

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Elimination of Public Notary's Role and Functions in The Establishment of Individual Companies in Indonesia

CHRISTANTIA CELINE BAWOTONG¹

ABSTRACT

In its effort to overcome investment barriers and provide ease of doing business for the investment climate in Indonesia, the Government of Indonesia passed Law Number 11 of 2020 on Job Creation which was later revoked by Law Number 6 of 2023 concerning Stipulation of Government Regulations in lieu of Law Number 2 of 2022 Concerning Job Creation to Become Law ("Job Creation Law"). One of the statutory provisions that was also amended by the Job Creation Law is Law Number 40 of 2007 on Limited Liability Companies ("Indonesian Company Law"). One of the changes made in the Indonesian Company Law as amended in the Job Creation Law is the introduction of single-person limited liability company that meet the criteria for micro and small businesses ("Individual Company"). Unlike the common limited liability companies which are established by at least 2 (two) founders, the Job Creation Law provides an exception for Individual Company which can be established by 1 (one) founder. Furthermore, the establishment of an Individual Company is also not required to be stated in a notarial deed, but simply by filling out a Statement of Establishment. It can be said that the purpose of this provision is to provide convenience for the founder of an Individual Company, in which the founder does not need to pay extra for making a deed of establishment before a notary. However, it should be understood that the role of the notary is very important, apart from making authentic deeds that have perfect evidentiary power, the notary also plays an important role in ensuring the legality of each document presented by the founder. This provision provides room for rampant criminal acts of fraud and/or counterfeiting. It is hoped that the Job Creation Law can become a legal basis for business actors, by providing ease of doing business and investment. However, if these provisions only prioritize convenience without heeding the principles of legality, supervision and legal certainty, then it might cause a negative impact in the future.

Keywords: Individual Company, Notary, MSMEs business actors.

¹ Author is a student at Universitas Pelita Harapan, Tangerang, Indonesia.

I. INTRODUCTION

(A) Background

The responsibility of a state as a legal state (*rechtstaat*) and a welfare state is not merely running the government, but also includes the responsibility to improve people's welfare in order to achieve the goals of the state itself. As stated in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, Indonesia applies the principles of a democratic economy, namely an economic system which main objective is to achieve independence for every Indonesian citizen in the economic field. One form of the Government's efforts to achieve these goals can be in the form of policies or the formation of laws and regulations that actually support the creation of a conducive investment climate for business actors.

On October 5, 2020 the Government of Indonesia passed Law Number 11 of 2020 concerning Job Creation which was later revoked by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law. The Job Creation Law is often referred to as the Omnibus Law. With the Omnibus Law technique, around 80 laws and more than 1,200 articles can be revised at once with only one Job Creation Law which regulates multi-sectors.² One of the statutory provisions that was also amended by the Job Creation Law is the Indonesian Company Law. Several changes and additions to the provisions of the Indonesian Company Law are intended so that Micro, Small and Medium Enterprises (“MSMEs”) business actors have a legal basis for establishing individual legal entities specifically for MSMEs. The purpose of creating Individual Company is to provide the right business platform and in accordance with the circumstances of MSMEs business actors. With the progress of the business world that is growing rapidly currently resulting in increasingly fierce business competition. MSME business actors in running their business also need the right business medium for transactions and legal actions, but also provide convenience so that it is in accordance with the capabilities of MSMEs business actors.

Before the enactment of the Job Creation Law, legal entities that were recognized and generally available for MSMEs business actors were legal entities in the form of limited liability companies. This is motivated by the nature of a limited liability company that is different from other legal entities or business entities. Based on the Indonesian Company Law, a limited liability company has the following characteristics:

1. In the form of a legal entity consisting of a capital partnership;

² Coordinating Ministry for Economic Affairs of the Republic of Indonesia, Omnibus Law: Cipta Lapangan Kerja, accessed at <https://dikti.kemdikbud.go.id/wp-content/uploads/2020/10/Booklet-UU-Cipta-Kerja.pdf>

2. Capital divided into shares;
3. Separation between capital and shareholders' assets;
4. The position of a limited liability company is separate from its founders, so that the liability is limited to the founders and their shareholders;
5. Company organs consisting of the General Meeting of Shareholders, the Board of Directors and the Board of Commissioners with their respective responsibilities and functions.

Apart from the characteristics of a limited liability company that can be profitable for business actors, in the process of forming a limited liability company there are several requirements that may be burdensome for MSMEs business actors, namely, among others:

1. Minimum authorized capital of IDR 50,000,000
2. A minimum of 2 (two) shareholders.

The provision for minimum authorized capital as required by the Indonesian Company Law basically does not provide flexibility for MSMEs business actors, who are generally entrepreneurs who are just starting their business. Furthermore, not all MSMEs business actors intend to carry out their business activities by cooperating with other parties. Oftentimes MSMEs business actors choose to start their own business, which is not in accordance with the provisions for establishing a limited liability company which requires a minimum of 2 (two) founders or shareholders. With the existing limitations, MSMEs business actors are more likely to choose to run their business in the form of an individual business. This is because the form of an individual business or trading business provides more flexibility and convenience in its establishment for MSMEs business actors who are just starting their business.

In response to this, the Government issued the Job Creation Law as a form of effort to assist the development of MSMEs in Indonesia. Through the Job Creation Law, the Government intends to provide a legal basis for the formation of individual legal entities specifically for MSMEs. In Article 109 of the Job Creation Law, several provisions in the articles of the Indonesian Company Law are amended, including changes to Article 7 paragraph (7) of the Indonesian Company Law regarding the addition of the type of company that meets the criteria for MSMEs as a form of business entity which is exempted from the obligation to have at least 2 (two) founders, or what is known as an Individual Company. In other words, now individual MSMEs business actors can establish Individual Companies with a single founder. This aims to provide flexibility and convenience for MSMEs business actors to start their businesses and establish

legal entities with several privileges that are owned by limited liability companies. Furthermore, the provisions of the Job Creation Law negate the role of a notary in the establishment of an MSME company. It is different from the establishment of a limited liability company which must be stated in a deed of establishment, in the establishment of an MSME company the founder is only required to make a statement of establishment without the obligation to make it in the format of a notary deed.

The purpose of this provision is to provide convenience for the founder of an MSME company, in which he does not need to pay extra for making a deed before a notary. However, it should be understood that the role of the notary is very important, apart from making authentic deeds that have perfect evidentiary power, the notary also plays an important role in ensuring the legality of each document presented by the founder. This provision provides room for rampant criminal acts of fraud and/or counterfeiting. It is hoped that the Job Creation Law can become a legal umbrella for business actors, by providing ease of doing business and investment. However, if these provisions only prioritize convenience without heeding the principles of legality, supervision and legal certainty, then it will have a negative impact in the future.

(B) Research Questions

Based on the background mentioned above, the formulation of the problem in this study is:

1. What are the functions and roles of a notary based on Law Number 30 of 2004 on Notary as amended by Law Number 2 of 2014 and Indonesian Company Law?
2. What are the legal implications that might occur by eliminating the role of a notary in the establishment of an Individual Company?

(C) Research Method

The research method used in this study is normative legal research, namely a method that aims to examine legal principles and sources of written law. The research approach used in this study is a statutory approach and a conceptual approach that refers to existing legal doctrines. The primary legal material used in this study is Law Number 30 of 2004 concerning Notary as amended by Law Number 2 of 2014 (“**Indonesian Notary Law**”), Indonesian Company Law, Job Creation Law, and Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses. The secondary legal materials used in this research are legal books, scientific article research reports, and legal journals related to research issues.

II. ROLE AND FUNCTION OF A NOTARY

(A) Role and Function of a Notary under the Indonesian Notary Law

In carrying out their duties and obligations, a Notary is subject to the provisions of the Indonesian Notary Law. Article 15 paragraph (1) of the Indonesian Notary Law, which states:

"The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations Deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law."

Article 15 paragraph (2) of the Indonesian Notary Law states that in addition to the authority referred to in paragraph (1), a Notary also has the authority to:

1. Validate the signature and determine the certainty of the date of a document by registering it in a special book;
2. Annotate a document by registering them in a special book;
3. Make a copy of the original document in the form of a copy containing the description as written and described in the letter concerned;
4. Verify the compatibility of the photocopy with the original letter;
5. Provide legal counseling in connection with making deeds;
6. Making deeds related to land; or
7. Make a deed of minutes of auction.

Based on the provisions above, the Notary's function is required by the rule of law with the aim of assisting and serving the public who need authentic written evidence regarding circumstances, events or legal actions. Thus, a Notary is expected to carry out his role as a public official to serve the community.

(B) Role and Function of a Notary under the Indonesian Company Law

Based on Article 7 paragraph (1) of the Indonesian Company Law, a limited liability is established by at least 2 (two) or more people with a notarial deed drawn up in the Indonesian language. From the provisions of the Article above, it can be concluded that the establishment of a limited liability company is carried out by several people who together appear before a notary and explain their intention to establish a limited liability company by submitting a draft of articles of association. The Deed of Establishment made by a Notary, which contains the

articles of association of the limited liability company must be considered as a contract or agreement. The requirement for the Deed of Establishment in the form of a Notary deed not only functions as evidence for the Company's founding agreement, but the obligation to draw up a notary deed based on Article 7 paragraph (1) of the Indonesian Company Law is at the same time in nature and functions as *solemnitas causa*, that is, if it is not drawn up in a notary deed, the deed of establishment of the company does not meet the requirements, hence the Government will not grant approval on such establishment, in this case the Minister of Law and Human Rights.

III. LEGAL IMPLICATIONS THAT MAY OCCUR WITH THE ELIMINATION OF THE ROLE OF A NOTARY IN THE ESTABLISHMENT OF AN INDIVIDUAL COMPANY

Deeds made before a Notary have an important role in creating legal certainty in every legal relationship. This is due to the nature of the notarial deed which is authentic and is perfect evidence. The notarial deed clearly determines rights and obligations, which guarantees legal certainty and is expected to minimize the occurrence of disputes. There are several things that can be used as a basis in creating a notarial deed structure, namely:³

- a. The background to be agreed upon
- b. Identification of the parties (legal subject)
- c. Identification of the object to be agreed upon
- d. Prepare a deed framework
- e. Formulate the substance of the deed.

When filling out the Statement of Establishment of an Individual Company, the data that must be filled in by the founder includes:⁴

- a. Company Name
- b. Domicile/Complete Address of the Company
- c. Term of the Company
- d. Purpose and Objectives of Business Activities
- e. Capital and Number of Shares

³ Habib Adjie, *Kebatalan dan Pembatalan Akta Notaris, cet 1*, (Bandung: Refika Aditama, 2011) p. 37.

⁴ Annex I of Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses

- f. Name of Founder
- g. Place and date of birth of the Founder
- h. Jobs
- i. Residence
- j. Resident Registration Number
- k. Taxpayer Identification Number

The data that needs to be filled in by the founder of an Individual Company is not much different from the data needed in making the deed of establishment of a limited liability company. However, the establishment of an Individual Company does not require that the establishment of the Individual Company be included in a notarial deed. In other words, the role and function of a Notary is abolished in the establishment of an Individual Company. This of course can cause some problems that might occur in the future. As previously mentioned, the role of a Notary in drawing up a deed, among other things, is to ensure the correctness and legality of the party and the documents provided by the party. In the case of the establishment of an Individual Company, there is no function of a notary to ensure the legality of the founder's identity and related documents such as Identity Cards and Taxpayer Identification Numbers.

The provisions of the Job Creation Law which eliminate the role of a Notary in the establishment of an Individual Company provide room for rampant criminal acts of fraud and/or forgery. If it is true that the ease of establishment of an Individual Company is proven to be used irresponsibly, then of course this can be detrimental to many parties, such as the banking sector, in the event that the Individual Company wants to apply for credit. Banking parties that wish to provide credit facilities to business actors will, of course, first conduct due diligence on prospective debtors. In carrying out this due diligence, the banking sector will check company documents in the event that the prospective debtor is in the form of a Company. Company documents in the form of a notary deed will certainly provide separate guarantees for the bank regarding the identity of the prospective debtor, considering that the personal data and contents of the deed have been confirmed by the notary. The same thing also applies to other parties who have a business relationship or legal relationship with an Individual Company. It is hoped that the Job Creation Law can become a legal umbrella for business actors, by providing convenience and flexibility in doing business. However, if these provisions only prioritize convenience without heeding the principles of legality, supervision and legal certainty, then it will have a negative impact in the future.

IV. CONCLUSION

The role and function of a Notary as specified in laws and regulations is to make authentic deeds. In making the deed, the Notary plays an important role in ensuring the legality of the identity of the parties, each of the parties' document, and the contents of the deed itself. This is to ensure that every deed made by a Notary is not legally flawed and has perfect evidentiary power. Therefore, the role and function of the Notary is also needed in the establishment of a limited liability company, especially to make the deed of establishment as mandated by Article 7 paragraph (1) of the Indonesian Company Law.

The Job Creation Law eliminates the role and function of a Notary in the establishment of an Individual Company. This is intended to provide convenience for business actors who are just about to start their business, so they do not need to pay Notary fee. However, by eliminating the role of the Notary in the establishment of an Individual Company, there is no party that will ensure the legality of the founders' documents and other related documents. This opens up the opportunities for document fraud/falsification which of course can be detrimental to other parties.

V. REFERENCES

Laws

1. Law Number 30 of 2004 concerning Notary as amended by Law Number 2 of 2014
2. Law Number 40 of 2007 on Limited Liability Companies
3. Law Number 6 of 2023 concerning Stipulation of Government Regulations in lieu of Law Number 2 of 2022 Concerning Job Creation to Become Law
4. Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses

Book

1. Habib Adjie. *Kebatalan dan Pembatalan Akta Notaris*, cet 1. Bandung: Refika Aditama, 2011.

Website

1. Coordinating Ministry for Economic Affairs of the Republic of Indonesia, *Omnibus Law: Cipta Lapangan Kerja*, accessed at <https://dikti.kemdikbud.go.id/wp-content/uploads/2020/10/Booklet-UU-Cipta-Kerja.pdf>
