

## NOTARY PROFESSION AND CODE OF ETHICS IN THE PROCESS OF MAKING A DEED OF ESTABLISHMENT OF A LIMITED LIABILITY COMPANY

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### ABSTRACT

<b>Keywords:</b>	Notary; Legalization of Limited Corporation, Act-Making.	This study examines how notaries validate a Limited Liability Company (PT) using paper forms and the Electronic Legal Entity Administration System (SISMINBAKUM). The principal concerns are the need for modifications in the role of notaries following the application of SISMINBAKUM, as well as obstacles and efforts to overcome them. The study attempts to determine the notary's participation in the ratification procedure of creating a PT, contrast the manual method with SISMINBAKUM, and pinpoint the difficulties and solutions the notary faced in carrying out its duties. The empirical legal approach and qualitative study technique utilized in this research emphasize the ethical standards and code of conduct that regulate the notary profession. The results demonstrate the essential role of notaries in ensuring the validity of legal papers and compliance with laws. Even though SISMINBAKUM is a novel system, notaries continue to play a vital role despite challenges related to notaries' technical accessibility and understanding. This study provides important insights into how notaries adjust to changes in the law and technological breakthroughs.
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### Introduction

The community, which includes the general public and the business sector, relies on the services of a notary to carry out numerous activities or legal transactions. Notaries are required when giving written proof (Yuniati, 2017). Notaries can create and provide actual papers that serve as persuasive evidence. Therefore, notaries must provide legal protection to both individuals holding papers and the parties involved (Kusuma, 2023).

According to the rules in the notary office regulations and the notary office law, it may be deduced that the primary duty of notaries is to generate legally binding papers, referred to as genuine deeds (Wardhani, 2017). According to Article 1870 BW (Burgelijk Wetboek), these authentic deeds ensure a complete and binding agreement between the involved parties. The notary profession is vital as notaries are legally empowered to generate irrefutable legal documents, ensuring that the information stated in the official deed is accurate (Putri, Anwary, & Haiti, 2022). This is crucial for individuals or organizations seeking evidence-based tools to serve many purposes, including personal interests and business-related activities inside the corporate domain. The demand for notaries, particularly in the business sector, is crucial for establishing and growing limited liability companies as legal entities (Sayuna, 2016). Notaries play a

vital role in ensuring legal protection and compliance with the relevant laws, particularly the limited liability company law (Prabawa, 2017). This need is recognized globally and is considered essential for the global community (Prasetyawati & Prananingtyas, 2022). Therefore, the existence of a genuine deed, a legally binding document produced by a notary, reinforces the establishment of the notion of legal certainty, which serves as a precursor to justice. The limited liability company (LLC) is currently the most favored form of economic activity due to its limited liability feature. Additionally, LLCs provide owners (shareholders) the convenience of transferring ownership by selling their shares to any interested party, along with other associated advantages (Latifah, 2021). The legal existence of a limited liability company is upheld by a range of rules and regulations, which also demonstrate government engagement in bolstering the global economy as the basis for a nation's progress and advancement. Numerous intricate issues relating to the regulations regulating Limited Liability Companies are covered under Indonesia's limited liability company law (UUPT) Number 1 of 1995. These rules are more complex than the previous Commercial Law Code (KUHD), a remnant of Dutch colonial history. The Law on Limited Liability Companies (UUPT) does not appear to have kept pace with how the economy has changed. The emergence of innovative legal structures intended to ensure compliance with the law indicates the UUPT's (the Limited Liability Companies Law) incapacity to adapt to the dynamic character of the business environment. Legislation implemented by the government in 2000 about the registration of limited liability companies through the use of the legal entity administration system (SISMINBAKUM). This law outlines the Legal Entity Administration System's implementation at the Directorate General of General Legal Administration by the Republic of Indonesia's Ministry of Justice and Human Rights. It takes the form of a Decree issued by the Republic of Indonesia's Minister of Justice and Human Rights, M-01. HT. 01.01 TH 2000. SISMINBAKUM represents a significant advancement in the legal field, serving as a reaction to the progress of technology and the evolution of the commercial sector. SISMINBAKUM possesses the qualities of efficiency and effectiveness in legalizing Limited Liability Companies. Therefore, it is anticipated to serve as a link between the dynamic business environment, where the crucial role of a notary remains indispensable in the new system. SISMINBAKUM was initially introduced as a replacement for the inefficient manual system used to ratify the establishment of limited liability companies. However, for various reasons, the manual system is still being used alongside SISMINBAKUM, which contradicts the previous regulations that deemed the manual system invalid (Christian, 2020). The implementation of SISMINBAKUM does not pose any issues or challenges in its adoption by the community, particularly notaries, such as a lack of understanding about SISMINBAKUM and using computer and internet operations as supporting tools. This is because SISMINBAKUM is a novel system that utilizes technology. It is common for a notary to delegate their authority to ratify the establishment of a limited liability company through SISMINBAKUM to other individuals or parties. However, this authority ultimately belongs to the notary as

stipulated by laws and regulations. Therefore, it can sometimes be quite simple to make errors or unintentionally overlook elements when verifying the legitimacy of documents prepared by notaries, such as the Deed of Establishment for a limited liability company, which falls under their oversight.

This study aims to understand notaries' involvement in the manual and electronic validation process for creating liability companies in the Legal Entity Administration System (SISMINBAKUM). Furthermore, this research aims to highlight the difficulties that notaries encounter while carrying out their responsibilities in this capacity. Suggests remedies.

### **Research Methods**

This research used approaches to examine the field of notary publics, specifically regarding the creation of limited liability corporations and ethical guidelines. The objective was to guarantee adherence to rules and laws when establishing an LLC by assessing the significance of services and the practicability of meeting these obligations.

This study extensively investigates the rules and regulations that govern these procedures using an approach. Additionally, it explores the notaries' role in confirming the process's authenticity and compliance with laws.

The research examines the principles of ethics and the code of ethics that govern notaries to understand their position. When carrying out their duties as a notary, ethical guidelines are followed in drafting deeds for companies. Scholars use methods to evaluate how well notaries comply with relevant ethical regulations while fulfilling their responsibilities.

After examining the existing literature, we successfully identified the data sources used in this investigation. This method allows researchers to explore viewpoints and gather opinions to enhance their study. Furthermore, it aims to provide an understanding of the framework surrounding the utilization of a notary in creating a power of attorney.

Understanding the interrelated historical elements and professional ethics of notaries about preparing deeds and establishing limited liability companies requires a strong understanding of previous scientific investigations. Regarding the ethical guidelines governing the notary profession and the role of notaries in forming limited liability companies, preliminary research observations can take the form of an evaluation and analysis of various papers, documents, and previous research.

Once the data is obtained, it must be analyzed. The methodology consists of three stages: data reduction, data presentation, and formulation of conclusions. Data reduction requires carefully organizing and categorizing raw data and identifying patterns, key findings, and relationships between variables. Sorting the findings related to the function of notaries and sections related to the code of ethics constitutes data reduction in the context of this investigation.

The methodical arrangement and dissemination of relevant information is what data presentation implies. This could potentially involve the utilization of descriptive

narratives in order to elucidate the results of the study. Consumers and other researchers should be able to comprehend prior study observations easily due to the data format.

Finally, to conclude, it is necessary to perform additional analysis of the results and present the facts. An essential factor is ensuring the acquired outcomes align with the study inquiries and goals. To conclude this research, it is essential to assess the degree to which the PT corresponds to the ethical values of the Notary profession and the amount that the Notary contributes to its advancement.

## **Results and Discussion**

### **The Role of Notaries in the Process of Ratifying the Establishment of Limited Liability Companies**

Limited liability corporations in Indonesia are subject to the regulations outlined in the Limited Liability Corporations Law Number 1 of 1995 (UUPT). The Commercial Code (KUHD) responsible for governing these enterprises was found unsuitable due to the evolving landscape of the country. Based on the research conducted by (Hetharie, Tjoanda, and Uktolseja, 2022), the UUPT theory offers a framework in Indonesia to manage the operations of liability companies effectively. The transition from KUHD to UUPT is a response to the evolving landscape aiming to adapt to advancements and fulfill obligations.

The regulations concerning liability enterprises mainly focus on classifying these organizations, protecting their funds and assets, keeping records, and performing procedures. In 1996, the government implemented Ministerial Decree No. M01 PR.08.01 to address the deficiencies identified in the laws and regulations. This judgment offers a succinct and clear elucidation of the procedures involved in registering a deed of incorporation for a limited liability company. This ruling emphasizes the notion of legal administration about the practical responsibilities and procedural elements inherent in the judicial system (Zakariya, Sari, Prabandari, & Budiarmaja, 2017).

The submission process and required contents of the Deed of Establishment of a Limited Liability Company, as mandated by the Decree of the Minister of Law and Human Rights Number M.01-PR.08.01 of 1996, are regulated by legislative provisions. This is applicable because this legislation grants permission to the letter of application for the specification of the Deed of Establishment of a Limited Liability Company, which must be signed and filed directly by the company's founders. The notary overseeing the formation of the establishment document must acknowledge the founders. This statement pertains to the notarial philosophy, which considers the notary as a public authority with the obligation and accountability to authenticate legal documents, such as the deed of establishing a PT. A notary present during the firm founders' attendance guarantees that the creation procedure adheres to the relevant legal regulations.

The deed of creation must be accompanied by further supporting attachments as specified in the appendix of the Minister of Law and Human Rights decision to comply

with the requirements outlined in the Law. The proclamation above by the Minister of Law and Human Rights underscores the significance of notaries in the procedure of seeking the decision of the Deed of Establishment. According to Article 1 of the Decree of the Minister of Law and Human Rights No. M. 01-PR.08.01 of 1996, the founders or directors of a company can also decide on establishing a Limited Liability Company in the manual system.

### **Procedures for Application for Ratification of the Deed of Establishment of a Limited Liability Company and Approval of Amendments to the Articles of Association of a Limited Liability Company**

According to Article 2 paragraph (2) of the decree of the minister of justice and human rights of the Republic of Indonesia number M.01-HT.01.01 of 2001, “which deals with the procedures for submitting applications and ratification of the deed of establishment and approval of the deed of amendment to the articles of association of limited liability companies, notaries are required to apply to the Minister of Justice and Human Rights of the Republic of Indonesia in order to obtain the ratification. This is the initial step or essential aspect of the role of notaries in the Legal Entity Administration System (SISMINBAKUM).

In SISMINBAKUM, there are facilities that notaries can use in the process of ratifying the establishment of limited liability companies, which are as follows:

1. Check Name: This option verifies the registration status of the proposed firm's name or any changes to the company name, ensuring another firm has not previously registered it. Unregistered names are not automatically available for usage; they must undergo verification by SISMINBAKUM Staff. To ensure that the ordered Company Name may be utilized, it is necessary to do a Name Message beforehand.
2. PNBP (Non-Tax et al.) payment is required upon receipt of the requested Company Name and prior to submission (Name Submission). Upon completing the PNBP payment, you must provide your company name by completing the Pnbp proof of payment form. Booking with the company name is contingent upon payment of a name message fee.
3. Fian, the pra or fan prerequisite, refers to the initial step of completing the supporting documents the company requires to be founded. The requirements vary according to the kind and standing of the organization. The essential requirements for the PR file consist of a bank-issued proof of capital deposit, a Pnbp payment receipt, an app, and other needs according to the kind of company.
4. Fian (notary et al. form), commonly called fian, is the stage of filling in the company's primary data and articles 1 to 4 for fian one and fian two and articles 5 to 28 for fian 3. Fian consists of three models, namely:
  - a. Model i is a 1, which is for company establishment
  - b. Model ii is a 2, i.e., for amendments, consisting of two ordinary changes, two changes in company name changes, and two limited liability company law adjustment years. 1995 (out), and fian two adjustments of up as well as change of company name

- c. Model III is a 3, namely for reporting fan three, reporting changes in the articles of association, fan three notification of changes in the company's management, and fan three company dissolutions. This final process is subject to an acceptable fee.
5. Monitoring: This menu provides a sequential view of the ongoing process of ratifying the company deed for fan 1, fan 2, and fan 3. The notary oversees the company deed ratification process, starting with the name check date and time and continuing until the minister's no objection is obtained and the physical document examination procedure, which is filed according to the requirements, is completed.
6. Billing: On this page, the number of bills for transactions that have been made can be seen, and the billing and pnbp payments that have been paid have been checked by the Sisminbakum administration.
7. Klu or business field group contains the aims and objectives of the business fields in indonesia and their business activities. Klu is constantly updated by the business fields that are continuously growing in indonesia.
8. Info contains information about the legal entity application system (sisminbakum).
9. Sequence number, on this page, can be searched for company sequence number stored in the database. Sequence numbers are required when making transactions on fan two and fan 3. The notary concerned is asked to enter the company name and decision letter number to find the data. E-mail, as a notary registered in Sisminbakum, automatically gets 1 () e-mail address and mailbox. This e-mail helps obtain information on transaction activities carried out.

Applying for the deed of establishment and approval of amendments to the articles of association of a limited liability company through SISMINBAKUM starts by accessing the Internet. Each notary must register themselves with the provider, which in this case is a limited liability company called "PT. Sarana Rekatana Dinamika." Registration is done for free, and the notary needs to bring personal equipment such as stamps, certificates of graduation, marks of notary education, and a curriculum vitae. When subscribing to the aforementioned online service, notaries must provide their taxpayer identity number as an attachment to access SISMINBAKUM. Including these elements is necessary to ensure the comprehensive representation of notary data on the homepage of the SISMINBAKUM website, which encompasses information about the respective notaries. Once all the requirements are met, the notary has a password and user ID to enter or access the SISMINBAKUM portal. According to the author's observations and interviews, it is understood that workers who reply can also access it on behalf of the relevant notary.

#### **Application and effectiveness of manual ratification of Limited Liability Company establishment with the enactment of the Legal Entity Administration System (SISMINBAKUM)**

Newly appointed notaries can access SISMINBAKUM after their appointment or inauguration once they complete the SISMINBAKUM training stage conducted by the Ministry of Law and Human Rights of the Republic of Indonesia. This training is mandatory for submitting a Decree of appointment as a notary, making it an essential

component of the notary appointment process (Putri et al., 2022). Upon receiving a password and letter of appointment as a notary, the individual can promptly access SISMINBAKUM. What is the status of ancient notaries appointed before the establishment of SISMINBAKUM but have not yet registered with SISMINBAKUM? Can they instantly register a PT, or, in other words, can they accept customers who wish to register a PT? Alternatively, what about notaries in regions that lack internet connectivity? In order to register a Limited Liability Company (legal entity), the old notary must have registered himself through SISMINBAKUM access. Failure to do so violates the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia, Number M04. HT.01.01.2001 pertains to amendments to the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number: M-01. HT.01.01.2001 regarding implementing the Legal Entity Administration System at the Directorate General of General Legal Administration, Ministry of Justice and Human Rights of the Republic of Indonesia. The manual submission of the application for ratification of the deed of establishment of a limited liability company, application for approval of the deed of amendment of the articles of association of a limited liability company, and submission of a report on the deed of amendment of the deed of association of a limited liability company concluded on June 30, 2002. Starting from July 1, 2002, the Directorate General of General Legal Administration, Ministry of Justice and Human Rights of the Republic of Indonesia, no longer accepts manually submitted petitions to settle legal entities (Safitri, 2019). In order to prevent the quick registration of a Limited Liability Company by the relevant notary, a message will be issued to notaries who have already manually filed their registration, instructing them to register for SISMINBAKUM access promptly. However, if a notary is aware of the existence of a new system called SISMINBAKUM for registering a Limited Liability Company but chooses not to register and instead continues to access the system manually, despite having internet access in their work area, would this not be a violation of laws and regulations? In this scenario, the laws and regulations do not currently address these requirements, meaning no specific rules control the imposition of punishments in such cases. Instead, the compliance of notaries and adherence to the Code of Ethics for notary professionals are relied upon. If a notary's working area does not have internet access or cannot be reached by telephone, manual registration of a legal entity must be carried out. This is by Article 4 of the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number: M-05. HT.01.01.2001 governs the implementation of the legal entity administration system at the directorate general of general legal administration, ministry of Justice and Human Rights of the Republic of Indonesia. According to this article, the notary can request manual processing of a legal entity by providing a certificate from the local Telecommunications Office (PT et al.) stating that the notary's working area does not have telephone or internet facilities (Prayitno, 2019).

This research contributes by detailing the dynamics of the role of notaries in the ratification process of establishing a Limited Liability Company (PT), both manually

and through the legal entity administration system (SISMINBAKUM). The novelty lies in the in-depth analysis of the changing role of notaries with the adoption of SISMINBAKUM, focusing on the ethical aspects and code of conduct of the notary profession. In addition, this research reveals the obstacles and solutions notaries face in implementing their role, providing valuable insights regarding practical and normative challenges in the digital era. Thus, this research not only explains the role of notaries in the context of regulatory changes but also explores the impact of technology on the implementation of notary duties in the face of business dynamics and the development of the legal administration system”.

### **Conclusion**

Based on the above research results, the Minister of Law and Human Rights Decree of the Republic of Indonesia No. M.01-PR.08.01/1996, the founder or notary can ratify the establishment of a PT. However, electronic ratification can only be done by a notary. Only the notary has the ID and password to apply for deed ratification and approval in this system. Government Decree No. M-05 HT.01.01/2002 regarding the Legal Entity Administration System applies two systems at once, manual and new. However, Article 4 of Decree No. M-05 HT.01.01/2002 shows that the manual system is still effective in ratifying the establishment of a PT under certain conditions.



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