

INVESTMENT IN DIGITAL AGE: THE FUTURE ROLE OF NOTARY IN COMPANY ESTABLISHMENT

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ABSTRACT

The introduction of the Limited Liability Company (LLC) with a single shareholder in Law No. 11 of 2020 on Job Creation omits Notary involvement in LLC establishment. Previously, Law No. 40 of 2007 on Limited Liability Company regulated that anyone who wants to form an LLC needs a Notarial Deed. One of the reasons for this omission is the advancement of technology, where electronic applications replace many investment-related professions. This paper uses the normative juridical method to assess the future role of the Notary in the investment sector, particularly in LLC incorporation. This paper finds that the Notary may see its role reduced in the future. However, it will be difficult for them to be completely uninvolved as long as the concept of LLC in Indonesia is basically a private partnership as regulated by Civil Code, where there should be at least 2 (two) founders to form a company.

Keywords: Notary, Limited Liability Company, Investment.

A. Introduction

Notary professional faces a dilemma regarding their role in the future. With the ease of conducting any work with technology, there is a notion that any legal profession, including Notary, has to adapt or reform their business model. Lauri (2018) believed that with the rise of 'Artificial-Intelligence' (AI), technology can replace nearly every legal profession.¹ It is believed that within a few years, AI

will be taking over or at least affecting a significant amount of work now done by legal practitioners. This phenomenon poses a threat to the future role of legal practitioners.²

The concern that technology could be taking over legal practitioners' jobs started back in 1987.³ This means back then, there was already a common belief among experts that in the future,

1 Lauri Donahue, A Primer on Using Artificial Intelligence in the Legal Profession (Massachusetts: Journal of Law and Technology Digest, 2018), p. 11.

2 Ibid.

3 Teng Hu and Huafeng Lu, Study on the influence of Artificial Intelligence on Legal Profession In Proceedings of the 5th International Conference on Economics, Management, Law and Education 2019 (Paris: Atlantis Press, 2020) pp. 964-968.

technology could play a crucial role in the legal field. Even though the technology at that time was not as advanced as today.

Sobowale (2016) suggested that technology plays a key role in transforming legal professions.⁴ He believes that technology can help legal professionals to perform their work.⁵ For example, to access laws and regulations for legal research, we can simply access the internet to search for the desired law that we are looking for. Back then, we must find the laws manually in certain government offices, bookstores, or libraries. Technology can also be really helpful in supporting every legal professional to manage their work precisely. Currently, the great majority of legal documents are prepared, signed, filed, stored, and delivered to relevant parties electronically.⁶ This proves that technology is an effective tool to support the legal profession as well.

The rapid development of technology allows everyone to use it on almost everything. Zhao and Zhang (2021)

revealed that for trade and investment purposes use advanced technology universally.⁷ For example, we find large numbers of online trading applications that connect the global audience with the stock market.⁸ Novice investors can use these applications with ease. What is apparent is that the investors are no longer needed to go to the investment manager or go to bank-run brokerage firms to trade their money.⁹

As online investment is having a surge, Norrestad (2022) announced that there were around 9.15 United States Dollars (USD) billion market sizes in the global online trading market.¹⁰ He forecasted that it will rise at the rate of 5.1% per year, and he also expected it to increase up to 12.16 billion USD in 2028.¹¹

4 Julie Sobowale, "How Artificial Intelligence Is Transforming the Legal Profession", ABA Journal, <https://www.abajournal.com/magazine/article/how-artificial-intelligence-is-transforming-the-legal-profession> (accessed 5 May 2022).

5 Ibid.

6 Sandra Day O'Connor, "The Role of Technology in the Legal Profession". Law Prac. Mgmt. 20 (1994): 24.

7 Dawei Zhao and Wenting Zhang, Robo-advisor and Expert Advisor: Artificial Financial Intelligence in China (Singapore: Springer, 2021) p. 117-127.

8 Shama Hyder, "How A New Generation of Investors is Changing Online Trading," Forbes, <https://www.forbes.com/sites/shamahyder/2021/03/05/how-a-new-generation-of-investors-is-changing-online-trading/?sh=5567b6061652> (accessed 15 May 2022).

9 Ibid.

10 Fanny Norrestad, "Global Online Trading Market in 2020, with Forecasts from 2021 to 2028," Statista <https://www.statista.com/statistics/1260026/forecast-global-online-trading-platform-market/> (accessed 12 May 2022)

11 Ibid.



(Source: Statista, *Global online trading market in 2020, with forecasts from 2021 to 2028 in billion U.S. dollars*, <https://www.statista.com/statistics/1260026/forecast-global-online-trading-platform-market/> accessed 12 May 2022)

This staggering number urges trading services to engage technology to provide better services. That means the online applications will gradually replace the traditional broker. In the long run, another investment-related profession may also be affected. Since Notary is one of the professions that play a fundamental role in company establishment, its involvement in that matter can and may be replaced.

In Indonesia, Notary holds a very decisive role in company establishment, especially in a Limited Liability Company (LLC).¹² The Notary is also involved in the establishment of a Private Partnership, a

Firm Partnership, a Limited Partnership,¹³ and a Cooperative.¹⁴ This highlights the importance of the Notary role in starting multiple business entities in Indonesia. However, with the introduction of LLC with a single shareholder as regulated on Law No. 11 of 2020 on Job Creation (hereinafter called Law on Job Creation), their role is now partially diminished. It is now possible for everyone to start an LLC without the involvement of the Notary.¹⁵ This paper examines this recent event that shifts the Notary's role in investment, particularly in company establishment.

B. Research Method

This paper uses the normative juridical method, which focuses on secondary data.¹⁶ The primary data sources in this paper are regulations and other scientific research. The type of research in this paper is qualitative research with a descriptive approach.¹⁷ The use of library research in this article is based on the fact that the Dutch Civil Code inherited the Notary function in the Indonesian legal system, and in its development is

- 12 Fauzan Salim, "Peran Notaris Dalam Pengesahan Pendirian Perseroan Terbatas Melalui Sistem Administrasi Badan Hukum (SABH)." *Recital Review* 2, No. 2 (2020), p. 140-156.
- 13 Krisnadi Nasution and Alvin Kurniawan, "Pendaftaran Commanditaire Vennotschap (CV) Setelah Terbitnya Permenkumham No 17 Tahun 2018." *JHP17: Jurnal Hasil Penelitian* 4, No. 01 (2019), p. 13.
- 14 I Gede Angga Permana and Lalu Wira Priahartana. "Peranan Notaris Dalam Pendirian Koperasi Sebagai Badan Hukum," *Jurnal Education and Development* 9, No. 3 (2021), p. 586-590.
- 15 Biro Humas, Hukum dan Kerjasama, "UU Cipta Kerja Mungkinkan PT Didirikan Tanpa Akta Notaris, Menkumham: Ini Komitmen Pemerintah Wujudkan Kemudahan Berusaha," <https://www.kemerkumham.go.id/publikasi/siaran-pers/uu-cipta-kerja-mungkinkan-pt-didirikan-tanpa-akta-notaris-menkumham-ini-komitmen-pemerintah-wujudkan-kemudahan-berusaha> (accessed 12 May 2022).
- 16 Sri Mamudji et al., *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), p. 6.
- 17 *Ibid*, p. 4.

regulated by various legal instruments. Therefore, to understand the changing role of the Notary in investment, this paper uses regulations as primary legal materials. This paper also uses books, journals, news articles, and other official statements as secondary legal materials.

C. Discussion

1. The Role of the Notary

The Notary is one of the oldest legal professions.¹⁸ Junyu (2020) revealed that Notary can be classified as a legal expert (jurist).¹⁹ Although Notary is closely related to the civil law system, there are notaries in common law system countries as well. In the United States (U.S.), for example, advocates can be appointed by the Secretary of State as the Notary public without any special education required.²⁰ The authority of the Notary public in the U.S. is nothing more than the creation of a limited certificate. In New York, Notary duty is only limited to legalization or determination of the certainty of the date and the signature of the person who affixed it as regulated under New York Executive Law on Notary Public License Law (May 2020).²¹

Article 135 New York Executive Law on Notary Public License Law 2020

Every Notary public duly qualified is hereby authorized and empowered within and throughout the State to administer oaths and affirmations, to take affidavits and depositions, to receive and certify acknowledgments or proof of deeds, mortgages, and powers of attorney and other instruments in writing; to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require, and, for use in another jurisdiction, to exercise such other powers and duties as by the laws of nations and according to commercial usage, or by the laws of any other government or country may be exercised and performed by notaries public, provided that when exercising such powers he shall set forth the name of such other jurisdiction.

A Notary public who is an attorney at law regularly admitted to practice in this State may, in his discretion, administer an oath or affirmation to or take the affidavit or acknowledgment of his client in respect of any matter, claim, action or proceeding.

For any misconduct by a Notary public in the performance of any of his powers such Notary public shall be liable to the parties injured for all damages sustained by them. A Notary public shall not, directly or indirectly, demand or receive for the protest for the non-payment of any note or for the non-acceptance or non-payment of any bill of exchange, check or draft and giving the requisite notices and certificates of such protest, including his notarial seal, if affixed thereto, any greater fee or reward than 75 cents for such protest, and 10 cents for each notice, not exceeding five, on any bill or note. Every Notary public having a seal shall, except as otherwise provided, and when requested, affix his seal to such protest free of expense.

The changing role of the Notary is nothing new. In the ancient Roman era, Notary evolved from transcribing senate speeches (Cato de Oudere) into the private writers for the Caesars.²² Subsequently, the Notary started to conduct various jobs in the ruler's circle.²³ However, the documents they produced were not classified as official documents

18 Simeon Gelevski and Darko Golić, "Notary," *Pravo-Teorija I Praksa* 25.3-4 (2008), p. 20-30.

19 Ma Junyu, "Notary According to Civil Law and Common Law Closely Related to International Transactions," *Jurnal Akta* Vol. 7 No.3 (2020), p. 285-291.

20 Ibid.

21 Ibid.

22 Anand Ghansham, *Karakteristik Jabatan Notaris di Indonesia*. (Jakarta: Prenada Media, 2018), p. 5.

23 Ibid.

or authentic deeds.²⁴ Anand (2018) claimed that the concept of the Notary was slightly different in Paris, France. The monarch appointed the Notary and was classified as a public official (*ambtenaar*).²⁵ This very concept was adopted by the Netherlands when France occupied them. Hence, Indonesia started to introduce it during the Netherlands' colonialism spell in Indonesia.

The Notary was introduced in Indonesia as a double job for the Secretary of Shipping (*College van Schepenen*) in 1624, and in 1625, it became an independent profession that was separated from the secretary role.²⁶ The evolution shows that Notary is a profession which familiar with various areas of work and it keeps evolving until today.

In Indonesia, the Notary holds a strategic role thanks to its title as 'general official' (*pejabat umum*).²⁷ The title is derived from the Dutch language 'Openbare Ambteneran' in Article 1868 Civil Code (*Burgerlijk Wetboek*).²⁸ This 'Openbare Ambteneran' title is also mentioned in article 1 Law No. 30 of 2004

on Notary Profession which was partially amended by Law No. 2 of 2014 (hereinafter called Law on Notary Profession), which says a Notary is a general officer who is responsible for creating authentic deed and other authority. This means that the term 'general official' in this case is limited to the creation of authentic deeds and other responsibilities inborn with this specific law only.²⁹ From the examples above, we can assume that Notary in Indonesia (Civil Law) and U.S. (Common Law) hold a similar fundamental principle role, that is creating authentic documents.

Interestingly, there is a recent development where the Notary is responsible for more than just a civil issue. One of the examples is its mandatory task to report a suspicious transaction concerning money laundering.³⁰ According to Article 41 Law No. 8 of 2010 on Prevention and Eradication of Money Laundering jo. Article 3 Law No. 43 of 2015 on Reporting Party on Prevention and Eradication of Money Laundering, Notary is one of the certain professionals as reporting party which should report any indication of money laundering

24 Ibid.

25 Ibid, p. 6.

26 Ibid.

27 Syafran Sofyan, "Notaris Openbare Ambttenaren" Syafran Sofyan, <https://www.jimlyschool.com/baca/9/notaris-openbare-ambttenaren-syafran-sofyan> (accessed 9 May 2022).

28 Syahrul Borman, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris." *Jurnal Hukum dan Kenotariatan* 3.1 (2019), p. 74-83.

29 Edwar Edwar, Faisal A. Rani, and Dahlan Ali. "Kedudukan Notaris sebagai Pejabat Umum Ditinjau dari Konsep Equality Before the Law," *Jurnal Hukum & Pembangunan* 49, No. 1 (2019), p. 180-201.

30 Nurananda Budi Muliani, "Tanggung Jawab Notaris Sebagai Pelapor Transaksi Keuangan Mencurigakan Dalam Aplikasi Gathering Reports & Information Processing System (GRIPS)," *Indonesian Notary Vol. 1. No. 03* (2019), p. 13.

by its clients to Indonesian Financial Intelligence Unit (PPATK). The Notary must provide any data and information required by PPATK if necessary to help their financial analysis or investigation.

The involvement of the Notary as reporting party in money laundering indicates that Notary has more responsibilities than just what is regulated under Civil Code and Law No. 30 of 2004 on the Notary Profession. Despite the conflicting issue that Notary is a general officer who should only focus on private and administrative matters, there is no denying that Notary has another responsibility by the law, which it has to comply too. This is another example of how the Notary role evolves again.

The emergence of the digital era also gives the challenge to the Notary. Sesung & Mayasari (2022) argues that the Notary should have skills, knowledge, and attitude to understand digital technology.³¹ They urge the Notary to master technology not only to help their work but also to maintain their professional ethics as well. The Notary is also facing a challenge with the yearning for e-Notary or Cyber Notary, in which such practice is already available in several developed countries

such as Italy and Belgium.³² The rapid development of technology causes this transformation, and it is the case where the Notary business model is affected.

2. Notary in Investment

In Indonesia, Notary also plays a crucial role in the investment sector. Nearly every commercial enterprise/business entity in the form of Partnerships is established through notarial deeds such as Private Partnership, Firm Partnership, Limited Partnership,³³ Cooperative,³⁴ and LLC. A Notarial deed is needed because these enterprises have similarities in that they must be established with at least 2 (two) people under a certain agreement.

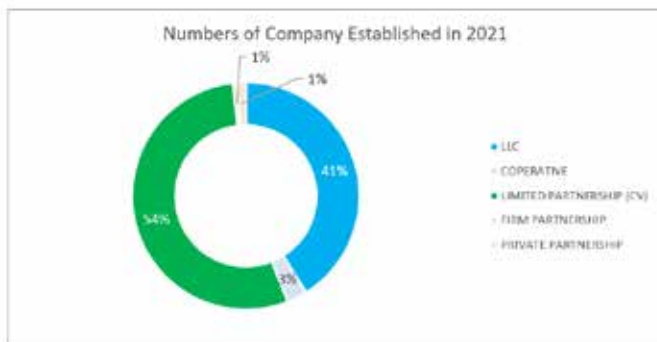
In terms of the Investment Law regime in Indonesia under Law No. 25 of 2007 on Investment, foreign investment can only be established under the LLC form. This made LLC the second most popular enterprise form in Indonesia in 2021. As there were 93.454 LLCs established or took 41% during that year, as suggested below.

31 Rusdianto Sesung and Citra Mayasari, "Ethics of the Notary Profession and Challenges in the Digital Era." *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 5.1 (2022), p. 4176-4184.

32 Wanda Ayu, "E-Notary dalam Era Industri 4.0 dan Sosial 5.0: Kebutuhan atau Ancaman," Faculty of Law Universitas Indonesia, <https://www.ui.ac.id/fhui-gelar-seminar-melihat-peluang-dan-ancaman-notaris-siber-di-era-digital/> accessed 14 May 2022.

33 Ministerial Law and Human Rights Regulation No. 17 of 2018 on Registration of Limited Partnership, Firm Partnership, and Partnership.

34 Ministerial Law and Human Rights Regulation No. 14 of 2019 on Cooperative Incorporation.



(Source: Directorate General for Legal Administrative Affairs, The Ministry of Law and Human Rights, data as of 12 May 2022)

Historically, LLC in Indonesia is based on Private Partnership (Van Maatschap). This can be seen in its establishment, where both need to be agreed upon by at least 2 (two) people as regulated under Civil Code. Article 1653 Civil Code says that LLC is another form of partnership with legal entity characteristics (Van Zedelijke Ligchamen). This characteristic can be concluded from the original text of Article 1653 Civil Code:

Article 1653 Indonesian Civil Code

Other than the pure private partnership, the association of people as the legal entity is also acknowledged by the law.

This clause means that the Civil Code sees LLC as another acceptable form of Private Partnership as it is basically an association of people established by 2 (two) people or more in principle. Although LLC and Private Partnerships have different characteristics, especially in their responsibility and liability, their basic principles are the same according

to Civil Code. LLC then was regulated more comprehensively under Law No. 40 of 2007 on Limited Liability Company (hereinafter called Law on LLC as amended by Law on Job Creation). Article 1 Section (1) defines LLC as an association of capital, established by agreement, and conducting business with authorized capital in the form of shares.

Article 1 Section (1) Law on LLC

Limited Liability Company, hereinafter referred to as the Company, means a legal entity constitutes the association of capital, established based on an agreement, to conduct business activities with the Company's Authorized Capital divided into shares or an individual legal entity that complies with Small and Micro Enterprise criteria and which satisfies the requirements as stipulated in this Law, and its implementing regulations.

From the phrase "...established based on an agreement..." above, which can be defined as establishing an LLC, the founders have to create an agreement before submitting it to the Ministry of Law and Human Rights online application.³⁵ Article 1320 Civil Code regulates that this agreement must also comply with the basic principle of civil law agreement.

Article 1320 Indonesia Civil Code

In order to be valid, an agreement must satisfy the following four conditions:

1. there must be the consent of the individuals who are bound thereby;
2. there must be a capacity to conclude an agreement;
3. there must be a specific subject;
4. there must be an admissible cause.

Furthermore, Article 7 Section (1) of Law on LLC, as amended by Law on Job Creation, states that such agreement referring to Article 1 must be formed in Notarial Deed.

35 Agus Sardjono, et al., Pengantar Hukum Dagang, (Jakarta: Raja Grafindo Persada, 2014), p. 4.

Article 7 Section (1) Law on LLC as amended Law on Job Creation

The Company shall be established by 2 (two) or more persons based on a notarial deed drawn up in the Indonesian language.

This article highlights the mandatory of forming it with the Notarial Deed. In short, the agreement to form an LLC is specified and distinctive from the common agreement recognized by Article 1320 Civil Code. Article 7 Section (4) Law on LLC as amended by Law on Job Creation also mentions that LLC legal entity status is obtained after it is registered to the Minister of Law and Human Rights.

Article 7 Section (4) Law on LLC as amended by Law on Job Creation

The Company obtains legal entity status after being registered to the Minister and acquires proof of registration.

This is another significant difference between a Private Partnership and an LLC. A private partnership is legally formed after the parties agree to create a private partnership as per Article 1624 Civil Code. While we understand that LLC is a Private Partnership, it bears legal entity status after being registered with the Minister of Law and Human Rights. This means that legally, as long as it is not registered in the Ministry, it is not an LLC.

Notary plays a considerable part in LLC establishment as its deed is the mandatory requirement before it can be

registered and obtains its legal entity status. As previously mentioned, LLC is the only acceptable enterprise form for domestic and foreign investors to invest in Indonesia according to Law No. 25 of 2007 on Investment.

Article 5 Law No. 25 of 2007 on Investment

- (1) Domestic capital investment may be conducted in the form of an enterprise, which is in the form of a legal entity, non-legalized entity, or sole proprietorship, in accordance with the provisions of laws and regulations.
- (2) Foreign capital investment shall be in the form of a limited liability company under the laws of the Republic of Indonesia and domiciled in the territory of the Republic of Indonesia unless stipulated otherwise by prevailing laws and regulations.
- (3) Domestic and foreign investors which are undertaking capital investment in the form of a limited liability company undertake this by:
 - a. subscribing to shares at the time of the establishment of the limited liability company;
 - b. purchasing shares; and
 - c. other ways under prevailing laws and regulations.

LLC as a prominent form of investment is not just a phenomenon in the Indonesian economy. As an association of capital, LLC is known worldwide for its ease of obtaining funds through the stock market.³⁶ In conclusion, LLC is clearly above other forms of partnership in terms of gaining funds.³⁷ Hence, we can conclude that Notary has a significant role in investment. Particularly as an entrance for the investors in establishing the LLC before acquiring other permits.

3. LLC with Single Shareholder

As a universally known type of enterprise, LLC transforms to adjust itself

36 Fahrurrozi Muhammad, "Enforcing Omnibus Law: Formalizing Micro, Small, And Medium Enterprises In Indonesia Using Behavioural Science." Indonesian Law Journal 14.2 (2021), p. 95-118.

37 Agus Sardjono, Op. Cit., p. 73.

to the dynamic business environment. One of the LLC's most important and globally acknowledged transformations is the single shareholder concept. Buxbaum (1990) believed that a single person is sufficient to incorporate a company, and it also suffices for every company only to have a single shareholder.³⁸ Single shareholder for LLC is relatively a new concept. It was first introduced in European Union (E.U.) through the 1989 Company Law Directive (89/667/EEC) on Single-Member Private Limited Liability Companies.³⁹ This directive was aimed to encourage SMEs and entrepreneurship in E.U. countries. The single shareholder model then was adopted by E.U. Countries, the United Kingdom, Malaysia, and Singapore.⁴⁰ Just recently, Indonesia also followed the trend by adopting the single shareholder concept into its corporate legal system.

Since Law on Job Creation came into force, LLC has a new definition to accommodate the single shareholder concept. Other than it must be established with an agreement, it opens up the opportunity for a single person to establish a company.⁴¹ What is more

interesting is that the LLC can be formed through a statement letter from the founder, which gives an alternative to a Notarial deed for its establishment. It is regulated under Article 153A Section (1) and Section (2) Law on Job Creation.

Article 153A

- (1) Limited liability company that complies with Micro and Small Enterprise criteria can be incorporated by 1 (one) person.
- (2) The establishment of a Limited liability company for Micro and Small Enterprise as stated in section (1) conducted by establishment statement letter created in the Indonesian language.

Article 153A section (2) is revolutionary because this means that Notarial Deed is no longer needed as previously regulated in Article 7 Section (1) Law on LLC before the amendment. This article marks a progressive measure in the Indonesian legal system in unprecedented Covid-19 times.⁴² This was also the first legal framework of what is known today as an LLC with a single shareholder in Indonesia. To optimize its implementation, the government responded by enacting Government Regulation No. 8 of 2021 on Authorized Capital, Establishment Registration, Amendment, and Dissolution of Limited Liability Company which Satisfies Micro

38 Richard M. Buxbaum, "Commercial Law-Single Shareholder Company." *The American Journal of Comparative Law* (1990), p. 251-269.

39 Muhammad Faiz Aziz and Nunuk Febrianingsih, "Mewujudkan Perseroan Terbatas (PT) Perseorangan Bagi Usaha Mikro Kecil (UMK) Melalui Rancangan Undang-Undang Tentang Cipta Kerja," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9.1 (2020), p. 91.

40 Ibid.

41 Shinta Pangesti, "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10.1 (2021), p. 117.

42 Ibid.

and Small Enterprise Criteria. In addition, The Ministry of Law and Human Rights also enacted Ministerial Law No. 21 of 2021 on Requirements and Procedure of Establishment Registration, Amendment, and Dissolution of Limited Liability Company. These regulations strengthen the Law on Job Creation clause that the Notarial Deed is not needed for the LLC with a single shareholder.

There are mixed receptions to this concept. Some of the critics suggest that the absence of the notarial deed may cause uncertainty for any parties involved.⁴³ Without Notary involvement, the authenticity of the information submitted will be questionable.⁴⁴ Some others question the standing position between a notarial deed and a statement letter.⁴⁵ However, there are also positive reactions too which suggest that this concept is widely known in developed countries.⁴⁶ Another reaction believes that

this will boost the Indonesian economy in general, particularly for micro and small enterprises which suffer a lot during the pandemic.⁴⁷

Despite the arguments, LLC with a single shareholder received plaudit and was waited by many.⁴⁸ The number of LLCs shows it was established after its launching which reached 9.112 LLCs established as of 7 April 2022.⁴⁹ Although it is still too early to judge, the numbers are quite promising. One of the determinant factors of these numbers is the absence of a notarial deed in its establishment. According to the world bank, Notary service in starting a business was deemed costly, complex, and time-consuming.⁵⁰ It is also considered a strong reason why the lawmakers agreed to reduce the Notary role in LLC establishment or to provide an alternative to its service.⁵¹ Previously, the government tried to force the Notary to reduce their fee for

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- 43 Cahyani Aisyah, "Implications of The Absence of Notary Act on The Establishment, Amendment, And Discontinuation of Single Owner Corporation," *Majalah Hukum Nasional* 51 (1) (2021), p. 41-58.
- 44 Siti Fauziah Dian Novita Sari, "Peran Notaris Dalam Proses Pembuatan Akta Pendirian Perseroan Terbatas." *Lex Renaissance* 3, no. 2 (2018), p. 407-422.
- 45 Cahyani Aisyah, Op. Cit.
- 46 Muhammad Faiz Aziz and Nunuk Febriananingsih, Op. Cit.
- 47 Ibid.
- 48 Public Relation Division, "Kemenkumham Akhirnya Launching Perseroan Perorangan: Badan Hukum Khas Indonesia" Directorate General for Legal Administrative Affairs, The Ministry of Law and Human Rights, <https://portal.ahu.go.id/id/detail/39-berita/2924-kemenkumham-akhirnya-launching-perseroan-perorangan-badan-hukum-khas-indonesia> (accessed 17 May 2022).
- 49 Data taken from Directorate General for Legal Administrative Affairs, The Ministry of Law and Human Rights database.
- 50 Chandra Gian Asmara and Samuel Pablo, "Menkumham Sebut Permen Notaris Jadi Biang Turunnya EODB RI," *CNBC Indonesia*, <https://www.cnbcindonesia.com/news/20181101173327-4-40192/menkumham-sebut-permen-notaris-jadi-biang-turunnya-eodb-ri> (accessed 17 May 2022).
- 51 Chandra Gian Asmara, "Jokowi Menyadari Urus Izin di Indonesia Itu Masih Ruwet!" <https://www.cnbcindonesia.com/news/20190423144647-4-68301/jokowi-menyadari-urus-izin-di-indonesia-itu-masih-ruwet> (accessed 17 May 2022).

their service in Ministerial Regulation No. 3 of 2017 on Notary Fee Service for LLC Establishment. This regulation was claimed ineffective as there were Notary reluctant to comply with this law.⁵² Cenggana (2019) also found that this Ministerial Law conflicted with the Law on Notary. This put micro and small investors facing the difficult reality that they need to spend quite a sum of money before their business is even established.

The other favorable factor why LLC has many admirers is the people's familiarity with technology. As shown by the online trading trend, the government believes that micro and small investors will be benefited from a simple and easy-to-use application to start a company. The Minister of Law and Human Rights claimed that he is targeting millennials as a market for it.⁵³ The familiarity with technology is one of the reasons why The Minister is confident that the Millennials can establish a company without hassle. Thus, the application was set up to be as easy as possible.⁵⁴

As the single shareholder concept is technically the newest feature of LLC, the regulators hope that it can benefit from LLC's advantage as a business entity. Although it might be too early to judge, a

single shareholder for LLC may be more preferred to replace the traditional LLC in the long run. Since it is significantly more affordable and easier to incorporate. As a result, Notary may see their role reduced if this happens.

4. Comparison with Netherlands and Thailand

Notary investment involvement is generally bound to the civil law system, particularly in starting a business. Common law countries do not use Notary to establish a company because their main task is generally limited to giving legal advice, preparing legal documents, and acknowledging the authenticity of certain documents or statements.⁵⁵ However, with Indonesia introducing LLC with a single shareholder, some critics suggest that the absence of a Notary in establishing a company is a common law concept that is deemed not fit to apply in Indonesia. Indonesia indeed adopted the Civil Law system as Indonesia was colonized by the Netherlands. However, to conclude that Indonesia is a Civil Law country might be a stretch. Because technically, Indonesia adopted many legal systems such as Islamic Law and

52 Siti, Damayanti, Penerapan peraturan menteri hukum dan hak asasi manusia nomor 03 tahun 2017 tentang biaya jasa hukum notaris untuk pendirian perseroan terbatas (PT) terhadap penggiat usaha mikro, kecil, dan menengah (UMKM) di kota Pangkalpinang. Diss. Universitas Bangka Belitung, 2018.

53 Biro Humas, "Launching Aplikasi Perseroan Perorangan, Yasonna: Pertama di Dunia!" <https://www.kemenkumham.go.id/berita/launching-aplikasi-perseroan-perorangan-yasonna-pertama-di-dunia>.

54 Ibid.

55 Ma Junyu, Op. Cit.

Customs Law (Adat Recht).⁵⁶ That being said, limiting Indonesia's legal system to Civil Law only is a misconception.

Even in civil law countries, the concept of the Notary varies. Especially in company establishment. This paper will compare the Notary's role in the Netherlands and Thailand. The Netherlands is a proper comparison to Indonesia since we adopt so many regulations from its legal system. Thailand is an even better comparison thanks to its socio-culture and geographical aspects. Both countries use civil law as their primary legal system. So comparing them with Indonesia is pretty relevant.

In the Netherlands, the Notary stands alongside attorneys-at-law, bailiffs, and tax advisors as some of the vital legal professions.⁵⁷ Its main task is to draw up deeds, especially concerning family law, property law, and corporate law.⁵⁸ Its involvement in corporate law is the reason why Notary holds a strategic role in Dutch investment law too. In other words, Indonesia has a relatively similar role as Notary to the Dutch legal system thanks to its importance in corporate law.

The Dutch Legal system has also acknowledged a single shareholder for LLC since the 1992 Dutch Civil Code (Nieuw Burgerlijk Wetboek).⁵⁹ It can be seen in Nieuw Burgerlijk Wetboek translation.

Article 64 Section 2
First Chapter of Book 2 on Legal Persons
Title 4 regarding Companies Limited By Shares
Nieuw Burgerlijk Wetboek

A company shall be incorporated by one or more persons by notarial deed.

This article in principle, explains that LLC (Companies Limited by Shares) is no longer established by agreement, as an individual can incorporate it. Interestingly, Nieuw Burgerlijk Wetboek still mandate the incorporation by notarial deed. The Netherlands Notary's involvement in LLC incorporation is bound to the fact that the Notary is involved with the legal person's birth.⁶⁰ Therefore, there is a shift of concept with the Indonesian Civil Code as LLC in the Netherlands is not necessarily based on agreement.

Notary also exists in Thailand and its role has been developing for many years.⁶¹ To be a Notary in Thailand, an attorney (Tanai Kwam) needs to enroll in a particular legal training course from

56 Choky Ramadhan, "Konvergensi Civil Law dan Common Law di Indonesia dalam Penemuan dan Pembentukan Hukum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* [Online], 30.2 (2018), p. 213-229.

57 Access, "What Does A Notary Do In The Netherlands?" Answers To Questions About Moving to and Living in The Netherlands, <https://access-nl.org/housing-netherlands/buying-house/what-does-a-notaris-Notary-do-in-the-netherlands/> (accessed on 17 May 2022)

58 Ibid.

59 Fahrurozi Muhammad, "Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal". *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 7 (3) (2018), p. 445-464.

60 KNB, "The Notary - Areas of Law," KNB, <https://www.knb.nl/english/the-Notary/areas-of-law> (accessed on 12 May 2022)

61 Alfred E. Iombino, *Notary Public Handbook: Principles, Practices & Cases, National Edition* (First ed.). (Norwell: East Coast Publishing, 2011), p. 12.

the Thai Council of Lawyers to get their Notary's license.⁶² This means that only an attorney can be appointed as a Notary, or a Notary means a lawyer who has a Notary license. Some of its authorities are attestation and confirmation of authenticity documents and other information such as signature, address, translation, and whatnot.⁶³

The Notary has no involvement in establishing a company in Thailand. To start a business in Thailand, the agency that involved are the Department of Business Development, Ministry of Commerce; The Revenue Department, Ministry of Finance; and Bank.⁶⁴ The unavailability of a Notary on this matter is because Thailand develops a system where the consumer or founder of the company, can establish it by themselves through the aforementioned agency. Learning from Thailand, we can conclude that Notary does not always have to be involved in enterprise incorporation. Even when they adopt the civil law system like Indonesia or Netherlands.

D. Closing

The involvement of Notary in the Investment sector through LLC establishment remains to exist in Indonesia. Although the existence of a Single Shareholder LLC dismisses its

role, Notary is still needed to incorporate a conventional LLC with 2 (two) or more shareholders. Which still dominates the number of LLCs in Indonesia. Furthermore, the role of the Notary will always be mandated as long as the LLC concept in Indonesia is still based on Private Partnership, or established by an agreement between 2 (two) founders. Unless there is a law that amends such clause which shifts the concept of LLC as a unique entity and disparate from Private Partnership in Civil Code.

However, we can not deny the condition where the digital age affects the Notary business model. As its role legally diminished in establishing LLC through Law on Job Creation, there is no guarantee that legislators will maintain its involvement in company incorporation in the future. This condition means the lawmakers may opt to provide an alternative to the Notary service, which can also mean there is a possibility that they may favor technology to replace its role as yearned by the public. Particularly since the investment atmosphere has rapidly changed where traditional investment-related professions have been victimized and replaced by technology as a result.

62 Ibid.

63 Yaya Kareng, Ong Argo Victoria, and R. Juli Moertiyono. "How Notary's Service in Thailand." *Sultan Agung Notary Law Review* 1.1 (2019), p. 46-56.

64 Doing Business Team, "Doing Business In Thailand," The World Bank, <https://www.doingbusiness.org/content/dam/doingBusiness/country/t/thailand/THA.pdf> (accessed on 17 May 2022).

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