VALIDITY OF DEED OF CONFIRMATION IN OPENING OF INDIVIDUAL LIMITED LIABILITY COMPANY ACCOUNT IN INDONESIA

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ABSTRACT

Purpose: This research aims to determine the Notary's basis for making a Deed of Confirmation in the Establishment of an Individual Limited Liability Company and assess the juridical implications of using a Deed of Confirmation in opening an Individual Limited Liability Company account as a substitute for the Articles of Association.

Theoretical Framework: This study is focused on the relationship between the validity of Deed of Confirmation of an Individual Limited Liability Company based on Indonesian positive law and the Know Your Customer principles in the process of opening an Individual Limited Liability Company account. The Individual Limited Liability Company is considered a legal entity with separate assets, deemed to have not yet fulfilled the elements required for the verification of the identity in the opening of an Individual Limited Liability Company account.

Method: The research method is normative research. All legal materials were analyzed qualitatively with the support of data presented descriptively analytically.

Result: The results of this research are the Deed Confirmation of Individual PT is a statement of the will, information or actions of the party, namely to establish Individual Limited Liability Company and provide information on the existence of the company. Therefore, basically the Deed of Confirmation of an Individual Limited Liability Company is a Partij Deed or Party Deed.

Conclusions: Based on the results of research conducted by the author, it can be concluded that the Notary's basis for making a Deed of Confirmation in the Establishment of an Individual Limited Liability Company (PT) is regulated in Article 15 Number (1) UUJN. The Deed of Confirmation of Individual PT is a statement of the will, information or actions of the party, namely to establish Individual PT and provide information on the existence of the company. Therefore, basically a Individual PT Deed of Confirmation is a Partij Deed or Party Deed, namely a deed drawn up before a Notary, based on the information or actions of the party who appears before the Notary, and the information or actions are required by the Notary to make a deed.

Keywords: deed of confirmation, individual limited liability company, principles of know your customer.
VALIDADE DO ATO DE CONFIRMAÇÃO NA ABERTURA DA CONTA DA SOCIEDADE DE RESPONSABILIDADE LIMITADA INDIVIDUAL NA INDONÉSIA

RESUMO

Objetivo: Este estudo visa determinar a base do notário para a realização de um ato de confirmação no estabelecimento de uma sociedade anônima e avaliar as implicações jurídicas da utilização de um ato de confirmação na abertura de uma conta de sociedade anônima em substituição dos estatutos.

Estrutura Teórica: Este estudo é focado na relação entre a validade do Ato de Confirmação de uma Sociedade de Responsabilidade Limitada Individual com base na lei positiva indonésia e os princípios Conheça seu Cliente no processo de abertura de uma conta de Sociedade de Responsabilidade Limitada Individual. A sociedade de responsabilidade limitada individual é considerada uma entidade jurídica com ativos separados, considerada como não tendo ainda preenchido os elementos exigidos para a verificação da identidade na abertura de uma conta de sociedade de responsabilidade limitada individual.

Método: O método de pesquisa é pesquisa normativa. Todos os materiais legais foram analisados qualitativamente com o apoio de dados apresentados descritivamente analiticamente.

Resultado: Os resultados desta pesquisa são a Confirmação de Atos da PT Individual é uma declaração de vontade, informação ou ações da parte, ou seja, estabelecer a Sociedade de Responsabilidade Limitada Individual e fornecer informações sobre a existência da empresa. Portanto, basicamente o Ato de Confirmação de uma Sociedade de Responsabilidade Limitada Individual é um Ato Partij ou Ato da Parte.

Conclusões: Com base nos resultados da pesquisa realizada pelo autor, pode-se concluir que a base do Notário para fazer um Ato de Confirmação no Estabelecimento de uma Sociedade de Responsabilidade Limitada Individual (PT) é regulamentada no Artigo 15 Número (1) UJN. O Ato de Confirmação da PT Individual é uma declaração da vontade, informação ou ações da parte, nomeadamente para estabelecer a PT Individual e fornecer informações sobre a existência da empresa. Portanto, basicamente um Ato de Confirmação PT Individual é um Ato Partij ou Ato de Partido, ou seja, um ato redigido perante um Notário, com base nas informações ou ações da parte que comparece perante o Notário, e as informações ou ações são exigidas pelo Notário para fazer um ato.

Palavras-chave: ato de confirmação, empresa de responsabilidade limitada individual, princípios de conhecer seu cliente.
a statement of the will, information or actions of the party, namely to establish Individual PT and provide information on the existence of the company. Therefore, basically the Deed of Confirmation of an Individual PT is a Partij Deed or Party Deed.

MSME are an important element in driving economic development in Indonesia (Setyawati, 2009). MSME sector absorbs the largest workforce, namely 97% of the total workforce in Indonesia, around 60% of Indonesia's Gross Domestic Product (GDP) comes from the contribution of MSMEs (Wibawa, 2021). Carrying out business activities requires legality and permits to accommodate these businesses, so that currently in Indonesia various types of companies are regulated (Utami, 2020). Companies or business entities are divided into 2 (two) groups, namely legal entity business entities and non-legal entity business entities. In the category of legal entities, namely State-Owned Enterprises (BUMN) and Limited Liability Companies (PT) (Sri Budi Purwaningsih, 2023). Those which include business entities that are not legal entities include Civil Partnerships (Partnership, Maatschap), Firms, and Commanditaire Vennootschap (CV) (Sembiring, 2009).

A Limited Liability Company (PT) must be established by 2 or more people based on an agreement to carry out business activities. Carrying out business activities means running a company. A company is any business entity that carries out economic activities continuously, with the aim of obtaining profits and/or profits as proven by records (Djabba, 2022). The business activities carried out by a PT are in the economic sector with the aim of obtaining profit or profits (Dewi, 2018). In essence, a PT considered to be an association of capital or shares (sero) of people who have agreed to establish a business entity. A PT has the main characteristic, namely its position as a legal subject, legal entity status, carrying limited liability for shareholders, members of the Board of Directors and Commissioner, namely the amount of capital or shares invested in the Company. PT’s shareholders are generally not personally responsible for agreements made in the name of the PT and for the PT’s losses in excess of the shares they own. Thus, because the basis for its establishment is an agreement, the establishment of a PT cannot be separated from the conditions for the validity of an agreement based on the provisions of Article 1320 Burgerlijk Wetboek (BW) (Marijke, 2008).

Law of the Republic of Indonesia Number 11 Year 2022 concerning Job Creation (UU Ciptaker) uses an omnibus law system, which means that in one law there are many regulations so that there is legal unification in one law. Some people are familiar with the
universal sweep law (Gloria, 2021). The Ciptaker Law has changed various applicable legal substances, one of which is related to the establishment of PT, which was previously regulated in Law of the Republic Indonesia Number 40 of 2007 concerning Limited Liability Companies (UU PT). The most fundamental change is found in the definition of the company itself, introducing a new type of company, namely the Individual Limited Liability Company, which is called the Micro and Small Business Individual Limited Liability Company (PT Perorangan). These change are regulated in Article 1 Number (1) of the Company Law in the substance of Article 109 of the Ciptaker Law, and Article 1 Number (1) of Government Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses (PP No. 8 of 2021), namely: "Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital entirely divided into shares or an individual Legal Entity which meets the criteria for Micro and Small Enterprises as regulated in statutory regulations regarding micro and small businesses."

This provision then became the juridical basis for the establishment of an Individual PT. After the enactment of the Ciptaker Law, there was a change that Limited Liability Companies were allowed to be formed by only one founder based on Article 153 letter A of the Ciptaker Law. Individual PT are exempt from the costs of establishing a legal entity only by making a statement of establishment, which is then registered electronically by filling in the form, without a notarial deed, at the Minister of Law and Hukman Rights (Isnaeni, 2021). The presence of Individual PT creates new legal implications in practice. This is because Individual PT has one-tier characteristics, where the organs of the business entity only consist of shareholders and directors without any supervision (Jaya, 2021). Furthermore, determining the minimum authorized capital for establishing an Individual PT is no longer determined based on the Ciptaker Law. The amount of capital is only determined based on the decision of the founder of individual PT based on Article 3 of Government Regulation No. 8 of 2021, except in relation to certain business activities which refer to statutory regulations.

These provisions and arrangements create loopholes that have the potential to increase vulnerability to the company's inability as a debtor to provide payments to creditors, because there is no capital guarantee that can be used as a means of paying off
receivables and control carried out only by a shareholder, can carry the risk of violations. In law, there is a legal loophole for fraud to occur against third parties based on relying on the limited liability nature of the Company. Another irregularity was found in the absence of a Notary's obligation to make a Deed of Establishment in establishing an Individual PT. This then indicates that there is a reduction in the authority given to public officials, namely Notary, providing legal uncertainty, resulting in a legal vacuum in validating data published in Individual PT.

Then, in the company development process, it is impossible for a business to be separated from the capital and systems it runs. There are several mechanisms that are usually applied to PTs, but are not implemented in Individual PT. This can be traced in the practice of opening Individual PT accounts, as legal entities that have separate assets. Generally, financing will carry out identity verification stages based on the Know Your Customer Principle, regulated in Article 18 of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (UU TPPU), which PT has accommodated in Articles of Association (AD OF PT), so that financing institutions such as banks in practice ask AD OF PT to verify identity. However, because from the start Individual PT did not have an AD OF PT, the legality of Individual PT was only limited to the Registration Certificate of Company Establishment from the Ministry of Law and Human Rights (Kemenkumham). For this reason, the bank usually asks for a Deed of Confirmation of the Establishment of Individual PT (Deed of Establishment) to be drawn up by a Notary, as a replacement for AD of PT when opening an account book in the name of Individual PT.

Basically, the formation of a company legal entity is guided by the Company Law. Therefore, Individual PT in principle, as a company that has limited liability, must also be subject to the Company Law. AD OF PT is something that must be owned by PT. Article 15 of the Company Law determines that the AD is part of the Deed of Establishment, drawn up by a Notary, which contains the rules of the PT, which determine each of the rights and obligations of the parties in the articles of association, be it the PT itself, shareholders, or management. PT and Individual PT obtain legal entity status on the date of publication of the Ministerial Decree regarding the ratification of corporate legal entities based on Article 7 Number (4) of the Company Law. To obtain a Decree from the Minister of Law and Human Rights (Kemenkumham Decree), the establishment of a PT requires an AD contained in the Deed of Establishment of the PT, which is made
in the form of a notarial deed. Meanwhile, Individual PT only requires founders, without a notarial deed, to make a Statement of Establishment electronically based on Article 1 Number (2) PP No. 8 of 2021.

Based on the description above, it can be seen that the position of AD of PT and the Statement of Establishment of the Individual PT are parallel, as a condition for the issuance of a Decree from the Ministry of Law and Human Rights, so that the company obtains legal entity status. In addition, there are indications of a reduction in the role of Notary as public officials, which creates legal uncertainty, resulting in a legal vacuum in the validation of data contained in Individual PT. In this regard, as previously explained, financing institutions such as banks in practice consider the Statement of Establishment of an Individual PT and the Ministry of Law and Human Rights Decree on the Establishment of an Individual PT to be insufficient to carry out identity verification based on Know Your Customer Principles, so the financing institution requests that a Deed of Confirmation of Establishment be drawn up by a Notary, as a substitute for AD OF PT in opening an account book in the name of Individual PT. However, in the example of the Deed of Confirmation of Establishment that the author found, the statement of establishment made by the Notary at the request of the bank as explained previously, as a document whose position is parallel to AD of PT, apparently does not contain all the minimum requirements that should be contained in AD of PT as regulated in Article 15 UUPT. According to the author, to be considered a replacement document, the Deed of Confirmation of Establishment must at least contain the minimum requirements for creating an AD OF PT, in relation to opening an account in the name of an Individual PT.

2 THEORETICAL FRAMEWORK

Generally, every research should always be accompanied by theoretical thoughts or concepts used by the author, and the variables studied will depict the relationships between one variable and another. This study is focused on the relationship between the validity of Deed of Confirmation of an Individual Limited Liability Company based on Indonesian positive law and the Know Your Customer principles in the process of opening an Individual Limited Liability Company account. The Individual Limited Liability Company is considered a legal entity with separate assets, deemed to have not yet fulfilled the elements required for the verification of the identity in the opening of an Individual Limited Liability Company account.
The Customer Identification Principles, as referred to in the Anti-Money Laundering Act, are implemented as part of the Customer Due Diligence (CDD) effort through the identity identification process. This serves as a preventive measure against operational, legal, and reputational risks associated with the customer. The presence of a new legal entity in the form of an Individual Limited Liability Company, accompanied by the absence of Articles of Association (AD PT), poses challenges for banks in conducting CDD procedures. Therefore, to address this issue, a document is created as the legal basis for the establishment of the legal entity, serving as a substitute for the AD PT, in the form of the Deed of Confirmation of an Individual Limited Liability Company.

In this research, two indicator variables are applied for investigation or analysis. Firstly, the independent variable is the validity of the Deed of Confirmation of an Individual Limited Liability Company. Secondly, the dependent variable is the implementation of Know Your Customer Principles in the opening of an Individual Limited Liability Company account.

3 METHOD

The method used in this writing is a normative legal research method because it is carried out by examining legal rules, legal principles and legal doctrines in order to answer the legal issues faced (Irwansyah, 2021). In this research, a statutory approach (Statute Approach) and conceptual approach (conceptual approach). The legislative approach is carried out by examining all laws and regulations relating to the legal issue being studied (Muhaimin, 2020), and the conceptual approach departs from the views and doctrines that develop in legal science (Marzuki, 2010). In normative legal research, what is studied is legal material which contains normative rules, while legal materials consist of primary legal materials, namely binding legal materials consisting of statutory regulations relating to writing. Secondary legal materials, namely legal materials that are not binding but provide explanations related to primary legal materials sourced from libraries and various literature, opinions or thoughts of experts in the field that researchers study, such as interviews, jurisprudence, and doctrine or expert opinions. As well as non-legal materials which are materials that provide instructions and explanations as a complement to primary and secondary legal materials including Indonesian dictionaries, newspapers, magazines and materials on the internet according to the problem being studied (Ibrahim, 2016).
The technique for collecting legal materials carried out in this research is literature study which is a method of collecting legal materials carried out through written legal materials using Content Analysis. This technique is useful for obtaining a theoretical basis by reviewing and studying books, laws and regulations, documents, reports, archives and other research results, both printed and electronic, that relate to the problem. Then, the author also conducted interviews with Notary, Financing Institutions and Financial Services Authorities to strengthen the literature study. In the analysis of this type of legal material, the documents or archives being analyzed are referred to as "text". Content analysis refers to an integrative analysis method and conceptually tends to be directed at finding, identifying, processing and analyzing legal materials to understand their meaning, significance and relevance.

The data obtained to form the basis of this research is sought and presented in a descriptive analytical manner where the existing facts are described and later analyzed based on the laws and regulations that apply in Indonesia (positive law) and also existing theories. To solve problems and implement descriptive methods, descriptive analysis is carried out which is not only limited to the data collection and preparation stage, but also includes analysis and interpretation of the data itself. In drawing conclusions from the data and facts collected in the research carried out, a qualitative analysis method was used which was carried out by interpreting, describing, describing and compiling a logical systematic manner that was adapted to the research objectives.

4 RESULTS AND DISCUSSION
4.1 NOTARY’S AUTHORITY TO MAKE A DEED OF CONFIRMATION OF AN INDIVIDUAL LIMITED LIABILITY COMPANY

The need for notarial institutions cannot be separated from the practice of law in social life. The strength of the Authentic Deed made by a notary has strong and memorable legal force and certainty. An Authentic Deed is a perfect piece of evidence, so it is not uncommon for various laws and regulations to require certain legal acts to be made in the form of an Authentic Deed (Dharmawan, 2017). Legal certainty, order and protection generally require the existence of evidence that can clearly determine a person's rights and obligations as a legal subject. The certainty of legal rights and obligations is realized through the role played by the Notary as a public official, who has
the authority related to making Authentic Deeds, namely documents that function as perfect evidence.

The presence of a Notary position is required by legal regulations, namely based on UUJN and UUJNP, as a substitute for the *Reglement op Het Notarisch Ambt in Nederland* or Notary Position Regulations (PJN), with the aim of helping and serving people who need written evidence, which is authentic regarding situation, event, or legal action. Thus, Notary appointed must have a passion for serving the community. Then, for the services performed by the Notary, the Notary is entitled to receive an honorarium. Therefore, a notary does not mean anything if society does not need it (Adjie, 2008). In addition, a professional organization for Notary in Indonesia was also formed, namely the Indonesian Notary Association (INI), which also has its own code of ethics, namely the Notary Code of Ethics, so that apart from Notary having to comply with the UUJN, Notary also has to comply with the Notary Code of Ethics issued by the Indonesian Notary Association (INI) (Sitorus, 2022). In line with the explanation above, based on Article 1 Number (1) UUJNP, that: "A notary is a public official who has the authority to make Authentic Deeds and has other authorities as intended in this Law or based on other laws”.

Notary as public officials, in the sense that they have authority with exceptions. By categorizing Notary as public officials, the relevant public official has legal meaning, not the public as the general public. Notary as public officials do not mean the same thing as public officials in the government sector, who are categorized as state administrative bodies or officials. It can be distinguished from the products issued by each public official (Susanto, 2010). An Authentic Deed does not qualify as a concrete, individual, final state administrative decision and does not give rise to civil legal consequences for a person or civil legal entity. This is because the deed is a formulation of the wishes or desires of the parties which are stated in the form of a deed made before a Notary or by a Notary, and disputes that arise will be processed in the District Court. The duties and authority of a Notary in carrying out his office must be in line with UUJN and UUJNP. Notary authority as referred to above can be divided into three types, namely general authority, specific authority, and other authorities.

The general authority possessed by a Notary is based on Article 15 Number (1) UUJNP, that the Notary has the authority to make an Authentic Deed regarding all acts, agreements and stipulations that are required by statutory regulations and/or that are
desired by interested parties to be stated in an authentic deed. The notary also has the authority to guarantee the certainty of the date of the deed, store the deed, provide the grosse of the deed, and is responsible for copies and quotations of the deed. Notary has the authority regulated in Article 15 Number (2) UUJNP, namely:

1. validate the signature and confirm the date of the underwritten letter by registering it in a special book;
2. record letters privately made by registering in a special book;
3. make a copy of the original letter under the hand in the form of a copy containing the description as written and depicted in the letter concerned;
4. validate the photocopy with the original letter;
5. provide legal counseling regarding the making of deeds;
6. draw up the deeds relating to land; and
7. draw up a deed of minutes of auction.

Other authorities possessed by a Notary are based on Article 15 Number (3) UUJNP, that the Notary has other authorities outside the provisions regulated in Article 15 Numbers (1) and Number (2) UUJNP, as long as they are in line with the applicable laws and regulations. In carrying out his office, a Notary is charged with responsibility based on Article 65 UUJNP, that every deed made is the responsibility of a Notary, even though it has been handed over to the Notary's protocol keeper. The liability as previously mentioned is imposed as long as the Notary is still alive because based on the UUJN and UUJNP there is no limit on the time period. However, a Notary should not be held responsible if the Notary, Substitute Notary, Special Substitute Notary, or Temporary Acting Notary is no longer in office, even though the person concerned is still alive (Hadju, 2017).

Authentic Deeds are also regulated in Article 1868 BW, namely "an Authentic Deed is a deed made in a form determined by law by or in the presence of a public official who is authorized to do so in the place where the deed is made". The form of an Authentic Deed is generally regulated in Article 38 Number (1) UUJNP, that each deed consists of at least:

1. the beginning of the deed or head of the deed (Article 38 Number (2) UUJNP), contains the title of the deed, deed number, time, day, date, month and year as well as the full name and position of the Notary;
2. body of the deed (Article 38 Number (3) UUJNP), including full name, place and date of birth, citizenship, occupation, position, place of residence of the presenter and/representative person, information regarding the acting position of the presenter, contents of the deed which constitutes the wishes and desires from interested parties, full name, place and date of birth, occupation, title, status and residence of each identifying witness;

3. the end or closing of the deed (Article 38 Number (4) UUJNP), contains a description of the reading of the deed, a description of the signing and place of signing or translation of the deed if any, full name, place and date of birth, occupation, position, position, residence of each witness to the deed, as well as a description of the absence of changes that occurred in the making of the deed or a description of any changes which may be in the form of additions, deletions or replacements; and

4. the deed of the substitute Notary and temporary Notary, contains the number and date of the appointment, as well as the official who appointed him.

In connection with the explanation above, according to Lieke Tunggal, Notary and Conveyancer (PPAT) in Makassar, deeds that can be made in front of or by a Notary based on their authority are divided into deeds without names and deeds with names, the names of which are regulated in the law. law, while the anonymous ones are like cooperation agreements as in line with legal rules based on Article 1338 BW (Tunggal, 2023). In line with the previous opinion, according to Brillian Thioris, Notary and PPAT in Makassar, there are several types of deeds that can be made by a Notary, which are made based on open contract law, as long as they meet the requirements based on 1320 BW, do not conflict with morality and public order, and applicable laws and regulations as per legal norms based on Article 1338 BW (Thioris, 2023).

Furthermore, according to Andi Senggeng Pulaweng Salahuddin, Notary and PPAT in Makassar, the types of deeds that can be made by a Notary has no restrictions as long as the authority is not given to another public official. In addition, all types of agreements between the parties may be deeded by a Notary, as long as these agreements do not violate or conflict with religion, morality and applicable laws and regulations. The notary must have sharp analytical skills regarding the client's wishes, so that the client's wishes determine what deed the notary makes. In line with this, the sources of Notary authority other than UUJN and UUJNP are the organization's code of ethics and
regulations (Salahuddin, 2023). In this regard, according to Mustahar, Notary and PPAT in Makassar, the source of the notary's authority must be clear when making a deed. If the Notary does not have the authority, the deed made will be degraded to a private deed, as regulated in Article 84 UUJNP. Therefore, the types of deeds that a Notary may make must be in line with the provisions regulated in Article 15 UUJN (Mustahar, 2023).

In addition, according to Nur Aidar Anwar, Notary and PPAT in Makassar, so far there is no standard format that regulates the making of authentic deeds. The deed remains valid and has perfect evidentiary power as long as it does not conflict with general provisions, morality and applicable laws and regulations. With regard to naming types of deeds, in principle it is based on statutory regulations with the naming of general deed titles. The notary can change the title of the deed by agreement of the parties. For example, in making a deed of collective agreement, the deed is not regulated or mentioned in the applicable laws and regulations. Therefore, Notary must actually be able to improvise as long as it does not conflict with general provisions, morality and applicable laws and regulations. However, there are several types of deeds which basically cannot be improvised, namely those which are expressly regulated in the applicable laws and regulations, such as the content of the Deed of Sale and Purchase and the Deed of Establishment of a Limited Liability Company, while those which can be improvised are deeds of agreement, statements and agreements (Anwar, 2023).

Furthermore, according to Maria Josefina Grace Kawi Tandiari, Notary and PPAT in Makassar, a Deed of Confirmation is a deed or acting action to reaffirm actions that have been stated in a previous Notarial deed. Thus, what is intended in the Deed of Confirmation is not to ensure the truth of the previous Notary's deed, but to confirm the actions that have been stated previously by the parties. This series of affirmative actions was also not carried out by the Notary concerned, but was carried out by the presenters themselves in front of the Notary (Tandiari, 2023). Based on the explanation above, according to the author, the Deed of Confirmation essentially requires an act of facing a Notarial Deed, so that the Deed of Confirmation is not suitable for use to confirm the Decree of the Ministry of Law and Human Rights relating to the establishment of an Individual PT, or to confirm the statement of the parties' wishes because of previous actions taken by the appearer has never drawn up a Notarial Deed.

Regarding the establishment of Individual PT, according to the author, through the Ciptaker Law, the government has provided policies to encourage the acceleration of
economic recovery. The establishment of a PT has been simplified with the existence of an Individual PT, without having to involve a Notary with the aim of reducing the costs of establishing a company and making it easier to establish a business entity. Therefore, when wanting to establish an Individual PT, the party concerned can directly input their own data online, does not require an Authentic Deed made by or before a Notary, and does not require a minimum of authorized capital for establishing the PT. Thus, the ease of establishing a legal entity is only intended for small and micro business actors who meet the capital criteria based on Article 35 PP No. 7 of 2021. By this convenience, it is hoped that it will support the acceleration of community economic growth (Rosyidi Hamzah, 2023).

4.2 URGENCY OF IMPLEMENTING KNOW YOUR CUSTOMER PRINCIPLES BY BANKING

In the business development process, it is impossible for a business to be separated from the capital it runs. There are several mechanisms that are usually applied to PTs, but are not implemented in Individual PT. This can be traced in the practice of opening Individual PT accounts, as legal entities that have separate assets. Generally, financing institutions will carry out identity verification stages, in the process of creating an account in the name of the company based on the Know Your Customer Principle, which is regulated in Article 18 of the TPPU Law. All forms of identity needs in PT have been accommodated through AD OF PT, so that financing institutions such as banks in practice ask AD OF PT to verify identity. The establishment of an Individual PT in the absence of an AD OF PT, means that the only legality that the Individual PT has is only a Company Establishment Registration Certificate from the Ministry of Law and Human Rights. For this reason, the bank usually asks for a Deed of Confirmation of Establishment to be drawn up by a Notary, as a replacement for AD of PT when opening an account book in the name of the Individual PT.

Banking activities, such as providing credit in Indonesia, are one of the main activities, so income from credit in the form of interest is the largest income compared to income from services other than credit interest which is usually called fee-based income. Therefore, credit distribution must be carried out with the principle of prudence through accurate and in-depth analysis, appropriate distribution, good supervision and monitoring, valid agreements that meet legal requirements, binding strong collateral and regular and
complete credit documentation (Widjaja, 2018). This precautionary principle is implemented through identity verification carried out by banks, as an effort to mitigate risks related to financing carried out with customers.

In line with the explanation above, according to Andi Aswar Ansar, Senior Customer Service at Bank Tabungan Negara (BTN) Makassar Branch Office, the documents for creating Individual PT and PT accounts generally do not have significant differences. The only difference lies in that Individual PT attach additional documents in the form of a Deed of Confirmation, while PTs generally attach PT ADs. The Deed of Confirmation is requested by banks as a reference or basis for legality to avoid fraudulent companies. The Deed of Confirmation requested by the bank must be made before a Notary and the Individual PT has been registered with the Ministry of Law and Human Rights, if one or both of these documents have not been attached then the application for opening an account in the name of Individual PT will not be processed. Individual PT who wish to open an account are also asked to attach additional documents according to the purpose of opening the account. For example, if the purpose of Individual PT's financing is for People's Business Credit (KUR), the customer is asked to add complete document attachments as per the terms and conditions of the KUR application, namely having a business and having collateral which can be further adjusted with the relevant KUR provider. A Deed of Confirmation when opening an Individual PT account is requested as a replacement for AD of PT owned by the PT, but when creating a PT account in general you still have to attach AD of PT. The basis for banks to carry out a series of activities is based on the Standard Operating Procedures (SOP) of each bank, which outlines the regulations for opening accounts for Individual PT and PTs in general (Ansar, 2023).

Then, according to Rahmatiah, Sub-Branch Manager of Bank Pan Indonesia (Panin) Makassar Branch Office, explained that the implementation of the Know Your Customer Principal principle was carried out by the bank before opening an account by asking for the customer's identity to find out the customer's background and asking Taxpayer Identification Number (NPWP) to view the customer's Tax History so that it is in accordance with the system determined by the bank. This is done to prevent customers from committing unlawful acts and to prevent customers from creating accounts for other people (Rahmatiah, 2023). On the other hand, according to Irfan Syamsul Bahri, Assistant Manager for Operations and Services at Bank Rakyat Indonesia (BRI) Panakkukang
Makassar Main Branch Office, banks have the authority to accept or not the documents that are required for opening an account, including for Individual PT. In essence, the Principles of Knowing Your Customer are the same for companies and individuals. Therefore, before opening an account on the BRI Bank application, customer profiles will first be allocated into several categories, namely low, medium and high customer risk. This is intended to determine risks that are determined after looking at the financial profile data of prospective customers by the banking sector, so that the Know Your Customer Principle also functions to protect the bank from risks that may occur in the future (Bahri, 2023).

In line with the opinion above, according to Abdul Muis, Notary and PPAT in Makassar, the principle of knowing your customer is very important to be implemented by banks whose aim is to get to know their customers. Every bank must also apply the principle of prudence, as well as Notary who have the principle of prudence when making deeds with whom the Notary deals. Almost every business or service sector uses the Know Your Customer Principle. The consequences of not implementing Know Your Customer Principles by Notary has implications for the Notary's authority being vulnerable to abuse. Then, based on Article 4 and Article 16 Number (1) of the UUJN, it is regulated that "Notary are required to maintain the confidentiality of everything regarding the deed they make and all information obtained to make the deed in accordance with their oath of office unless the law determines otherwise." In connection with maintaining confidentiality, the Notary must also apply the Principle of Knowing the Service User (PMPJ) in beneficial ownership (BO), because no one can ensure that the party dealing with the Notary is the party who obtained the funds from a halal source, in order to avoid criminal acts money laundering and the flow of terrorist funds (Muis, 2023).

Furthermore, in banking practice, the Know Your Customer Principle is a principle applied to determine customer identity, monitor customer transaction activities including reporting suspicious transactions (Rozali, 2011). This principle is regulated in Bank Indonesia Regulation Number 3/23/PBI/2001 as amended by Bank Indonesia Regulation Number 5/23/PBI/2003 concerning Implementation of Know Your Customer Principles. Based on these regulations, it is explained that the Know Your Customer Principle is an effort to implement the precautionary principle. Further provisions regarding Know Your Customer Principles issued by each bank's supervisory agency are
instruments used by banks towards their customers. The bank’s obligations regarding the Know Your Customer Principles are outlined in the bank's policies. The policies referred to previously are as follows:

a. Customer acceptance policy;
b. Policy procedures for identifying customers;
c. Policies on monitoring procedures for customer accounts and transactions;
d. Risk management procedure policies related to the principle of knowing your customer.

The customer identification policy is carried out by the bank with its customers as parties who use the services and with documents related to customers. Likewise, if the services used by customers are electronic, the bank is still required to hold a meeting, at least when opening an account. The customer identification policy must also be implemented for customers in the form of corporations, institutions or other parties as beneficial owners. Implementation of the Know Your Customer Principle starts from the moment the prospective customer opens an account at the bank. In general, acceptance of prospective bank customers is divided into opening individual accounts and opening company accounts. Regarding opening an individual account in the context of implementing Know Your Customer Principles, filling out the standard form determined by the bank must contain at least the following information (Gazali, 2012):

a. Name, place and date of birth, address, and citizenship as proven by KTP, SIM or passport and accompanied by information regarding permanent residence address if it is different from that stated in the document. Especially for foreign citizens, apart from a passport, it is proven by a Temporary Residence Permit Card (KIMS/KITAS) or Permanent Stay Permit Card (KITAP).
b. Address and telephone number of the place of work, accompanied by information regarding the business activities of the company/agency where you work.
c. Information regarding the prospective customer's job/position and income. In the event that a prospective customer does not have a job, the data required is source of income; information regarding the source and purpose of use of funds.

Then, when opening a company or legal entity account, fill out the standard form set by the bank, containing at least information about:
a. The legal status of the business in question is proven by the deed of establishment and articles of association;
b. Business license or other permission from the authorized agency as proven by, among others, SIUP, SITU;
c. Names, specimen signatures and powers of attorney for parties appointed to act for and on behalf of the company. Meanwhile, the power to act on behalf of the company is proven by a power of attorney from the Board of Directors and/or the results of the General Meeting of Shareholders (GMS);
d. Company address, telephone number, and/or fax number.
e. Information regarding the source and purpose of use of funds.
f. Country of origin in the event that the company in question is a foreign legal entity.

In addition, along with the development of legal practice in society, the presence of Individual PT makes it difficult for banks to implement Know Your Customer Principles. This is because from the start Individual PT did not have an AD OF PT, the legality of Individual PT was only limited to the Registration Certificate of Company Establishment from the Ministry of Law and Human Rights. For this reason, the bank requested that a Deed of Confirmation of the Establishment of Individual PT be drawn up by a Notary, as a replacement for AD of PT when opening an account book in the name of Individual PT.

According to Lieke Tunggal, Notary and PPAT in Makassar, so far there has not been any legal basis explaining how the Deed of Confirmation of Individual PT is formed and implemented. In principle, the Registration Certificate of Establishment of an Individual Limited Liability Company (Individual PT Establishment Decree) should be sufficient for banks to apply the Know Your Customer Principle through identity verification in creating an account in the name of Individual PT. This is because in the process of establishing Individual PT, the entire identity of the founder is still reported and has received legality from the Ministry of Law and Human Rights. In line with the opinion above, according to Nur Aidar Anwar, Notary and PPAT in Makassar, that banks do not follow developments regarding the laws and regulations governing limited liability companies, both in general form and in the form of Individual PT. This can be seen from the legal rules governing Individual PT which should no longer require the involvement of a Notary in terms of the legality of the position of a legal entity, so that a Deed of
Confirmation of an Individual PT is not required. Administratively, since the Decree on the Establishment of Individual PT was issued, Individual PT has had the status of a legal entity and has owned separate assets from the parties within it. This is intended as a form of government policy to save costs and facilitate licensing in establishing business entities, especially legal entities. However, in this case the banking may only make efforts to be more careful in applying the precautionary principle, so that the presence of a Individual PT Confirmation Deed is required as an additional document when opening a Individual PT account. Meanwhile, the Decree on the Establishment of Individual PT should be sufficient to implement the Know Your Customer Principle because the Decree on the Establishment of Individual PT cannot be issued carelessly by the Ministry of Law and Defense and there are several administrative requirements that must be fulfilled.

In connection with the explanation above, according to the author, regarding verification of the identity of Individual PT through the application of Know Your Customer Principles, banks have so far never provided education to customers regarding how and the purpose of implementing these principles. Banks should utilize all tools and efforts that can be used to verify customer identity, without charging additional fees to customers by asking them to attach a Deed of Confirmation of Individual PT. The efforts referred to above, according to the author, can be carried out by verifying the identity with the Occupation Identification Card (KTP) of Individual PT’s shareholders, because the internal organs of Individual PT only consist of directors and the GMS is conducted by the same shareholder. Regarding the risk of customer involvement in criminal acts, through customers creating fake KTPs just to fulfill the administrative requirements for opening an account in the name of an Individual PT, the presence of a Deed of Confirmation as a replacement document for AD of PT is not required on the grounds that the customer is at risk of being involved in a criminal act. Banking can prevent this action by carrying out BI-Checking and looking at the Track Record of KTP of the relevant customer or BO. Thus, according to the author, the additional document that should be used as an additional document for the administrative purposes of opening a Individual PT account is a Police Record Certificate of Shareholders and/or Beneficial Ownership, because basically there are not as many parties involved in Individual PT business activities as Individual PT in general., so it is not too difficult to determine who the authorized party is for and on behalf of the Individual PT.
4.3 DEED OF CONFIRMATION OF AN INDIVIDUAL LIMITED LIABILITY COMPANY AS AN AUTHENTIC DEED MADE BY A NOTARY

As previously explained. Generally, in the practice of opening a Individual PT account as a legal entity, the financing institution will carry out the identity verification stage. In the process of creating an account in the name of the company, the financing institution applies a principle, namely the Know Your Customer Principle which is regulated in Article 18 of the TPPU Law. All forms of identity needs in PT have been accommodated through AD of PT, so that financing institutions such as banks in practice ask AD of PT to verify identity.

However, the establishment of an Individual PT in the absence of an AD of PT means that the only legality that the Individual PT has is only a Company Establishment Registration Certificate from the Ministry of Law and Human Rights. Therefore, the bank usually asks for a Deed of Confirmation of the Establishment of an Individual PT to be drawn up by a Notary, as a replacement document for AD of PT in verifying identity. opening an account book in the name of Individual PT. Then, in the example of the Deed of Confirmation that the author found, it only consists of 9 (nine) articles which contain several provisions, namely, name, aims and objectives, date of formation, amount of capital, director, bookkeeping, distribution of profits, liquidation and closing, which in Basically it just explains the true existence of the Individual PT. These provisions are then given to the Notary to make a deed known as a Partij Deed.

Based on the theoretical basis of the authority conferred upon the Notary, a Partij Deed is a type of deed that can be made by a Notary as a public official, who is given the authority by the state to carry out services in the community. A Partij Deed can be defined as a deed made before a Notary, a deed made based on the information or actions of the party appearing before the Notary, and the information or actions must be confirmed by the Notary to make the deed. Besides Partij Deed, a Notary can also make a Relaas Deed, which is a deed made by a Notary as a public official, which contains an authentic description of all events or occurrences seen, experienced and witnessed by the Notary himself (Hably, 2019). The Partij Deed and Relaas Deed have been explicitly regulated based on Article 15 Number (1) UUJN, that: "Notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses,
copies and quotations. deed, all of which as long as the deed is made is not assigned or excluded to another official or other person as determined by law”.

Based on the description above, according to the author, the Notary in making the Partij Deed is only an intermediary and makes the deed based on the wishes of both parties. The function of a Notary Public is only to record (write) the wishes of the parties who appear before the Notary, without any obligation for him to materially investigate the matters presented to him by the person appearing before him. Authentic Deeds are the strongest and most complete evidence, which have an important role in every legal relationship in people's lives. In essence, a deed like this contains evidentiary power both externally, formally and materially (uit bewijskracht, formiele en materiele bewijskracht). As stated above, the Notary in making the Deed of Confirmation is only an intermediary. The deed produced by a Notary is basically based on the agreement of both interested parties.

Based on the description above, looking at the theoretical basis regarding the authority given to a Notary as a public official, it can be concluded that a Notary's deed must contain the wishes desired by the relevant party. The notary's role is only to provide perfect evidentiary power through the deed that is made if in the future there are parties who dispute the wishes contained in the Deed of Confirmation. Notarial institutions are one of the social institutions that arise from the need for interaction between human beings who require evidence regarding the civil legal relationships that exist and/or occur between them. The public places very high trust in Notary who are considered to be the solution to the problem of ambiguity in the field of civil law. UUJN and UUJNP have given the label of public official to a Notary so that as a public official, the Notary has an obligation to provide services to people in need as well as possible.

Therefore, as explained previously, according to the author, there is still hesitation among Notary in making a Deed of Confirmation regarding the establishment of an Individual PT, some agree and some reject its use. This is because in making the Deed of Confirmation of Individual PT, one of the elements confirmed by the Notary is the Decree of the Ministry of Law and Human Rights on the establishment of Individual PT. In addition, the Deed of Confirmation essentially requires that there be an act of representation that has previously been made by a Notarial Deed, so that the Deed of Confirmation is not suitable for use to confirm the Decree of the Ministry of Law and Human Rights relating to the establishment of an Individual PT, or confirm the statement
of the parties' will because the action taken by the applicant has not previously been carried out. A Notarial Deed has been made. Then, making a Deed of Confirmation in establishing an Individual PT is contrary to the aim of creating an Individual PT, namely without having to involve a Notary as an effort to reduce the costs of establishing a company and make it easier to establish a business entity. The creation and use of a Deed of Confirmation in creating a Individual PT account has not yet been specifically regulated. Therefore, the basis used by banks is only the custom of creating a company account that has a notarial deed, so this is also applied when opening a Individual PT account to attach a Notarial Deed. Thus, the absence of a Notarial Deed in the establishment of an Individual PT makes banks request a Deed of Confirmation regarding the establishment of an Individual PT for administrative needs. This occurs as a result of a lack of coordination between the Financial Services Authority and Banking, so that banking policy requires a Deed of Confirmation when creating an Individual PT account, which is detrimental to business actors by increasing costs through making a Deed of Confirmation.

5 CONCLUSION

Based on the results of research conducted by the author, it can be concluded that the Notary's basis for making a Deed of Confirmation in the Establishment of an Individual PT is regulated in Article 15 Number (1) UUJN. The Deed of Confirmation of Individual PT is a statement of the will, information or actions of the party, namely to establish Individual PT and provide information on the existence of the company. Therefore, basically an Individual PT Deed of Confirmation is a Partij Deed or Party Deed, namely a deed drawn up before a Notary, based on the information or actions of the party who appears before the Notary, and the information or actions are required by the Notary to make a deed. And the Deed of Confirmation of the Establishment of an Individual PT and AD of PT cannot have the same position. This is because AD of PT must be made by a Notary as regulated in Article 7 Number (1) UUPT, while the Deed of Confirmation of an Individual PT basically contains the wishes, statements or actions of the party which is made before a Notary basically in the form of a Partij Deed. The absence of Articles of Association in Individual PT makes it difficult for banks to implement Know Your Customer Principles. This is because the practice of opening an account for a legal entity is that it must have an Authentic Deed made by a Notary.
In connection with the above conclusions, the author also took the initiative to provide suggestions that the Banking, Financial Services Authority, and the Ministry of Law and Human Rights of the Republic of Indonesia, as service providers and government organs responsible for being facilitators and/or regulators in business development, should improve synergy and collaboration to create laws and regulations related to the operationalization of Individual PT which are in line with the aim of creating this legal entity, namely ease of doing business and encouraging accelerated economic growth. In implementing the Know Your Customer Principles, banks require documents to verify customer identity. The absence of an AD of PT at a Individual PT can be accommodated by verifying the identity of the founder and/or BO of the Individual PT, because the parties involved in the operations of a Individual PT are not as complicated as those in a PT. The establishment of a Individual PT should not require the involvement of a Notary Public, apart from being contrary to the purpose of establishing the Individual PT, it is also not difficult to identify capital, distribution of profits, authority of the parties representing the Individual PT. Thus, the presence of a Deed of Confirmation when opening an individual PT account is not required.
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