



Received: 29-04-2024
Accepted: 09-06-2024

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

Position of the Company's Deed of Establishment Made in Collaboration with the Service Bureau

¹ Sriyuli Hariati, ² Dahlan, ³ Ika Susilawati

¹ Postgraduate Student of Master of Notary, Faculty of Law, Universitas Syiah Kuala, Indonesia

² Faculty of Law, Universitas Syiah Kuala, Indonesia

³ Notary in Aceh Besar Regency, Indonesia

Corresponding Author: **Sriyuli Hariati**

Abstract

This research aims to examine and analyze the position of company deeds of establishment made in collaboration with service bureaus and examine the role of notaries and power of attorney deeds in making company deeds of establishment through service bureaus. This problem is very important because in the Notary's Position Regulations (UUJN) and the Notary's Code of Ethics (KEN) it is expressly prohibited for a notary to collaborate with a service bureau, this provision is confirmed in Article 4 of the KEN which states that "Notaries or other people (as long as the person concerned is carrying out their position Notaries) are prohibited from collaborating with service bureaus/persons/legal entities who essentially act as intermediaries to find or obtain clients. However, currently there are still notaries who use information technology to

make efforts to use the law to collaborate with online service bureaus. One of the legal loopholes that is the entry point for violations of the KEN is the use of a power of attorney to represent the parties in making the company's deed of establishment. Therefore, the parties and the notary can use their power of attorney to make a deed of establishment of a limited liability company anywhere and at any time. This is of course very contrary to the requirement that notaries must work within their area of office. Considering that the notary's enormous authority in making authentic deeds does not mean that the notary can act as he pleases in making deeds, there needs to be special provisions governing the use of special powers and confirmations in the use of online media in making authentic deeds.

Keywords: Deed of Establishment, Limited Liability Company, Service Bureau

Introduction

The Notary profession is a noble profession or *Officium Nobile* which is subject to Law No.30 of 2004 as amended by Law No.2 of 2014 concerning Notary Positions (UUJN) and Notary Code of Ethics (KEN). As a person in a noble profession, a notary in carrying out his profession or duties must be accompanied by ethics, morals or noble character.¹ In the UUJN a notary is defined as a public official whose authority is to make deeds (in the form of authentic deeds) as specified in the law.² Etymologically, notary in English is translated with the word notary, then the word *van notaris* is referred to in Dutch. Based on the definition above, it can be said that the main task carried out or given to a notary is as a public official who has the authority to make authentic deeds. This task is not given to other public officials, even state officials. So, the main duties of a notary are determined by the applicable law to make authentic deeds. Apart from notaries having the authority to make authentic deeds because of the law that regulates it, notaries can also make authentic deeds due to the wishes of certain people in society and certain legal entities who need it.³ The definition of a public official referred to here is a person who carries out

¹ Suhaimi, Nurdin MH, Enzus Tinianus, Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh, *Jurnal Ius Civile*, Volume 7(2), 2023, pp. 27-45.

² Pasal 1 Ayat (1) Undang-Undang No.30 Tahun 2004 tentang Jabatan Notaris sebagaimana telah diubah dengan Undang-Undang No. 2 Tahun 2014.

³ Supriadi, *Etika Dan Tanggung Jawab Profesi Hukum Di Indonesia*, Sinar Grafika, Jakarta, 2006, Hlm. 37.

some of the public service functions of the state, but specifically in the field of civil law. However, notaries are not included in the group of public officials who are paid by the government through the government budget, such as the State Civil Apparatus (ASN).⁴ In making an authentic deed, "public official" is a position that must be held or held by a person, so that that person has the right or authority to make an authentic deed. The words "public official" are a translation of *openbare ambtenaren* who are essentially assigned by law to serve members of the public to fulfill their needs to obtain strong and perfect evidence, namely authentic deeds. With this authentic deed, the certainty of civil legal relations will be perfect and the parties involved in the legal relations will receive perfect legal protection. Thus, as long as citizens still need authentic evidence and this is required by a country's legal system, the existence of a notary position will continue to be necessary in society.⁵

Producing authentic evidence is the duty of a notary both based on law and based on the wishes of a human being or legal entity in accordance with statutory regulations, then these wishes are stated in a deed that is authentic in nature. Based on Article 1868 of the Civil Code (KUH Perdata), it explains that an authentic deed is a deed made by or in the presence of an authorized official called a public official. According to Prof. Sudikmo Mertokusumo explained that an authentic deed is a form of letter which from the beginning was intentionally officially made to prove something.⁶

In relation to making authentic deeds which are the authority of a notary to make them, this is stated in Article 15 UUJN, namely "a notary has the authority to make authentic deeds regarding all acts, agreements and provisions required by a statutory regulation and/or by interested parties as desired. to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed, all as long as the making of the deed is not also assigned or excluded from other officials as determined by the Law."⁷ Article 15 of the UUJN confirms that authentic deeds are the main product of a notary, except for deeds that are otherwise determined by law, in other words, most authentic deeds are those issued by a notary. To classify these deeds, they can be classified into two based on the process of making them, namely *Relaas Deeds* and *Partij Deeds*.

A *Relaas Deed* is a deed made by a notary because of the wishes or requests of the parties regarding everything that is seen or heard directly by the notary which is carried out by the parties and the notary has the authority to write it down or put it in the form of an authentic deed.⁸ An example of a *Deed of Relaa*s is the deed of the General Meeting of Shareholders (RUPS). Meanwhile, what is called a *Deed Partij* is a deed made before a notary, a deed containing

information desired by the parties who made it or ordered the deed to be made. Based on the information from the parties, the notary then consolidates it in a deed agreed upon by the parties before the notary. Examples of *Partij Deeds* are lease deeds, deeds of establishment of business entities and deeds of Company Establishment.

A Limited Liability Company (hereinafter referred to as a Company or PT) is a legal entity (in the form of a Legal Entity) which is established by two or more parties based on an agreement and in carrying out the business consists of capital which is divided into shares and meets the requirements stipulated by law. Laws and other regulations as implementation.⁹ Agreements in establishing a Company must be made in a notarial deed in accordance with Article 7 (1) of Law No. 40 of 2007 concerning Limited Liability Companies. The notarial deed establishes the agreement between the parties regarding capital, the identity of the founder of the Company, the identity of the Company's management, and information regarding shareholders who have taken shares or the agreed value of the shares that have been paid up at the time of establishment. Then the entire information in the deed of establishment is referred to as the Company's Articles of Association (AD).¹⁰

Making a deed of establishment of a Company is one part that must be fulfilled in the process of establishing a Company until it becomes an entity that exists as an "artificial person" or "person in law". Apart from that, the reason the establishment of a Company is made in the form of an authentic deed is because in the law of evidence, an authentic deed is seen as binding and perfect evidence as long as it is not proven otherwise. Therefore, the notary must act in accordance with statutory provisions and the applicable professional code of ethics in making the deed of establishment of the Company so that legal certainty regarding the deed of establishment of the Company can be guaranteed.¹¹

Establishing a company is one of the people's choices in order to improve the economy both individually and as a group. Based on a survey by the Central Statistics Agency, until 2022, around 4 million business entities have been established and one of the largest contributors is a business entity in the form of PT.¹² This of course cannot be separated from the important role of notaries in the process of establishing a Company, but in practice, currently, amidst the increasing number of notary professions in Indonesia, competition has arisen which sometimes exceeds the limits determined by UUJN and KEN.

As previously explained, a notary fulfills the wishes of certain people and legal entities who need it in the form of an authentic deed, in other words "certain people and legal entities" refers to the client or party who uses the services of a notary in making a deed. This also refers to the fees charged by the notary to the client in accordance with

⁴ Mariana, Darmawan, Suhaimi, Pengawasan Terhadap Notaris Yang Tidak Membuka Kantor, *Kanun Jurnal Ilmu Hukum*, Volume 21(3), 2019, pp., 473-486.

⁵ M. Syahrul Borman, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perpektif Undang-Undang Jabatan Notaris", *Jurnal Hukum Dan Kenotariatan*, Volume 3(1), 2019, pp.74-82.

⁶ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta Surabaya: Liberty, Cet. 6, 2002, Hlm. 145.

⁷ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 1992, Hlm. 49.

⁸ *Ibid*, Hlm. 51.

⁹ Jamin Ginting, *Hukum Perseroan Terbatas*, PT. Cipta Aditya Bakti, Bandung, 2007, Hlm. 174.

¹⁰ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris....*Hlm. 48

¹¹ R. Subekti, *Hukum Pembuktian*, Jakarta: Pradnya Paramita, 1978, Hlm. 27.

¹² Badan Pusat Statistika, <https://www.bps.go.id/id/statistics-table/2/ndqwizi=/jumlah-perusahaan-menurut-provinsi-unit-.html>, Diakses Pada Tanggal 1 Januari 2024.

Article 36, Paragraph 1 of the UUJN, which states that the notary has the right to charge fees for the legal services provided.¹³ KEN supports the implementation of the UUJN, and both go hand in hand to provide guidance for notaries in the exercise of their duties. KEN is formulated by the Indonesian Notary Association (INI) and is the rules that regulate the behavior of every notary and is the rules that every notary must follow in and out of his or her duties. Regarding the relationship between notaries and clients, KEN explains special rules according to which notaries are not allowed to cooperate with offices/services/legal entities as intermediaries to attract clients. The phenomenon of notaries cooperating with service agencies is supported by current technological developments, resulting in notaries openly using online service bureaus to try to get as many clients as possible in an instant and unconventional way. This makes some notaries interested in taking actions outside the applicable rules without realizing that this has created competition among some notaries themselves.¹⁴ Without realizing it, the act of violating the KEN can give rise to legal risks that can be experienced by the notary and the position of the deed he or she makes, especially in making the deed of establishment of the Company. The occurrence of collaboration between notaries and service bureaus as intended, could occur because human needs are increasing, while the means (especially money) to satisfy needs are always limited. This situation is made worse by the increasingly difficult economic situation, where the prices of necessities (both primary and secondary needs) are increasingly soaring. Life is very difficult, coupled with natural conditions that are increasingly uncertain, which ultimately requires additional budgets to adjust. All of this requires a person, including a notary, to increase their income, because the income they have earned so far is no longer enough to meet their daily living needs. In the end, the notary was forced to try to increase his income in ways that were not in accordance with UUJN and KEN, including collaborating with service bureaus in the process of making company deeds (PT).

Indications of these violations can be found on websites that offer services for making deeds of establishment, such as kotrak Hukum.com and permitted.co.id, for example, on these websites that serve the creation of limited liability companies where the establishment is under the authority of a notary. In other words, the website owners establish cooperation or mutually beneficial relationships with each other. Apart from that, the website owner also offers to make deeds at a relatively cheap price, thereby attracting people's interest in carrying out transactions on the website. Promotion is a communication activity carried out by individuals or companies to the public. The aim of this promotion is to introduce a brand, product or company to the public, and influence them to use or buy the product or service.¹⁵ Based on the research, it was found that the use of

the service bureau was aimed at establishing communication and looking for clients with an effort to create promotions in the form of reduced service costs and other conveniences that could attract clients. This is certainly an indication of promotions carried out by notaries through service bureaus. Therefore, starting from the description above, the author is interested in discussing the position of the Deed of Establishment of a Company Made in Collaboration with a Service Bureau.

Research Method

Scientific research in the field of law is carried out because there are legal issues and problems that arise in society. Resolving these issues can be done by examining legal principles, legal rules and legal doctrine.¹⁶ The type of legal research used in this thesis is normative legal research, namely a way of researching and reviewing library materials or often called secondary data. The source of legal materials used in this research is secondary data through the study of documents to obtain data taken from library materials.¹⁷ The approach methods used are the statutory approach, conceptual approach and case approach. This approach method is used because the research is normative research, with this form of approach it will be easier to know how things are regulated in statutory regulations, what the legal concept is and what cases have occurred in connection with this problem.

Data management techniques are used by reduction, systematization and description. Data analysis techniques are the author's method or way of processing data into useful information that is used to find solutions to research problems. This research uses a data analysis method with a qualitative approach, namely analysis based on understanding the author's perceptions and systematic thinking regarding the data obtained relating to the accountability of notaries who use third party services indirectly in making authentic deeds.

The form of this writing is explanatory-analytical. The result of this research is an analysis of the implementation of the accountability of notaries who use third party services indirectly in making authentic deeds.

Result and Discussion

1. Position of the Company's Deed of Establishment Made in Collaboration with the Service Bureau

The PT is a type of legal entity company in Indonesia. There are various definitions of the company according to experts. According to HMN.Purwosutjipto, the PT is an association of legal entities in the form of a company due to capital consisting of holdings or shares.¹⁸ R Ali Rido also believes that a PT is a form of company founded by several people with certain capital where the capital is divided into shares

¹³ I Ketut Gunawan Adi, *et al*, "Penetapan Honorarium Notaris Dalam Praktik Pelaksanaan Jabatan Notaris", *Jurnal Kontribusi Hukum*, Volume 1(2), 2020, pp.55-72.

¹⁴ Pengurus Pusat Ikatan Notaris Indonesia, *Jati Diri Notaris Indonesia: Dulu, Sekarang Dan Dimasa Akan Datang*, Gramedia Pustaka, Jakarta, 2008, Hlm. 94.

¹⁵ Rizky Amalia, Musakkir Musakkir, and Syamsuddin Muchtar, "Pertanggungjawaban Notaris Terhadap Isi Akta Autentik Yang Tidak Sesuai Dengan Fakta," *Al-Ishlah:*

Jurnal Ilmiah Hukum, Volume 24(1), 2021, <https://doi.org/10.56087/aijih.v24i1.77>.

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, Hlm. 35.

¹⁷ Soerjono Soekanto Dan Sri Mamudji, *Penelitian Hukum Normatif...*, Hlm. 13-14.

¹⁸ H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Djambatan, Jakarta, 1979, Hlm. 85.

which can be owned by one or more people who are then responsible for the capital they own.¹⁹

As a legal entity corporation, a PT has several characteristics, namely:²⁰

- Limited Responsibility, this characteristic emphasizes the separation of responsibilities where the founder or shareholder of the corporation is only personally responsible for the amount of shares he owns.
- Perpetual succession, this characteristic explains that in the context of a Limited Liability Company, shareholders can transfer the shares they own to third parties.
- Having its own wealth, this characteristic explains that all the wealth owned by the company is not owned by members or shareholders. So ownership is not based on members or shareholders.
- Having contractual authority (can sue or be sued), this characteristic explains that legal entities as legal subjects are treated like humans who have contractual authority. The entity can enter into contractual relations on its own behalf. As legal subjects, legal entities can be sued and prosecuted before the court.

The loss of validity of a deed can come from the deed itself or from the maker of the deed. Therefore, it is important for a notary to understand the impact that will arise if the deed made does not comply with the provisions, namely the degradation of an authentic deed to a private deed. Degradation itself is defined as a decrease in rank, quality, morals, decline, setback, or it can also be placed at a lower level if it is related to a notarial deed, then this term can be interpreted as a deed previously made based on the provisions for making authentic deeds experiencing decline, decline, or a decline in quality in the sense of a lower position in strength as complete and perfect evidence. So that it has a direct impact on the deterioration of the proof into a private deed and has legal defects that cause the cancellation or invalidity of the Notarial deed.²¹

Article 4 (4) KEN states that it is prohibited "Notaries from collaborating with service bureaus/persons/legal entities which essentially act to find clients". The service bureaus in this research refer to online-based legality/licensing service companies that include price promotions in the preparation of the deed of establishment of a PT (contract Hukum.com, permittedku, permittedkilat.id, and legalku.id). Based on the research conducted, it is proven that the existence of these legal/licensing companies indicates a violation of the notary's code of ethics which then has an impact on the position of the authentic deed becoming a private deed. Apart from that, it will also have an impact on the difficulty for some notaries to get clients. A further impact is that it can lead to unhealthy competition by ignoring Notary

Position Regulations, Laws and/or codes of ethics in order to get clients.

One way that is considered to override Notary Position Regulations, Laws and/or codes of ethics is for notaries to collaborate with service bureaus in looking for clients. This prohibition on cooperation is clearly written in Article 4 of the KEN which states that "Notaries or other people (as long as the person concerned is carrying out the position of Notary) are prohibited from collaborating with service bureaus/persons/Legal Entities who essentially act as intermediaries to find or obtain clients.

The mention of these explicit and implicit prohibitions does not seem to be seen as important by some notaries nowadays considering that the activities of notaries who collaborate with notaries are becoming more and more explicit, supported by online media in marketing the making of authentic deeds, especially the making of deeds of establishment of PTs. The following is an example of an online institution that offers PT establishment services.



The image above is a service bureau for establishing a PT through an online website with the name merdekakilat.id. And easylegal.id. The IlmuKilat.id service bureau offers PT establishment services in the Banda Aceh area by including prices and service packages. Meanwhile, the easylegal.id service bureau offers the creation of a national-scale PT by providing promotions for deed-making packages.

The service bureaus in this research refer to online-based legality/licensing service companies that include price promotions in the preparation of the deed of establishment of a PT (contract Hukum.com, merdekaku, bisniskilat.id, and legalku.id). Based on the research conducted, it is proven that the existence of these legal/licensing companies indicates a violation of the notary's code of ethics which then has an impact on the position of the authentic deed becoming a private deed. The consequences arising from the existence of a PT creation service bureau via an online website include:

- That, by using an online-based service bureau entity there are indications of hidden promotions. where the notary is not directly involved in marketing the product, but rather the entity provides its services in making authentic deeds at low prices and promotions which are then passed on to certain notaries to make the deeds. This is reinforced by the fact that the notary has the right to make an authentic deed, not another entity such as an online website.
- That, by using an online service bureau, you can break through the boundaries of a notary's position. Where a

¹⁹ R. Ali Rido, *Hukum Dagang Tentang Aspek-Aspek Hukum Dalam Asuransi Udara, Asuransi Jiwa Dan Perkembangan Perseroan Terbatas*, Remadja Karya, Bandung, 1986, Hlm. 335.

²⁰ David Kelly, *et al, Business Law*, Cavendish Publishing Limited, London, 2002 Hlm. 343 - 345

²¹ Agus Toni Purnayasa, "Akibat Hukum Terdegradasinya Akta Notaris Yang Tidak Memenuhi Syarat Pembuatan Akta Autentik," *Acta Comitatus*, Volume 3(3), 2019, <https://doi.org/10.24843/ac.2018.v03.i03.p01>.

notary can make a deed from anywhere because the service bureau's reach is not limited to an area, but can be accessed anywhere and at any time. So the notary can get clients from outside his work area to make a deed of establishment of a PT. This indirectly violates the position area provisions in Articles 17 and 18 of the UUJN which state in essence that Notaries are prohibited from carrying out positions outside their office area which includes the territory of the province where they are domiciled.

3. That, deeds made through service bureaus are generally not read in the presence of the presenters, but are read to the presenters' proxies made by the notair and/or the parties. Apart from that, the recipient of power of attorney is not limited to certain matters so that it can be authorized by other people who are not directly related to the deed of establishment of the company. Violating the provisions of Article 16 (1) letter m UUJN, it is stated that "Notaries must be physically present and sign the deed in the presence of an audience and witnesses".
4. That, the price is determined by a non-notary service bureau. In the Notary Position Regulations there are provisions regarding determining the honorarium of a notary. While a Notary is carrying out his official duties, even though he is appointed and dismissed by the government, he does not receive a salary from the government or a pension from the government, so the honorarium received by the Notary is the personal income of the Notary concerned.²²

Regarding the determination of the notary's honorarium, it is not actually determined by the service bureau, but it is the authority of the notary concerned to determine it. According to Habib Adjie, a Notarial Deed is an intellectual product of a Notary, and must be given credit as an implementation of a Notary's knowledge. Each Notary has his own touch of value from the Notary concerned and requires accuracy, so that the Notary can determine the amount of his own honorarium, sometimes the amount of the honorarium is determined based on an agreement between the parties who use the Notary's services, with the parameters being the level of difficulty in make a deed requested by the parties. In the sense that if the level of difficulty in making the deed is more difficult, then the cost is more expensive. Likewise, vice versa, if the level of difficulty in making the deed is easier, then the costs are cheaper.²³

Guaranteeing the certainty and validity of authentic deeds is the responsibility of a notary, therefore it is not uncommon for notaries to be sued criminally or civilly if errors and/or negligence occur in making the deed. This relates to material proof of the deed made by the notary. Making a deed is the full material responsibility of a notary, but it needs to be emphasized that this does not mean that a notary can freely, according to his wishes, make an authentic deed without the parties requesting the deed to be made. It should also be noted that one of the factors that causes a deed to be

relegated to a private deed is due to the notary's authority or incompetence in making a deed. If you look again, the definition of an authentic deed is a deed made by or before a notary.²⁴ Therefore, it is necessary to study further regarding how the service bureau as an intermediary contacts a notary to make a deed and then when the parties sign it, they do not do it in front of a notary but rather do it in front of the service bureau, because this is what causes the deed to be degraded to a private deed.²⁵

The process for establishing a PT through a service bureau is slightly different, where based on the results of a simple approach, the service owners require that the deed of establishment can be made anywhere and without having to be physically present before a notary. Apart from that, these service bureaus set their own prices and make promotions with the aim of attracting clients' interest in making a deed of establishment. Based on the facts in the field, it can be concluded that there are legal inconsistencies in making deeds of establishment through service bureaus.

The procedure for making a deed through a service bureau generally begins with negotiations via a website/online platform, then continues with direct communication regarding the PT name, address and other contents of the deed to the service bureau. Then the service bureau will direct and select a special notary to make the deed to the s in accordance with its work area or outside the notary's work area. If the notary appointed by the service bureau has a different work area from the domicile of the parties, then a special power of attorney will be drawn up or efforts will be made to send minutes of the deed to the PT's location for signature.



The image above shows the negotiation process via the website/online platform, and is followed by direct communication regarding the creation of the PT in question. Based on this simple examination, it can be seen that there are many discrepancies that occur and refer to the use of legal loopholes in establishing the PT. This certainly contradicts the principles and theory of legal certainty which should be the aim of making an authentic deed by a notary. Legal certainty is the implementation of the law according

²² Hatta Isnaini Wahyu Utomo, *Memahami Pelaksanaan Tugas Jabatan Pejabat Pembuat Akta Tanah*, Phoenix Publisher, Jakarta, 2019, Hlm. 84.

²³ Habib Adjie, *Hukum Notaris Indonesia: Tafsir Tematik Terhadap Uu No. 30 Tahun 2004 Tentang Jabatan Notaris*, Refika Aditama, Bandung, 2008, Hlm 63.

²⁴Boysal Parulian Sihombing, "Unsur Perbuatan Melawan Hukum Yang Dilakukan Oleh Notaris Dalam Pembuatan Akta" *Premise Law Jurnal*, (2016), Vol. 20, Hlm 12

²⁵ Abdul Kohar, *Notaris Berkomunikasi*, Alumni, Bandung, 1984, Hlm. 25

to its letter so that society can ensure that the law is implemented. However, if you look at the formation process, making a deed through a service bureau reflects legal uncertainty. Therefore, making a deed through a service bureau can damage the validity of the deed of establishment.

2. The role of the Notary and Special Power of Attorney in Making the Deed of Establishment of a Limited Liability Company

According to Article 1 UUJN, a Notary is a public official vested with the power to create legally valid documents and perform various other duties and responsibilities. In accordance with this article, a notary is recognized as a public official who fulfills public functions and obligations, specifically in relation to civil law. The government is responsible for appointing and removing notaries from their positions. Notaries are entrusted with the important task of serving the public in specific matters, as they actively contribute to the execution of governmental authority.²⁶ Article 2 (1) of the UUJN clearly outlines the role of a notary as an official responsible for creating authentic deeds and possessing additional authorities as specified in this Law or other relevant legislation. This provision is particularly emphasized when it comes to the creation of a deed for the establishment of a PT. In Article 8 of PT Act, the deed of establishment of a PT must be made using an authentic deed before a notary.

The role of a notary in the creation of a PT establishment deed is to validate the desires of the founders, which are based on their agreement and objectives. Subsequently, the agreement is documented in an official and authentic deed. The notary's creation of the establishment deed falls under the category of a *partij deed*. A *partij deed* is a deed that is executed before a notary, where the information or actions of the involved parties must be confirmed by the notary in order to formalize the deed. Within the *partij deed*, there are descriptions and statements provided by the parties, which are narrated before the notary. These statements are considered authentic and are included in the deed as evidence of the parties' intentions. The deed also acknowledges that the parties involved have expressed their specific desires as outlined in the deed. Based on this explanation, it can be concluded that a notary is a public official who fulfills certain public functions on behalf of the state.²⁷

Notaries have the authority to become public officials or in other words it is called *openbare amtbtenaren* which means a notary is an official who is delegated the task of serving the public, especially in making authentic deeds. This explanation is in line with the provisions in Article 1 of the Notary Position Regulations (PjN) and Article 1868 KUHPperdata.²⁸ Based on this explanation, it can be concluded that a public official is a person who carries out some of the state's public functions, especially in the field of civil law. Public officials are appointed and dismissed by the government and are given the authority and obligation to serve the public in several ways because they participate in

carrying out the power that comes from the authority of the government. He has attributes or qualities that differentiate him from other positions in society.²⁹

A general explanation of the authority of a notary can be viewed from a linguistic perspective. Etymologically, authority is defined in English as "Authority" which means authority or authority.³⁰ Meanwhile, according to the Big Indonesian Dictionary (KBBI), authority is usually defined as a person's right to do something within a certain period of time and is accepted by other people in a certain group. Based on this explanation, it can be concluded that authority in terms of language is the authority, ability or right given to do or not do something.

According to Bagir Manan, authority and power are not the same in legal language. Power simply means the right to do something or not. Authority in law means rights and obligations (*rechten en plichten*). Authority is defined as the ability of a person or group to have power in a Western legal perspective. Islamic law regards humans as caliphs, or mandataries, in the world, so that absolute authority rests with Allah.³¹

The primary responsibility of a notary is to create legally binding documents, known as authentic deeds. This authority, known as attributive authority, is granted to notaries by the state in order to represent the government. In essence, attributive authority is the legal delegation of government power to government entities, as established by lawmakers through legislation that divides state authority.³² With this understanding, it can be inferred that notaries operate in accordance with the UUJN when carrying out their official duties. As public officials appointed by the state, notaries have the freedom to perform their duties independently, without requiring approval from the central government. While the primary attributive authority of a notary is to create authentic deeds, it is important to note that not all authentic deeds are necessarily created under the jurisdiction of a notary. An authentic deed made by a notary will only be within his or her authority if the law determines it, certain people are permitted by statutory regulations, so it is not permissible for a notary to make a deed for his own interests, for the interests of his wife or husband, or other people. Have a family relationship with a notary (either by blood or marriage). Apart from that, it must also be in accordance with the work area or position area in accordance with the appointment and inauguration decree. Lastly, the Notary must have authority based on the time the deed was made. This means they may not make deeds while on leave or after being fired or dismissed from their position as notaries. They also may not make a deed before Appointment.

A notary has a domicile in a regency or municipality area, namely a domicile relating to appointment as a notary by the Office of the Ministry of Law and Human Rights. However, within the scope of the work area, a notary has an area of

²⁹ *Ibid.*

³⁰ John M. Echols, Hassan Shadily. *Kamus Inggris Indonesia (An English-Indonesian Dictionary)*. Gramedia Pustaka Utama, Jakarta, 2005. Mlm. 481.

³¹ Juniarso Ridwan, Achmad Sodik Sudrajat. *Hukum Administrasi Negara Dan Kebijakan Pelayanan Publik*, Nuansa, Jakarta, 2009, Hlm 137.

³² Ridwan Hr, *Hukum Admnistrasi Negara*, Raja Grafindo Persada, Jakarta, 2008, Hlm 104.

²⁶ Deo Fandy Tumembouw, "Tinjauan Yuridis Akta Otentik Sebagai Alat Bukti Dalam Perkara Perdata," *Lex Privatum VII*, no. 6 (2019).

²⁷ G. H. S. Lumban Tobing, *Peraturan Jabatan Notaris*, Erlangga, Jakarta, 1991, Hlm 51.

²⁸ *Ibid.* Hlm. 41

office covering the entire province of his/her place of domicile. Notaries are required to have only one office, namely at their place of residence. Notaries do not have the authority to regularly carry out office outside their place of residence.³³ According to Lumban Tobing, each notary determines his area of office according to his place of residence, so that notaries are only authorized to make deeds within their area of office. Deeds made outside the area of his office are only considered private deeds.³⁴

From the aforementioned explanation, it becomes evident that the notary possesses significant authority, necessitating the creation of a deed in accordance with the regulations outlined in UUJN and the KEN. UUJN stipulates that the production of an authentic deed can be based on either a private power of attorney or an authentic power of attorney, as long as the inclusion of the power of attorney is explicitly stated within the deed. This provision is stated in Article 47 UUJN which states:

1. "An authentic power of attorney or other letter which is the basis for the authority to make a deed issued in the form of an original or private power of attorney must be attached to the Minutes of Deed.
2. An authentic power of attorney made in the form of a Deed Minutes described in the deed.
3. The provisions as intended in paragraph (1) are not mandatory if a power of attorney has been attached to a deed made before the same Notary and this is stated in the deed."

By analyzing the characteristics of the PT constitution, it becomes evident that the PT constitution is formulated through the documentation of a mutual understanding, thus necessitating the utilization of a power of attorney in accordance with Article 47 of the UUJN and the PT agreement. This is due to the existence of a consensus principle within the agreement, which mandates that all parties involved must reach a unanimous agreement on the terms of the agreement.³⁵

According to Article 1796 of the KUHPerdata, the primary purpose of a power of attorney is to safeguard the interests of the grantor. It is specifically required for tasks such as assignments, item transfers, or any other actions that the owner is unable to perform independently without a special power of attorney. In the case of creating the deed of establishment for a PT, it can be deduced that this process necessitates a special power of attorney or a notarized power of attorney. This is because the act of establishing the deed is a legal action that can only be executed by the owner.

From this explanation, one can draw the conclusion that the formation of a PT can be carried out through either a special power of attorney or a notarized power of attorney, allowing for the absence or inability of the parties or presenters to be physically present or sign the authentic deed. However, this provision only states that it is permissible to use a power of

attorney in making deeds without stating in detail the clear procedures for its implementation. This is a legal loophole for notaries who collaborate with online-based service bureaus to make deeds outside their area of office, because in the process of collaborating with these service bureaus it is possible for notaries to make deeds covering all regions of Indonesia considering that online coverage has no boundaries. For example, based on research that has been carried out by ordering a deed via the legality/licensing website whose company is based on the island of Java, it can be accessed by a client who is domiciled outside Java, so to make a deed of establishment of a PT, efforts will be made to use a special power of attorney addressed to another party. Who are basically unrelated and/or do not understand the making of the deed. This is of course in direct conflict with the provisions of the UUJN and the KEN regarding the area of office and the nature of the notary's reading of the deed to the audience.

The validity of a deed and the reputation of a notary can be compromised if conflicts arise during the process of creating the deed. Such conflicts can lead to the deterioration of the deed and result in administrative sanctions for the notary. Hence, it is crucial for notaries to exercise caution when preparing deeds. The principle of caution should always be at the forefront of a notary's mind, both within the community and while fulfilling their duty to create authentic deeds. While the principle of prudence is commonly associated with the world of banking credit, it can be likened to the role of a notary in providing public services that rely on accurate information. Therefore, the precautionary principle emphasizes the importance of exercising care in order to safeguard public funds that have been entrusted to the notary.

Apart from that, in carrying out the functions of his position, a notary must comply with the provisions of the PJN, UUJN and the KEN. Based on the theoretical explanation, legal compliance can be viewed from the perspective of the general understanding of law. According to Utrecht, law is a set of rules consisting of commands and prohibitions that regulate the order of a society so that it must be obeyed by that society. CST Kansil believes that laws are coercive regulations that determine human behavior and are made by official institutions, while violations of these regulations will result in certain penalties. Attempts to utilize power to override other provisions (territory of office and facing obligations) are actions that indicate an attempt at notary legal non-compliance with regulations.

The legal consequences of non-compliance with the law on notaries are:

1. In the event of a violation of the KEN, the notary who violates the Code of Honor may be subject to sanctions by the Honor Committee in the form of a) warning, b) warning, c) temporary suspension of his membership, d) honorable discharge from the club, and e) dishonorable discharge from the club. On this basis, notaries working with service companies may be sanctioned according to these provisions.
2. For violations of the UUJN based on Article 77, the notary can be temporarily suspended and dishonorably dismissed with a proposal to the minister.
3. Can be bankrupted if the deed is made and it turns out that it causes losses to certain parties, then the notary can be bankrupted. The factor leading to bankruptcy is that the notary who pretends to be a notary is an

³³ Pasal 18 Ayat 1 Dan 2, Pasal 19 Ayat (1) dan ayat (2) UUJN.

³⁴ G. H. S. Lumban Tobing, *Peraturan Jabatan Notaris ...* Hlm 49-50

³⁵ Moch Najib Imanullah and Mohamad Hanapi Mohamad, "Kajian Penerapan Asas-Asas Hukum Perjanjian Waralaba Internasional Dalam Peraturan Pemerintah Nomor 42 Tahun 2007 Tentang Waralaba Dan Implikasi Yuridisnya," *Jurnal Syiar Hukum*, Volume XII, No. 1 (2010).

individual who cannot perform his duties in accordance with the statutory authorization or cannot perform his duties for some reason. An example is that a deed prepared by the notary has problems and the losses suffered by the parties are beyond the ability of the notary until the parties finally sue the notary for bankruptcy.

Conclusion

The PT is a legal entity company established based on an agreement made before a notary. Therefore, the establishment of a Limited Liability Company must be carried out based on an authentic deed in accordance with the provisions of the Code of Ethics and statutory regulations. Making a deed of Establishment of a Limited Liability Company through a service bureau is not in accordance with the Code of Ethics and Law so it can have an impact on degrading the deed of Establishment of a Limited Liability Company. There are indications that violations have been committed, namely that the Notary carried out covert promotions, violated office area boundaries, the deed is not read in front of the audience, the determination of notary service fees is determined by the service bureau, not by the notary. The notary is involved in making the deed of establishment of the PT through a service bureau, because the notary is tempted by the lure or benefits offered by the service bureau. All the necessary documents are taken care of by the service bureau and the notary only needs to make and sign the deed. Notaries need to be aware of this, because service bureaus work and strive only to gain partial and momentary profits. Once the service bureau makes large profits and when it experiences legal problems, the bureau may close and its whereabouts will no longer be known. Meanwhile, the nature of the notary's job and position is permanent, it is impossible to open and close, and even last for a long time until the notary retires. Therefore, UUN and KEN are guidelines for notaries in carrying out their work and there is little chance of legal problems if the notary has acted and worked in accordance with UUN and KEN.

The position of the notary in the drafting of the PT Regulations is that of a state official, authorized to confirm the intention of the parties to enter into an agreement in the form of a notarial deed establishing a legal entity. Representatives of other parties may draft notarial instruments by power of attorney when exercising their powers. But currently this power of attorney is often misused to violate other provisions relating to the making of deeds. This can have a negative impact on the notary and the deeds he makes. The deed he makes can be degraded to a private deed and the notary can be subject to administrative, civil or criminal sanctions.

Suggestions

That the procedure for making a deed through a service bureau is generally carried out using a power of attorney for the applicant who is unable to attend and sign the deed before a notary. However, what needs to be paid attention to is that service bureaus use power of attorney to find legal loopholes where notaries, through service bureaus, can make deeds anywhere by making a special power of attorney to represent the person facing other people. Therefore, it is necessary to make special provisions regarding the use of a

power of attorney specifically for the conditions for making a deed.

In this case, notaries should also be careful when making PT deeds which are carried out through certain service bureaus, because after all, there are still legal loopholes that cause notaries to get carried away or dragged to court. It is true that currently the problem has not arisen, but when there is a legal problem, where the parties enter into an agreement with the PT, then the opposing party may question the legal validity of the PT, so that in the end the notary who made the PT is dragged into it.

Considering that there are more and more service bureaus offering deed making services amidst increasingly sophisticated developments, notaries should not be tempted by the lure or benefits offered by service bureaus. Notaries need to be aware of this, because service bureaus work and strive only to gain partial and momentary profits. It is possible that the bureau will close within a few years, especially if the service bureau has legal problems. Meanwhile, a notary's term of office or work lasts for a long time until the notary retires.

That Notaries are expected to always carry out their duties and positions by complying with applicable laws and regulations and following the agreed Notary code of ethics. It is also hoped that there will be good cooperation between the Supervisory Council, Notaries and the community in law enforcement. In addition, facilities and community cultural support are needed to achieve legal effectiveness.

References

1. Suhaimi, Nurdin MH, Enzus Tinianus. Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh. *Jurnal Ius Civile*. 2023; 7(2):27-45.
2. Pasal 1 Ayat (1) Undang-Undang No.30 Tahun 2004 tentang Jabatan Notaris sebagaimana telah diubah dengan Undang-Undang No.2 Tahun, 2014.
3. Supriadi. *Etika Dan Tanggung Jawab Profesi Hukum Di Indonesia*, Jakarta: Sinar Grafika, 2006, 37.
4. Mariana, Darmawan, Suhaimi. Pengawasan Terhadap Notaris Yang Tidak Membuka Kantor. *Kanun Jurnal Ilmu Hukum*. 2019; 21(3):473-486.
5. Syahrul Borman M. Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris. *Jurnal Hukum Dan Kenotariatan*. 2019; 3(10):74-82.
6. Sudikno Mertokusumo. *Hukum Acara Perdata Indonesia*, Yogyakarta Surabaya: Liberty, Cet. 2002; 6:145.
7. Lumban Tobing GHS. *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 1992, 49.
8. *Ibid*, Hlm. 51.
9. Jamin Ginting. *Hukum Perseroan Terbatas*, Bandung: Pt. Cipta Aditya Bakti, Cet. 2007; 1:174.
10. Lumban Tobing GHS. *Peraturan Jabatan Notaris....Hlm. 48*.
11. Subekti R. *Hukum Pembuktian*, Jakarta: Pradnya Paramita, 1978, 27.
12. Badan Pusat Statistika, <https://www.bps.go.id/id/statistics-table/2/ndqwizi=/jumlah-perusahaan-menurut-provinsi--unit-.html>, Diakses Pada Tanggal 1 Januari 2024.

13. I Ketut Gunawan Adi, *et al.* Penetapan Honorarium Notaris Dalam Praktik Pelaksanaan Jabatan Notaris. *Jurnal Konstruksi Hukum*. 2020; 1(2):55-72.
14. Pengurus Pusat Ikatan Notaris Indonesia. *Jati Diri Notaris Indonesia: Dulu, Sekarang Dan Dimasa Akan Datang*, Jakarta: Gramedia Pustaka, Cet I, 2008, 94.
15. Rizky Amalia, Musakkir Musakkir, Syamsuddin Muchtar. Pertanggungjawaban Notaris Terhadap Isi Akta Autentik Yang Tidak Sesuai Dengan Fakta. *Al-Ishlah: Jurnal Ilmiah Hukum*. 2021; 24(1). Doi: <https://doi.org/10.56087/aijih.v24i1.77>.
16. Peter Mahmud Marzuki. *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2011, 35.
17. Soerjono Soekanto Dan Sri Mamudji. *Penelitian Hukum Normatif...*, Hlm. 13-14.
18. Purwosutjipto HMN. *Pengertian Pokok Hukum Dagang Indonesia*, Djambatan, Jakarta, 1979, 85.
19. Ali Rido R. *Hukum Dagang Tentang Aspek-Aspek Hukum Dalam Asuransi Udara, Asuransi Jiwa Dan Perkembangan Perseroan Terbatas*, Remadja Karya Cv, Bandung, 1986, 335.
20. David Kelly, *et al.* *Business Law*, London: Cavendish Publishing Limited, 2002, 343-345.
21. Agus Toni Purnayasa. Akibat Hukum Terdegradasinya Akta Notaris Yang Tidak Memenuhi Syarat Pembuatan Akta Autentik. *Acta Comitas*. 2019; 3(3). Doi: <https://doi.org/10.24843/ac.2018.v03.i03.p01>.
22. Hatta Isnaini Wahyu Utomo. *Memahami Pelaksanaan Tugas Jabatan Pejabat Pembuat Akta Tanah*, Yogyakarta: Phoenix Publisher, 2019, 84.
23. Habib Adjie. *Hukum Notaris Indonesia: Tafsir Tematik Terhadap Uu No. 30 Tahun 2004 Tentang Jabatan Notaris*, Bandung: Refika Aditama, 2008, 63.
24. Boysal Parulian Sihombing. Unsur Perbuatan Melawan Hukum Yang Dilakukan Oleh Notaris Dalam Pembuatan Akta. *Premise Law Jurnal*. 2016; 20:12.
25. Abdul Kohar. *Notaris Berkomunikasi*, Bandung: Alumni, 1984, 2.
26. Deo Fandy Tumembouw. Tinjauan Yuridis Akta Otentik Sebagai Alat Bukti Dalam Perkara Perdata. *Lex Privatum*. 2019; 7(6).
27. Lumban Tobing GHS. *Peraturan Jabatan Notaris*, Erlangga, Jakarta, 1991, 51.
28. *Ibid.* Hlm. 41.
29. *Ibid.*
30. John M Echols, Hassan Shadily. *Kamus Inggris Indonesia (An English-Indonesian Dictionary)*. Jakarta: Gramedia Pustaka Utama, 2005, 481.
31. Juniarso Ridwan. Achmad Sodik Sudrajat. *Hukum Administrasi Negara Dan Kebijakan Pelayanan Publik*, Jakarta: Nuansa Jakarta, 2009, 137.
32. Ridwan Hr. *Hukum Administrasi Negara*, Jakarta: Raja Grafindo Persada, 2008, 104.
33. Pasal 18 Ayat 1 Dan 2, Pasal 19 Ayat 1 Dan 2 Uu No. 30 Tahun 2004 Tentang Jabatan Notaris.
34. Lumban Tobing GHS. *Peraturan Jabatan Notaris ...*Hlm 49-50.
35. Moch Najib Imanullah, Mohamad Hanapi Mohamad. *Kajian Penerapan Asas-Asas Hukum Perjanjian Waralaba Internasional Dalam Peraturan Pemerintah Nomor 42 Tahun 2007 Tentang Waralaba Dan Implikasi Yuridisnya*. *Jurnal Syiar Hukum*. 2010; 12(1).