dewi and Novy Purwanto, "The Role of Notaries in the Establishment of Limited Liability Companies After the Job Creation Law."

²³ Indonesia, 'Law Number 40 of 2007 Concerning Limited Liability Companies. State Gazette of the Republic of Indonesia 2007 Number 106', 2007.

notary's responsibilities so that the implementation of the notary's office remains in line with the principles of legal certainty and legal protection in the establishment of a legal entity.

2. Research Methods

This study uses a normative legal research method with a doctrinal approach that places law as a norm that is analyzed systematically to answer the problem of notary responsibility in the establishment of a Limited Liability Company related to the discrepancy between authorized capital and paid-up capital. This study applies a statutory approach to examine the legal provisions governing the position of notary and company, a case approach to examine the judge's considerations in relevant decisions, and a conceptual approach to analyze the doctrines and legal principles that develop in the literature. This study uses primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, journals, and expert opinions, and tertiary legal materials as conceptual support. This study collects all legal materials through literature studies and analyzes them qualitatively with a deductive method, namely drawing conclusions from general norms to concrete problems in order to build logical, systematic, and consistent legal arguments.

3. Research Results and Discussion

3.1. Notary Responsibilities in Establishing a Limited Liability Company

Limited Liability Companies do not arise naturally, but rather are legal constructs whose existence is entirely determined by compliance with legal procedures and norms established by the state. In this context, Notaries play a strategic role as public officials who bridge the private desires of the founders with public recognition by the state.²⁴ When there is a discrepancy between the authorized capital and the issued and paid-up capital as stated in the deed of establishment, the legal issue no longer stops at administrative errors, but rather directly touches on the aspect of the Notary's job responsibilities.

3.1.1. The Position of a Notary as a Public Official in the Establishment of a Limited Liability Company

In the Indonesian legal system, a notary is positioned as a public official with attributive authority to create authentic deeds. This position is affirmed in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states that "A notary is a public official authorized to create authentic deeds and has other authorities as referred to in this Law or based on other laws." This formulation shows that a notary does not merely function as an independent profession, but as a legal organ that carries out state functions in the field of civil law.

The position of a Notary as a public official has legal implications that every official action carried out not only has an impact on the legal relationship

²⁴ Basyarudin Basyarudin, 'The Evolution and Significance of Notarial Law in Modern Legal Systems', *Law and Business* 4, no. 1 (2024): 39–44, <https://doi.org/10.2478/law-2024-0002>.

between the parties, but is also related to the interests of the state in maintaining legal order and legal certainty.²⁵ The deed of establishment of a Limited Liability Company is not an ordinary private document, but rather a public-private legal instrument which is the basis for state recognition of the birth of a legal entity.^{26 27} Therefore, a Notary in the establishment of a Limited Liability Company cannot be positioned solely as the author of the will of the founders, but rather as an official who carries out the function of controlling legality.²⁸

Habib Adjie emphasized that a notary is a public official with a private law function, meaning that he carries out civil law functions with the consequence of public accountability. This position demands higher professional standards than other legal professions, as notarial deeds have complete evidentiary force and serve as the basis for the emergence of legal rights and obligations.²⁹ In the context of establishing a Limited Liability Company, this function becomes increasingly important because the deed of establishment is a constitutive requirement for the birth of a legal entity as stated in Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies.

Notaries also act as an extension of the state in ensuring that every legal entity that is born has met the minimum legal standards stipulated by statutory regulations.³⁰ This position makes the Notary the first line of defense in the legal protection system for third parties, especially creditors and business partners who will have relations with the Limited Liability Company.³¹ Mismatches in capital data listed in the deed of establishment directly have the potential to mislead third parties and damage public trust in the corporate legal system.³²

The principle of prudence and professionalism is inherently attached to the position of a Notary as a public official. This principle is not only ethical, but also

²⁵ Carissa Dianputri And Rasji Rasji, 'Responsibilities Of A Notary Public Violating The Code Of Ethics Based On Decision Number 501/Pdt/2020/Pt.Dki And Decision Number 294 K/Tun/2021', *Eduvest - Journal Of Universal Studies* 4, No. 8 (2024): 6746–56, <https://doi.org/10.59188/Eduvest.V4i8.1701>.

²⁶ Hadi And Palenewen, 'Responsibilities Of Notaries In Making Company Deeds Of Limited Liability Companies For Communities In Jayapura City'.

²⁷ Hably And Djajaputra, 'The Authority of Notaries in Making Deeds (Example of Supreme Court Decision Case Number)'.

²⁸ Dewi Masitah Et Al., 'The Urgency of a Notarial Deed Regarding the Legality of Establishing a Sole Proprietorship After Law Number 6 of 2023 Concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation Becomes Law, 2023.

²⁹ Habib Adjie, 'Building the Indonesian Notary Law Ecosystem'.

³⁰ Dianputri and Rasji, 'Responsibilities of a Notary Public Violating the Code of Ethics Based on Decision Number 501/Pdt/2020/Pt.Dki And Decision Number 294 K/Tun/2021'.

³¹ Ruth Deta Louisa and Mohammad Fajri Mekka Putra, 'Establishment of a Sole Proprietorship Without a Notarial Deed Under the Job Creation Law', *Jurnal Ius Constituendum* 8, no. 2 (2023): 185–206, <https://doi.org/10.26623/jic.v8i2.6722>.

³² Ayu Cahya Widianingrum and Siti Malikhatun Badriyah, 'The Role and Responsibilities of Notaries in the Settlement of Civil Disputes in Indonesia Through Notarial Deeds', *Khatulistiwa: Journal of Education and Social Humanities* 5, no. 3 (2025): 127–39, <https://doi.org/10.55606/khatulistiwa.v5i3.6593>.

normative, as emphasized in Article 16 paragraph (1) letter a of the Notary Law, which requires Notaries to act honestly, carefully, independently, and impartially. This obligation is the legal basis for assessing the Notary's responsibility if negligence occurs in carrying out his/her position that results in legal losses.³³.

3.1.2. Scope of Authority and Obligations of Notaries in Making Deeds of Establishment of Limited Liability Companies

The authority of a Notary to draft a deed of establishment of a Limited Liability Company is derived from Article 15 of the Notary Law. This article states that a Notary is authorized to draft authentic deeds concerning all acts, agreements, and provisions required by law or desired by the parties to be stated in an authentic deed. This authority is exclusive and cannot be exercised by any party other than a Notary.

In the context of establishing a Limited Liability Company, this authority is reinforced by the Limited Liability Company Law, which expressly requires that the company's establishment be conducted through a notarial deed. The deed of establishment must contain the articles of association and other information required by law, including provisions regarding authorized capital, issued capital, and paid-up capital.³⁴ This provision places the Notary as a central actor in ensuring that the formal requirements for establishing a company are met.

The Notary's obligations do not stop at expressing the wishes of the founders in a deed. Article 16 paragraph (1) letter m of the Notary Position Law requires the Notary to read the deed in front of the audience and witnesses and explain the contents of the deed³⁵. The obligation to explain the contents of the deed means that the Notary must ensure that the founders understand the legal consequences of each provision included, including provisions regarding the company's capital structure.³⁶.

The notary's obligation to ensure that the founders' statements comply with statutory provisions cannot be interpreted narrowly as a mere administrative obligation. The notary's authority is active and contains an element of due care.³⁷. Habib Adjie stated that public officials who are given the authority to

³³ Albeth Albeth and Gunawan Djajaputra, 'Ethics and the Role of Notaries in Issuing Inheritance Deeds (Example Case of Notary A in 2018)', *Adigama Law Journal* 2, no. 2 (2019): 928, <https://doi.org/10.24912/adigama.v2i2.6696>.

³⁴ Indonesia, 'Law Number 40 of 2007 Concerning Limited Liability Companies. State Gazette of the Republic of Indonesia 2007 Number 106'.

³⁵ Indonesia, 'Law 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 3', 2014.

³⁶ Eka Ratna Putri Et Al., 'Legal Protection and the Role of Notary Staff as Witnesses in Deeds', *Majelis: Jurnal Hukum Indonesia* 2, No. 2 (2025): 126–33, <https://doi.org/10.62383/Majelis.V2i2.675>.

³⁷ Riani Talitha Nazhiif Soemadji Et Al., 'The Role of Notaries in the Legality of Sole Shareholder Companies for National Economic Development', *Palar | Pakuan Law Review* 7, No. 2 (2021): 355–72, <https://doi.org/10.33751/Palar.V7i2.4218>.

make authentic deeds must act actively in ensuring that the deeds they make do not conflict with the law, public order, and morality.³⁸

In establishing a Limited Liability Company, capital is an essential element that determines the company's legitimacy and credibility. Article 33 of the Limited Liability Company Law stipulates that at least 25% of the authorized capital must be subscribed and fully paid up. Notaries have a legal obligation to ensure that this provision is properly reflected in the deed of establishment. This obligation cannot be reduced to simply accepting a unilateral statement from the founders without rational verification.³⁹

The scope of a Notary's authority also includes submitting applications for legal entity ratification through the Legal Entity Administration System. The Notary's involvement in this process demonstrates that the Notary's responsibility extends beyond signing the deed and extends to ratification by the Minister of Law and Human Rights.⁴⁰ This position further emphasizes that the Notary's authority is integral and continuous throughout the entire process of establishing a Limited Liability Company.

3.2. Legal Implications of Capital Mismatch in the Deed of Establishment of a Limited Liability Company

The discussion of the legal implications of the discrepancy between authorized and paid-in capital in the deed of establishment of a Limited Liability Company occupies a strategic position in this research because it touches on the core legitimacy of the company's legal entity. The issue of capital cannot be reduced to a technical administrative issue, but rather is a fundamental element that determines the validity of corporate legal norms as a whole.⁴¹ When the deed of establishment contains capital data that does not comply with the provisions of the law, the legal consequences will not only impact the internal aspects of the company, but will also have broad implications for the interests of the public, creditors, and third parties who interact with the company.⁴²

The provisions regarding capital in the Limited Liability Company Law are designed as a preventive legal protection mechanism.⁴³ Capital is not just a nominal figure stated in the articles of association, but rather a representation of the company's economic capacity to carry out business activities and fulfill its

³⁸ Habib Adjie, Building the Indonesian Notary Law Ecosystem.

³⁹ Cokorda Istri Ratih Dwiyantri Pemayun and I. Made Sarjana, 'Notary's Responsibility Regarding Legal Smuggling in the Case of Nominee Agreements', *Acta Comitatus* 6, no. 01 (2021): 142, <https://doi.org/10.24843/AC.2021.v06.i01.p12>.

⁴⁰ Moses Nathanael et al., 'Legal Consequences of Authentic Deed with False Identity Against Notary', *Journal of Law, Politics and Humanities* 4, no. 6 (2024): 2576–83, <https://doi.org/10.38035/jlph.v4i6.838>.

⁴¹ Subekti, *Commercial Law* (Intermasa, 2010).

⁴² Raymond Wacks, *Comparative Company Law* (Cambridge University Press, 2017).

⁴³ Lidya Puspita and Ariawan Gunadi, 'Legal Protection of Minority Shareholders Interests in Merger Actions', *Awang Long Law Review* 7, No. 2 (2025), <https://doi.org/10.56301/Awl.V7i2.1572>.

legal obligations.⁴⁴ The discrepancy between authorized capital and paid-in capital creates a problematic legal situation because it places the company in a position that appears to fulfill legal requirements, even though it substantively contains normative defects.

Normative provisions regarding authorized capital and paid-in capital are expressly stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. Article 31 of the Limited Liability Companies Law stipulates that a company's authorized capital consists of the total nominal value of its shares. This provision demonstrates that authorized capital serves as a normative framework that establishes the maximum limit on a company's ability to issue shares. Article 32 of the Limited Liability Companies Law further stipulates that a company's authorized capital must be at least a certain amount determined by government regulation, unless otherwise stipulated by law. This regulation reflects the intention of the legislators to ensure that every company has a reasonable minimum capital base.

The deed of establishment of a Limited Liability Company has a constitutive function in establishing the status of a legal entity. The deed of establishment is not merely written evidence, but rather a legal instrument that gives birth to a new legal subject. This function is emphasized in Article 7 paragraph (4) of the Limited Liability Company Law, which states that a company obtains legal entity status after the deed of establishment is ratified by the Minister of Law and Human Rights. The relationship between the deed of establishment and ratification shows that the deed of establishment is the normative foundation of the company's existence.⁴⁵

Approval by the Minister of Law and Human Rights is often perceived as an absolute guarantee of a company's legitimacy. This perception requires critical examination, as approval is essentially administrative and declarative. Approval is granted based on submitted data and information, without substantive examination of the actual realization of capital.⁴⁶ This condition creates a gap between administrative legitimacy and normative legitimacy.

The doctrine of administrative law emphasizes that administrative decisions do not necessarily rule out the possibility of legal defects in the basis for their issuance.⁴⁷ The Minister's approval of a legal entity does not eliminate the potential for normative defects in the deed of establishment if the statutory

⁴⁴ Adam Samborski, 'Board Members' Responsibility In A Limited Liability Company. The Perspective Of Corporate Governance', *Zeszyty Naukowe Wyższej Szkoły Humanitas Zarządzanie* 21, No. 2 (2020): 47–57, <https://doi.org/10.5604/01.3001.0014.2821>.

⁴⁵ Anton Sujarwo Dunggio Et Al., Notary's Responsibility for Inheritance Certificates Without Including One of the Heirs in the Perspective of Civil Law, 2, No. 2 (2025): <https://doi.org/10.62383/progres.v2i2.1455..>

⁴⁶ Hans Lukita And Ariawan Gunadi, The Role Of The Notary Supervisory Council In Addressing Civil Law Violations Committed By Notaries, *Awang Long Law Review* 7, No. 2 (2025): <https://doi.org/10.56301/awl.v7i2.1576>.

⁴⁷ Arviana Et Al., 'Legal Implications Of The Position Of The Defendant Notary In A Law-Suit To Cancel A Deed Of Bequest As The Deed Of Parties'.

requirements are not met. This perspective aligns with Utrecht's view that administrative decisions can lose legitimacy if they conflict with higher legal norms.⁴⁸

The discrepancy between the capital in the deed of establishment raises fundamental questions about its validity. Notarial deeds, in principle, have full evidentiary force, as stipulated in Article 1868 of the Civil Code. This force depends on the fulfillment of the formal and material requirements for the deed's creation. When the contents of the deed contradict the imperative provisions of the law, the deed is potentially subject to a loss of legal force.

Degradation of an authentic deed can occur in several ways. A deed can be declared null and void if the violation of the law is fundamental and affects the essential requirements for establishing a company.⁴⁹ A deed can also be qualified as being revocable if the violation relates to certain interests that require a judge's assessment.⁵⁰ Another possibility is that the deed remains formally valid, but gives rise to further legal consequences in the form of civil or administrative liability.⁵¹

Assessing the validity of a deed in the event of a capital discrepancy cannot be done mechanically. The judge has a central role in assessing the evidentiary strength of the deed based on the concrete context of the case.⁵² The doctrine of judicial independence in assessing evidence allows judges to assess whether capital incompatibility constitutes a violation that damages the essence of the company's establishment or is simply an administrative error that can be corrected.⁵³

When the paid-in capital does not comply with the provisions of the law, the principle of limited liability has the potential to be violated.⁵⁴ The doctrine of piercing the corporate veil allows for the imposition of personal liability on

⁴⁸ Bedner, B. and Oomen, B, 'Real Legal Certainty and Its Relevance: Essays in Honor of Jan Michiel Otto', *Law, Governance and Development Research* 820 (2018), <https://hdl.handle.net/1887/66819>.

⁴⁹ Roselli Anjelina Lumbansiatar et al., 'The Role of Notaries in Determining the Rights and Responsibilities of Heirs in the Perspective of Islamic Law', *Mandub: Journal of Politics, Social, Law and Humanities* 1, no. 4 (2023): 234–43, <https://doi.org/10.59059/mandub.v1i4.639>.

⁵⁰ Yetniwati Yetniwati et al., 'Legal Protection for Notaries Receiving Protocols: Forms and Limitations', *Undang: Jurnal Hukum* 4, no. 1 (2021): 213–44, <https://doi.org/10.22437/ujh.4.1.213-244>.

⁵¹ Ahmad Yani and Taupiq Qurrahman, 'The Authority of the Honorary Council of the Indonesian Notary Association in Imposing Sanctions for Violation of the Notary's Code of Ethics', *Veteran Law Review* 4, no. 1 (2021): 1, <https://doi.org/10.35586/velrev.v4i1.2696>.

⁵² Albeth and Djajaputra, 'Ethics and the Role of Notaries in Issuing Inheritance Deeds (Example Case of Notary A in 2018)'.

⁵³ Rini Widiastuty et al., 'The Authority of A Notary to Legalize Letters Under Hand from The Perspective of Islamic Law and National Law', no. 1 (2025).

⁵⁴ WI Airlangga et al., 'Limitation of Notary Obligation in Monitoring the Fairness of Limited Liability Company Service User Transactions', *Law and Safety* 97, no. 2 (2025): 162–72, <https://doi.org/10.32631/pb.2025.2.13>.

shareholders if the corporation is used as a means to avoid legal obligations.⁵⁵ Fictitious capital is a strong indicator of the abuse of legal entity form.⁵⁶

The Board of Directors, as the body responsible for managing the company, also faces serious legal implications. The Board of Directors has a fiduciary duty to run the company in good faith and with full responsibility, as stipulated in Article 97 of the Limited Liability Company Law. Managing a company with unrealistic capital can be classified as a breach of fiduciary duty, particularly if such actions result in losses for the company or third parties.

The commissioners, as a supervisory body, are also not exempt from legal implications. Failure to supervise the company's capital structure can result in liability if there is evidence of negligence in carrying out their supervisory function.⁵⁷ Capital structure is a fundamental aspect that should be a primary concern in corporate supervision.

3.3. Legal Protection for Deeds of Establishment of Limited Liability Companies

Legal protection for parties and third parties in the context of a Limited Liability Company's deed of establishment containing capital discrepancies is a crucial issue in corporate and notarial law. The deed of establishment is not merely an administrative document, but rather a legal instrument that creates a relationship of trust between the company, the state, and the public. When the deed contains capital information that does not comply with statutory provisions, the legal risk is borne not only by the founders but also extends to third parties acting in good faith. Legal protection in this context must be understood as a systemic effort to maintain a balance of interests, ensure legal certainty, and uphold the principle of justice in civil law.

3.3.1. Legal Interests of the Parties and Third Parties in the Deed of Establishment of a Limited Liability Company

The legal interests of the founders and shareholders in the deed of establishment of a Limited Liability Company are directly related to the recognition of legal entity status and limitation of liability.⁵⁸ The deed of establishment serves as the normative basis for founders to obtain protection in the form of separating personal assets from the company's assets. Mismatching

⁵⁵ Agus Supriyanto Supriyanto and Adi Sulistyono, 'Analysis of the Principle of Notary Independence in Notarial Deed Making in Review of the Notary Position Law and the Notary Professional Code of Ethics', *International Journal of Educational Research & Social Sciences* 5, no. 3 (2024): 536–40, <https://doi.org/10.51601/ijersc.v5i3.836>.

⁵⁶ Leonardo Dias Menezes et al., 'Blockchain and Smart Contract Architecture for Notary Services under Civil Law: A Brazilian Experience', *International Journal of Information Security* 22, no. 4 (2023): 869–80, <https://doi.org/10.1007/s10207-023-00673-3>.

⁵⁷ Shania Puttie Syabilla and Arman Nefi, 'Notary's Responsibility for Notification of Changes to Company Data to the Minister and Submission of Related Documents to the Applicant (A Study of PT Ade Resky Sejahtera)', *Palar | Pakuan Law Review* 7, No. 2 (2021): 451–72, <https://Doi.Org/10.33751/Palar.V7i2.4356>.

⁵⁸ Petr Tomášek, 'Shareholders' Power In Managing The Company's Business In Private Limited Companies – The Case Of Czechia In An International Context', *Auc Iuridica* 71, No. 2 (2025): 153–67, <https://Doi.Org/10.14712/23366478.2025.396>.

the capital in the deed of establishment has the potential to undermine the foundation of this protection, as limitations on liability are only valid if the company is established and operated in accordance with statutory provisions.⁵⁹This situation places the founders in a vulnerable legal position if it is later proven that the stated capital was never paid in as required.

The legal interests of shareholders are also tied to the accuracy of the capital data stated in the deed of incorporation. Paid-in capital determines the proportion of share ownership, voting rights, and profit distribution within the company.⁶⁰The discrepancy between stated and actual capital creates structural inequity among shareholders, particularly those who have fully fulfilled their capital contribution obligations. This situation demonstrates the need for legal protection not only for external parties but also for internal parties within the company acting in good faith.

Third-party legal interests are most vulnerable in cases of capital mismatch. Creditors, business partners, and investors base their legal decisions on officially available data, including the deed of establishment and information in the Legal Entity Administration System.⁶¹The capital stated in the deed of establishment serves as an initial indicator of the company's solvency and capacity to meet its obligations.⁶²When such information is inaccurate, third parties face disproportionate legal risks without having access to verify its material truth.

Trust in authentic deeds is a fundamental principle in civil law. Notarial deeds are treated as evidence that has perfect evidentiary power as stated in Article 1870 of the Civil Code which states that "an authentic deed provides perfect evidence between the parties and their heirs or persons who receive rights from them regarding what is contained therein." This trust will lose its meaning if the deed of establishment systematically contains information that does not comply with capital norms.

Legal risks for third parties acting in good faith include the potential for non-fulfillment of obligations, financial loss, and uncertainty regarding the responsible party.⁶³ Third parties often face difficulties in penetrating the veil of legal entity if the company does not have real capital as stated.⁶⁴This situation shows that capital mismatch is not merely an administrative violation, but a threat to the integrity of the corporate legal system.

⁵⁹ Saka et al., 'Juridical Review of Good Corporate Governance Principle in Law Number 40 of 2007 Concerning Limited Liability Company'.

⁶⁰ Indonesia, 'Law Number 25 of 2007 Concerning Investment. State Gazette of the Republic of Indonesia 2007 Number 67.', 2007.

⁶¹ Mardiasmo, Regional Financial Management (Andi, 2017).

⁶² Mardiasmo, Accountability & Transparency in Public Administration (ANDI, 2018).

⁶³ Penelope Reed And Jonathan Rickford, Company Law And Corporate Finance (Routledge, 2016).

⁶⁴ University Of Novi Sad, Technical Faculty " Et Al., 'Legal Status Of Limited Liability Company - Comparative Overview', Međunarodna Naučna Konferencija Izazovi I Otvorena Pitanja Uslužnog Prava - Tom2, 2024, 565–79, <https://doi.org/10.46793/Xxmajsko2.5651>.

Founders and shareholders consider the deed of incorporation to be the basis for legitimizing the formation of a legal entity and limiting liability. Capital mismatches have the potential to obscure the separation of corporate and personal assets, thus opening up the possibility of personal liability if the company is proven to have failed to meet the normative requirements for incorporation.⁶⁵ This risk demonstrates that legal protection for founders and shareholders in good faith cannot be separated from the correct capital structure from the initial stages of establishment.

The directors and commissioners are in a position that depends on the capital structure as the basis for managing and supervising the company.⁶⁶ Inappropriate capital data creates disproportionate legal risks because liability may be imposed not due to mismanagement but rather due to normative defects that have existed since the company was founded. Legal protection for company organs is relevant to ensure that responsibility is not structurally transferred due to failures at the founding stage.⁶⁷

Creditors and business partners are the most vulnerable parties because they rely entirely on trust in authentic deeds and official company information. Capital mismatches create the illusion of solvency, which can mislead legal and economic decision-making.⁶⁸ This condition confirms that the deed of establishment functions as a public document that has external impact, so that legal protection for third parties acting in good faith is a systemic requirement in corporate law.

3.3.2. Forms of Legal Protection through Civil Mechanisms

Legal protection through civil mechanisms is the primary means for parties and third parties to obtain redress for losses arising from capital discrepancies in the deed of establishment of a Limited Liability Company. Civil lawsuits against notaries can be filed based on the construction of unlawful acts as regulated in Article 1365 of the Civil Code which states that "every unlawful act that causes harm to another person requires the person whose fault causes the loss to compensate for the loss." This provision opens up space for notary accountability if there is evidence of error or negligence in carrying out their official duties.

The element of error in this context does not have to be interpreted as intentional. Professional negligence resulting in the issuance of a deed with an incorrect capital statement can fulfill the element of an unlawful act if the notary ignores the obligation of care.⁶⁹ This obligation is inherent in the position of

⁶⁵ Prayoga and Handayani Ridwan, 'The Position of Notaries as a Supporting Profession for the Capital Market in Indonesia'.

⁶⁶ Paul Davies And Sarah Worthington, Gower And Davies' Principles Of Modern Company Law.

⁶⁷ Ayu Cahya Widianingrum and Siti Malikhatun Badriyah, 'The Role and Responsibilities of Notaries in Resolving Civil Disputes in Indonesia Through Notarial Deeds'.

⁶⁸ Mark Bovens, Public Accountability: A Framework For The Analysis And Assessment Of Accountability Arrangements In Governance.

⁶⁹ Supriyanto and Sulistyono, 'Analysis of the Principle of Notary Independence in Notarial Deed Making in Review of the Notary Position Law and the Notary Professional Code of Ethics'.

notary as a public official tasked with ensuring certainty and order in civil law. Proving the element of error requires an analysis of the professional standards that should be met in notarial practice.⁷⁰

The elements of loss in a civil lawsuit can include material or immaterial losses. Third parties who suffer financial losses due to the company's failure to fulfill its obligations can file a claim for compensation by demonstrating a causal relationship between the capital discrepancy in the deed of incorporation and the losses suffered. Causality is a crucial element in confirming that the losses are not solely due to business risks but stem from normative flaws in the company's founding.

Liability for compensation serves as a corrective legal protection instrument. The theory of corrective justice holds that the party causing the loss is obligated to restore the disturbed balance. Applying this theory to the notarial context positions notaries as legal entities who can be held accountable if proven negligent in carrying out their authority and obligations. This mechanism also provides a normative signal regarding the importance of accountability in the notarial profession.

Legal protection through civil proceedings can also be directed at founders or shareholders who fail to contribute capital as stated in the deed. The principle of limited liability cannot be used as a shield if the company is established in bad faith. The doctrine of piercing the corporate veil in corporate law allows for the breach of the legal entity veil to impose personal liability on parties who abuse the corporate form.

Lawsuits for unlawful acts occupy a central position in the context of notary liability. This instrument allows the injured party to claim compensation if professional negligence in the drafting of a deed can be proven.⁷¹ The focus of protection is not directed at punishment, but rather at recovering losses arising from violations of the duty of professional care.⁷²

Lawsuits for breach of contract and claims for damages provide protection for the certainty of contractual relationships.⁷³ The mismatch of capital that results in the failure to fulfill the performance shifts the problem from the administrative realm to the civil realm.⁷⁴ This instrument emphasizes that legal

⁷⁰ Dianputri and Rasji, 'Responsibilities of a Notary Public Violating the Code of Ethics Based on Decision Number 501/Pdt/2020/Pt.Dki And Decision Number 294 K/Tun/2021'.

⁷¹ Putu Putri Nugraha And I Nyoman Bagiastra, 'Legal Protection of Notary Employees as Witnesses of Authentic Deeds in Judicial Processes Related to Confidentiality of Authentic Deeds', *Kertha Semaya: Journal of Legal Science* 10, No. 7 (2022): 1540, <https://doi.org/10.24843/Ks.2022.V10.I07.P06>.

⁷² Eka Ratna Putri Et Al., 'Legal Protection and the Role of Notary Staff as Witnesses in Deeds'.

⁷³ Arisaputra, 'Notary's Obligations to Maintain Confidentiality of Deeds in Relation to Notary's Right to Refuse'.

⁷⁴ Ayu Cahya Widianingrum and Siti Malikhatun Badriyah, 'The Role and Responsibilities of Notaries in Resolving Civil Disputes in Indonesia Through Notarial Deeds'.

protection is not only related to the formal legitimacy of the company, but also to the realization of promised contractual obligations.

Personal liability lawsuits and deed cancellations serve as corrective mechanisms against abuses of the corporate form. These instruments are exceptional in that they allow for the breach of the limited liability principle if bad faith or fundamental normative defects are proven.⁷⁵ The protection function in this context is directed at restoring legal legitimacy and preventing the misuse of legal entities as a means of avoiding responsibility.

4. Conclusion

The notary's responsibility in establishing a Limited Liability Company is not limited to fulfilling the formal aspects of deed preparation, but also includes a professional obligation to ensure compliance with the capital norms stated in the deed of establishment. A mismatch between authorized and paid-up capital implies a normative flaw that can affect the legitimacy of the legal entity, legal certainty for the parties, and protection of third parties even though the company has obtained administrative approval. Therefore, legal protection for the deed of establishment must be realized through civil liability mechanisms, administrative supervision, and enforcement of the code of ethics to maintain the validity of the authentic deed and public trust in the company's legal system. This study recommends that notaries enhance their prudential principles and professional verification of capital requirements for company establishment to minimize legal risks and maintain the integrity of the deed. Policymakers need to strengthen oversight norms and mechanisms so that the ratification process is not merely administrative but also able to prevent potential normative defects from the initial stage. Further research is recommended to examine the relationship between digitalization of company administration and notary accountability in preventing capital mismatches.

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⁷⁵ University Of Novi Sad, Technical Faculty "Et Al., 'Legal Status Of Limited Liability Company - Comparative Overview'.

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