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Notary Position and Authority in Carrying Out the Process of Managing Business Entity License through OSS (Online Single Submission)

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Abstract

This study aims to analyze the position and authority of a Notary in carrying out the process of obtaining a business license using OSS (Online Single Submission) as well as analyzing the obstacles faced by a Notary in carrying out the process. This research is Empirical Research, using the Legislative, Conceptual, and Sociological approach method. Besides that, this research adopts the theory of authority, theory of legal certainty and the theory of legal effectiveness. The findings reveal that position and authority of the Notary as an authorized official based on a special power of attorney (mandate) from the business actor. However, a Notary as the official making the deed of establishment of a legal entity will be more effective if he directly registers the legal entity into the OSS system. Furthermore, there are obstacles faced by Notary where there is no legal certainty for Notaries in managing business entity permits using OSS both in the Notary Position Act and Guidelines and Procedures for Business Licensing Services. As for additional obstacles, there are Risk-Based and Investment Facilities and its application in using Notary OSS only based on the power of attorney from business actors, along with technical constraints such as difficulty accessing the OSS website, lack of understanding of business actors on new information on the website, invalid population identification number (NIK) and taxpayer identification numbers which commonly occurs when inputting OSS, difficulty in using the Indonesian Standard Classification of Business Fields (KBLI) and obstacles in the aspect of implementation. and obstacles in the aspect of implementation.

Keywords: Notary Position, Notary Authority, Online Single Submission (OSS), Business License

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1. Introduction

So far, the Internet is considered mainly on the basis of scientific advancement and freedom of expression. Entrepreneurs, academic institutions, and the government collaborate to develop an open information network system (Zulianti & Aslam, 2022). Every society is urged to have subjects who are engaged (Hutabarat et al., 2022), participatory, and interconnected. This is what many people use to access the open information network for a variety of objectives, including personal pursuits. This personal interest motivated many others to follow suit; hence, the phenomena of digitization grew in popularity and demand among the majority of people (Alfiatut et al., 2018).

Technology has also made its way into the realm of licensing in Indonesia, which resulted in the birth of an online licensing system currently known as OSS (Online Single Submission). This system has come about as a direct result of technological advancements. This is confirmed by the issuance of Government Regulation (PP) Number 5 of 2021 governing the Implementation of Risk-Based Licensing.

The registration of legal entities such as Firms, Limited Liability Companies (*Comanditaire Vennootschap*), etc. is one of the purposes of Online Single Submission (OSS). The applicant submits the request for the name of the limited liability company online, specifically by filling out the data according to the Ministry of Law and Human Rights' instructions. If the permission for the use of the company name has been granted by the Ministry of Law and Human Rights and delivered electronically to a notary, then it is the notary's responsibility to create a limited liability company establishment deed. The existence of approval for the use of the name and the document of establishment of a limited liability company is followed by the applicant or notary submitting a request for legalization of the establishment of the limited liability company.

One of these requirements is the need for a notary to be involved in the creation of the deed of establishment and articles of association. A notary is authorized by law to place all actions, agreements, and stipulations desired by the parties to an authentic deed, so that the deed he creates has complete strength of evidence and validity; in this case, the Deed of Establishment of Limited Liability Company (hereinafter referred to as PT). Notaries are also expected to comply with the provisions of the Notary position and other laws outlined in the Company Establishment Act. In this instance, the notary is responsible for determining if the parties will conflict with applicable laws and regulations. In performing their duties, notaries must also count on the Law on Notary Positions (hereinafter referred to as the JN Law). This is implemented by a Notary as a form

of responsibility to convey the requirements for authenticity, validity, and the reasons for the cancellation of a deed, as well as a preventative measure for the existence of a legal flaw in the Notary Deed that can result in the loss of authenticity and cancellation of the Notary Deed, causing harm to the public, especially relevant parties (Sari, 2018).

The notary also plays a role in requesting the name of the Company and acts as a proxy for the founder in terms of obtaining legal entity status from the Deed of Establishment of the Company until the announcement of the Company in the State Gazette of the Republic of Indonesia. The process begins with the signing of the Deed of Establishment of the Company (PT) and continues until the announcement of the Company in State Gazette of the Republic of Indonesia. This is solidified by the existence of a legal basis, specifically based on Article 2 paragraph (1) of Ministry Regulation No. M. 01-HT 01-10/2007 concerning Procedures for Submitting Applications for Legal Entities and Amendments to the Articles of Association, Submission of Notification of Articles of Association and Amendments to the Articles of Association and Changes to Company Data (hereinafter referred to as Ministerial regulation No. M. 01-HT 01-10/2007), that the one who has the right to apply is that the founder who authorizes the Notary, so that the legitimate form of application is a Notary due to "in quality and capacity as power" of the founder. Further, as specified in the Article 2 paragraph (1) of the Ministry Regulation which reads: "The application for ratification of the Company's legal entity is carried out by a Notary as the power of attorney of the founder".

The legal justification for OSS is Government Regulation Number 5 of 2021 Concerning Implementation of Risk-Based Licensing (hereinafter referred to as PP No. 5/2021). PP No. 5/2021 lists 20 business sectors, including electricity, agriculture, finance, tourism, education and culture, as well as micro, small and medium enterprises and nuclear power. After entering the Population Identification Number (hereinafter referred to as NIK), the ratification number of the Deed of Establishment, or the registration number of Company (PT) for the OSS institution, a Business Master Number (hereinafter referred to as NIB) in the form of 13 (thirteen) digits of random numbers is issued in order to obtain a business license and commercial or operational permit, which also serves as a Company Registration Mark (hereinafter referred to as TDP), and after the founder registers through filling in the complete data and obtaining a Taxpayer Identification Number (hereinafter referred to as NPWP).

Due to the fact that many errors are committed by notaries when using the OSS (Online Single Submission) system, there is a need to expand the role of notaries in the process of providing training to notaries about the OSS (Online Single Submission) system. This training can take place in-person or online, using a platform such as zoom. This is essential since there are currently many errors committed by notaries when using OSS (Online Single Submission).

In this context, there are several cases of Notaries in the West Nusa Tenggara region who make mistakes in inputting data into the OSS (Online Single Submission) system. Due to the fact that OSS (Online Single Submission) system is a new system, many Notaries do not understand the changes that must be made in the deed of establishment where the goal and purpose of a company must be adjusted according to Standard Classification of Indonesian Business Fields (hereinafter referred to as KBLI). Nevertheless, the OSS (Online Single Submission) system itself is still not perfect so it confuses parties who use the OSS (Online Single Submission) system including notaries.

On the other hand, a notary is a public official who is an extension of the government and who has the power and authority to provide services to the public in the civil sector in order to make authentic deeds. It is also stated that a Notary is a public official authorized to make authentic deeds and other authorities as referred in Article 1 of Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of a Notary (UU JN). However, in this issue there is a gap in rules since nothing is explained in Law Number 2 of 2014 regarding the amendments to Law Number 30 of 2004 Concerning the Position of a Notary that no statement was specified regarding the role, obligations and powers of a Notary in carrying out the OSS (Online Single Submission) system process in the process of establishing a legal entity. Therefore, current study aims to analyze the position and authority of a Notary in carrying out the process of obtaining a business license using OSS (Online Single Submission) as well as analyze what obstacles are faced by a Notary in carrying out the process of obtaining a business license using OSS (Online Single Submission).

2. Literature Review

2.1 Authority Theory

The terms of "authority" and "power" are frequently confused with one another, despite the fact that they do not have the same meaning. On the other hand, depending on the circumstances, either one could be used instead of the other without significantly altering the meaning of the sentence. The practice of "power" and the lines of "authority" are exceedingly difficult to differentiate from one another. Both terms refer to the manner in which governmental duties are carried out (Ridwan, 2020).

The features of the duties assigned to government authority have an impact on its development. The government's job is to follow the state's responsibilities, which include carrying out some of the state's

responsibilities as a power structure. Meanwhile, the government's responsibilities are determined by each country's responsibilities, aims, and obligations. The bigger the function of the government, the more duties and responsibilities the state has, as seen by the government's participation in citizens' activities. These interventions are required to align people's actions with one another and with the state's welfare purpose (Kosasih et al., 2017).

2.2 Legal Certainty Theory

Certainty is a matter (condition) that can be known for such, and the requirements of the law must fundamentally be certain and fair. A code of conduct and a commitment to fairness are both prerequisites, given that the code of conduct needs to be able to back up an order that is regarded reasonable. The law is able to perform its function only on the condition that it is carried out in a just manner and with absolute consistency. The question of legal certainty can only be answered normatively, rather than sociologically (Dominikus, 2010).

A normative legal certainty exists when a regulation is enacted and accepted because it governs in a clear and logical manner. Clear in the sense of not giving rise to uncertainty and rational. In the opinion of Utrecht, legal certainty has two meanings: first, the existence of general rules that allow individuals to know what actions may or may not be performed, and second, legal security for individuals against government authority, because the existence of general rules allows individuals to know what the State may charge or do against them (Dominikus, 2010).

2.3 Legal Effectiveness Theory

Effectiveness refers to the consequence of success or effectiveness or efficacy that has been achieved. Indeed, it is impossible to discuss the efficiency of the law without studying the features of two associated factors, namely the qualities or dimensions of the target object employed (Suarda, 2009). Furthermore, Bronislav Molinoswki, and Allot highlight that:

"The theory of the effectiveness of social control or law, law in society is analyzed and divided into two, namely: (1) modern society, (2) primitive society, modern society is a society whose economy is based on a very broad market, specialization in industry and the use of advanced technology. In modern society, laws are made and enforced by authorized officials" (Salim, 2013).

2.4 The Concept of Role

Mukti Fajar ND and Yulianto Achmad present the definition of roles, which states that "role is behavior that examines that legal subject will behave in accordance with their status and function" (Dewata & Achmad, 2010). Therefore, a role can be defined as the behavior that examines and analyzes the actions of institutions and legal subjects in solving, resolving the problems that arise in the life of society, nation and state.

2.5 OSS (Online Submission System)

Electronically Integrated Business Licensing or Online Submission, hereinafter referred to as OSS, is a Business Licensing that is issued by the Institution to business actors through an integrated electronic system. This Business Licensing is issued for and on behalf of ministers, institutional leaders, governors, or regents/mayors to business actors.

18 Notary Concept

The definition of a Notary is stated in Article 1 number (1) of Law Number 2 of 2014 concerning Amendments to the Law Number 30 of 2004 concerning the Position of a Notary, which reads:

"Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws."

3. Methodology

This research is empirical legal research. The approach method used in this research is the statue approach, conceptual approach, and sociological approach. This study uses legal material collection techniques with secondary data collection methods, namely by using recording, recording through data or synopsis. After the data has been collected, both obtained by library research and interviews, then it is analyzed qualitatively, namely the data stated by the respondents in writing or verbally as well as real behavior, which is researched and studied as a whole (Dewata & Achmad, 2010). Subsequently, the data is described using prescriptive logic of thinking. The prescriptive method of thinking is intended to provide arguments made by researchers to provide an assessment of right or wrong or what should be according to law on facts or legal events from research results (Persad, 2014). All legal materials collected are then reviewed and analyzed according to the legal issues faced, as well as followed by drawing conclusions by deductive method, namely drawing conclusions from a general issue to the concrete problems faced (Dewata & Achmad, 2010).

4. Result and Discussion

4.1 The Notary Position and Authority in Managing Business Entity License using Online Single Submission according to the Prevailing Laws and Regulations

The Law on Notary Positions (UUJN) Number 2 of 2014 and the Jo. LAW Number 30 of 2004 serve as the legal foundation upon which notaries perform out their responsibilities and exercise their authorities. The rules of the Notary Position Regulations and the Notary Position Act stipulate in essence, that the main responsibility of a notary is to make authentic deeds. In Article 1868, it is clarified that an authentic deed is a deed that is made in the form established by law and is made by or in the presence of public officials who have the right to do so at the location where the deed was made. Notary deeds play a significant role in the creation of legal certainty due to the fact that they are authentic. Notary deeds can be used as a means of concrete evidence whose proof is outward and full in the event that problems relating to the deed arise in the future (Sjaifurrachman & Adjie, 2011).

According to the findings of interviews, it is possible to draw the conclusion that the primary reason for the birth of OSS was to facilitate licensing services in order to expedite and increase business investment and activity; however, this is not implemented very well in the community, which is why the role of a Notary is required in this context.

In addition, there is assistance for Notaries in the form of the Indonesian Notary Association (henceforth INI) as an organization for every Notary authorized to render legal advice on OSS issues. INI also offered assistance in accordance with Article 1 paragraph (2) of the Indonesian Notary Association Regulation No. 08/PERKUM/INI/2017 Regarding Procedures for Providing Legal Aid and Assistance. Providing each Notary Public with a knowledge of the OSS program and system is the duty of INI in minimizing or preventing errors in the use of OSS. Every Notary Public must comprehend this, as it is the foundation for preventing errors and accidents in the operation of the OSS system.

In order to obtain absolute legal certainty, it is necessary for the notary as a public official who carry out the profession of providing legal services to the general public to get obtain protection and guarantees. In the Law Number 2 of 2014 concerning Amendments to the Law Number 30 of 2004 concerning Notary Positions, provisions have been made to govern guarantees of protection as well as assurances of reaching legal certainty when it comes to the execution of notarial deeds. Notwithstanding, several provisions in the Law are no longer in conformity with developments in the law and the requirements of the community, which means that changes need to be made. These changes are also intended to further emphasize and strengthen the responsibilities, functions, and authorities of Notaries as officials who carry out public services, as well as synchronization with the other law.

In the event of a Notary error in the operation of the OSS system in accordance with Article 1 Paragraph (6) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018 Concerning Registration of Limited Partnerships, Sole Partnerships, and Civil Partnerships, the Notary is defined as the applicant, in this case the beneficiary of the founder or the business entity's allies. The position of the Notary as an official authorized by a specific power of attorney (mandate) derived from the power of attorney (business actor). Therefore, if there is a loss that is actually caused or suffered by the recipient of the power of attorney, in this case the Notary is negligent or not careful enough to cause harm to the founder or the business entity, then the provisions regarding the sanction of the code of ethics that regulates related to the implementation of his position as a Notary cannot be enforced, particularly in relation to by inputting, recording, or registering in OSS.

Accordingly, the form of accountability that can be granted by a Notary as a beneficiary, the form of accountability of civil or ordinary legal subjects, and not as a Notary, and this can be demonstrated normatively by referring to the provisions of Article 1365 of the Civil Code. Theoretically, a claim for compensation that is based on the cause for an act of violating the law can only be considered to be a breach of the law if it meets the 4 (four) characteristics that are listed below:

- a) There is a violation of the law;
- b) There is a loss;
- c) There is a causal relationship between losses and unlawful acts, and;
- d) There is a mistake.

If it turns out that the loss was proven to have arisen due to an error or mistake that was caused by the recipient of the power of attorney, then the person concerned can be held accountable as an ordinary legal subject rather than as a Notary, which means that the code of ethics sanctions cannot be imposed by a Notary if referring to the provisions of the Regulations. Meanwhile, the Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships have been regulated in the Regulation of Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2018. Nevertheless, if the deed in question was executed by a Notary, the person concerned might be sanctioned under the Notary code of ethics.

Furthermore, the role of INI in carrying out the function of Notary coaching has been carried out in the

National Seminar in a series of events commemorating the 113th Anniversary of the Indonesian Notary Association (INI) on July 1, 2021. Hence, the Central Board of the Indonesian Notary Association (PP-INI) on Tuesday, June 15, 2021 at Bhirawa Ballroom Hotel Bidakara, Jakarta, held a National Seminar conducted online and offline with the theme "Implementation of Risk-Based Licensing After the Enactment of the Job Creation Law" and Government Regulation of the Republic of Indonesia Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing and "Implementation of Online General Law Administration (AHU) for Company (PT) After the Enactment of Permenkumham RI No. 21 of 2021".

The advent of OSS also solves the licensing issue about the slowness of licensing services in various Indonesian locations. At the onset of the implementation of Government Regulation of the Republic of Indonesia Number 5 of 2021 Concerning the Implementation of Risk-Based Business Licensing, the Investment Coordinating Board (BKPM) is in charge of OSS. However, over time, OSS will involve several associated Ministries. The Ministry of Law and Human Rights is one of the associated agencies.

When business owners want to establish a business entity that is both legally and non-incorporated, the purpose or objective and business activities listed in the deed of establishment must be in accordance with the KBLI 2020 code. This is because the Notary will access the affirmation of the establishment of a business entity in the system known as AHU Online, which is maintained by the Directorate General of the General Legal Administration. When a business entity is not a legal entity, such as a CV, Firm, or Individual Alliance, then it is registered with the Business Entity Administration System. If a legal entity in the form of a Limited Liability Company is registered with the Legal Entity Administration System (SABH), then the business entity is registered with the Business Entity Administration System (SABU). This also applies to business entities that have been running or operating; in order for them to be integrated into the OSS system, they will need to modify the purpose or objective as well as the business activities of their business entities in accordance with KBLI 2020.

When notaries are assigned the task with the responsibility of registering the legalization of business entities, they are required to check that the KBLI code data that has been entered in these systems is accurate. This is necessary in order for these systems to be integrated into the OSS system before the process of registering for business licenses can begin. Because of this, business owners who want to start their own companies often seek assistance from notary services by granting power of attorney so that they can get assistance registering their companies' business licenses. This is because the deed of establishment or the deed of change of business entity are considered to be part of the same package. If the business owner operates under the guise of a huge corporation, then the company will be equipped with a specialized legal department that is familiar with the various types of personal rules. The case of licensing registration is required to be carried out in accordance with the law in an effort to be carried out directly by the corporation. The Notary acts solely in accordance with the authority regulated in the Notary Position Act, which consists of making a deed and providing a copy in addition to providing legal counseling on what the appearers want to make in the case.

According to the Law on the Position of a Notary, the authority possessed by a Notary is to make an authentic deed relating to matters relating to acts, agreements, and other authorities regulated by law and/or required by those who have an interest in, as long as the deed to be made is not excluded, assigned to an official, or other person who has been regulated by law. The authentic deed is extremely significant for people who require documentation, both in terms of business and personal interests (Prabawa & Rudy, 2020).

The reason that business licenses are processed online is that the Notary believes that the government has a vision and mission to make business licensing registrations online, with the goal of accelerating business in the investment sector in order to attract foreign investors to invest in the country, which will undoubtedly open up many opportunities. Job opportunities, then the bureaucracy that has been very long in terms of business license registration, which is face-to-face and takes a long time, then the government strives to prevent corruption in connection with business license registration. The introduction of the OSS system has also made it easier for entrepreneurs, particularly in terms of obtaining the principle license or main license required for conducting business. The registration of business licenses through OSS has proven to be very quick (in one day), entrepreneurs can obtain an NIB and a business license, after which they can print their own completed business licensed products to be registered.

The Notary's authority, which will be determined in Article 15, paragraph (3) that the Notary Position Act is an authority that will be determined in the future based on other future legal regulations (*ius constitutum*) pertaining to this authority. The aforementioned agreement is not enforceable or cannot be executed (non-executable), and parties or individuals who are offended by the Notary's activities beyond the scope of authority may sue the Notary in civil court. The Notary's power, which will be defined subsequently, will be determined in accordance with the applicable laws and regulations.

Notaries are the only individuals who have the authority to create legal documents in the form of a deed, whether it be a notarial deed or a private deed. One may say that this is just a small portion of the whole legal action that takes place in the private sphere society, and that this activity serves as proof that is admissible in any court of law. When recognized through the provisions of Article 5 paragraph (4) Letter b of Law Number 19

of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), provides an explanation regarding the requirement to make a deed in the form of a document, in accordance with the form of an authentic deed and in accordance with the provisions enforced in this Law which are written and contained in the form of a notarial deed, which is in accordance with the provisions that enforced.

In carrying out its duties, the Notary profession creates evidence as requested by the parties involved in the evidence in specific legal actions, as well as evidence referred to in the area of civil law. In order for a Notary to issue or make a deed, the parties must submit a request. If the parties do not submit a request, the Notary will not issue or make any deed in this situation, including services in OSS management. The Notary will make a Notary deed externally, formal and material, based on proof or information and/or statements collected by the Notary from the parties that are further explained or expressed and exhibited to or before the Notary.

The authority and position of a Notary created as well as to provide services and services outside of his main responsibility are crucial to the creation of legal certainty and protection for the community, as the position and authority of a notary are in the realm of preventing legal problems. A Notary's authentic deed is a foundation of legal action in the field of Civil Law carried out by the community, which can be used as flawless evidence in court in the future.

In essence, a notary records or certifies in writing the legal actions of the parties involved. The purpose of the Notary Deed to ensure that the parties who have an interest in pursuing legal actions can be indicated in a Notary deed or an authentic deed that can be used as strong and valid evidence. Therefore, the making of a Notary deed or an authentic deed must be conducted in accordance with Article 1868 of the Civil Code and established procedures, such as fulfilling the provisions of the form of a Notary deed consisting of the beginning of the deed, the body of the deed, and the closing/end of the deed, as stated, and also in accordance with the provisions of Article 38 of the Act on Notary Positions. Moreover, for the formation of OSS, even though there are no rules or laws, the Notary must carry out the duty professionally and responsibly and must produce a report on the services provided, such as the charge for making OSS to INI, which is also used in the Notary's income and tax report.

Based on the Authority theory, referring to the provisions of Article 1 paragraph 1 and Article 15 paragraphs (1), (2), and (3), the position of the Notary is interpreted not as an authorized official but as an ordinary person or ordinary legal subjects who are considered capable of carrying out legal actions.

A normative legal certainty exists when a regulation is enacted and accepted because it governs in a clear and logical manner. Clear in the sense of not giving rise to uncertainty and rational. In the opinion of Utrecht, legal certainty has two meanings: first, the existence of general rules that allow individuals to know what actions may or may not be performed, and second, legal security for individuals against government authority, because the existence of general rules allows individuals to know what the State may charge or do against them (Dominikus, 2010).

According to the legal certainty theory, Notaries do not have complete power over OSS, as the OSS system can be administered by anybody who intends to form a business company. However, a Notary as the official creating the deed of formation of a legal entity will be more successful if he directly registers the legal entity in the OSS system. This will obviously benefit the community, as it will be directly handled by officials who are familiar with the system. Although the Notary does not have complete control over the operation of the OSS, the Notary has complete control over the creation of a legal entity deed so long as it does not exceed the Notary's code of ethics.

4.2 Notary Obstacles in Managing Business Entity License by using Online Single Submission System

Government and public administration at both the national and regional levels place a premium on the provision of high-quality public services. Decentralization and Public Service Democracy Regarding Local Government Services, the primary responsibility of the government in the era of decentralization is to organize, provide, and deliver high-quality public services to the community. Within the context of public services, the state is obligated to provide for every citizen and resident's fundamental rights and requirements. The West Lombok One Stop Integrated Service and Investment Service (henceforth DPMPSTSP) must provide facilities for business actors who handle their licenses at the OSS. During the deployment of the new system, there are undoubtedly going to be difficulties. As a facilitator of OSS system services, West Lombok DPMPSTSP has a responsibility to assist the community in overcoming hurdles, particularly for business actors and notaries that operate/register firms in OSS. The obstacles to the implementation of the Online Single Submission (OSS) system are:

4.2.1. Difficulty accessing the OSS website

After the launch of the OSS system, the first issue encountered was the difficulty of logging in to the OSS portal page. The amount of business players visiting the OSS website at the same time makes it difficult to access the OSS website, causing several problems. The OSS application appears somewhat forced, and there is a monthly upgrade of information and systems.

In the Government Regulation of the Republic of Indonesia Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions, Article 11 explains the role of DPMPPTSP in providing assistance to business actors or Notaries who have been authorized by business actors, including the following:

- a) OSS System Services on Business Licensing in the regions are carried out independently by Business Actors.
- b) The independent service as referred to in paragraph (1) is carried out with its own equipment/facilities or provided by DPMPPTSP.
- c) In the event that the OSS System service cannot be implemented independently, DPMPPTSP shall: a. assisted services; or b. mobile service.
- d) Assisted services as referred to in paragraph (3) letter a are carried out interactively between DPMPPTSP and Business Actors.
- e) The mobile service as referred to in paragraph (3) letter b is carried out by bringing the affordability of services closer to Business Actor by using transportation or other means.

4.2.2. Lack of Understanding of Business Actor: New Information on the Website

In the second month following the debut of the Online Single Submission (OSS) system, the OSS website contains updated information. The information update in the second month following the launch of the OSS system has no impact on business actors' ability to access the OSS website, but business actors are unaware of the significance of the new information. Oftentimes, information updates in the form of upgrades to a still-running OSS system result in changes to the features and appearance of the OSS system, necessitating modifications from the user (business actors) and Notaries who manage OSS.

The provision of guidelines and procedures for Risk-Based Business Licensing and Investment Facilities has actually been regulated in Article 2 of the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities.

In the current research, the role of West Lombok DPMPPTSP in providing understanding and counseling for business actors and Notaries is very necessary, because OSS is still a new thing so a seminar or technical guidance is needed, especially for Notaries who work on OSS so that Notaries can work on OSS licensing properly and can provide explanations about OSS to his clients.

4.2.3. Constraints to the Use of Indonesian Standard Classification of Business Fields (KBLI)

In addition to constraints on the OSS system, there are obstacles to the use of the Indonesian Standard Classification of Business Fields (KBLI), namely there are business activities that have not been classified as KBLI and there are business fields that do not yet have a permit. The lack of understanding of business actors in using the KBLI as the basis for classifying business fields to issue permits is also an obstacle in the implementation of the OSS system. Especially at the stage of issuing permits.

In Article 1 Central Statistics Agency Regulation Number 2 of 2020 concerning Standard Classification of Indonesian Business Fields. In this Agency Regulation what is meant by the Standard Classification of Indonesian Business Fields is to classify Indonesian economic activities/activities that produce products/outputs, both in the form of goods and services, based on business fields which is used as a standard reference and a tool for coordination, integration, and synchronization of statistical operations.

Further, KBLI 2020 regulated in the Head of BPS Regulation No. 2 of 2020, this regulation shall come into force at the time of its promulgation, which is September 15, 2020 and is a replacement for the Regulation of the Head of BPS Number 95 of 2015 and Regulation of the Head of BPS Number 19 of 2017, which have been revoked and declared invalid.

Moreover, it is also explained in Article 4 of the Central Statistics Agency Regulation Number 2 of 2020 concerning the Standard Classification of Indonesian Business Fields, namely when this Agency Regulation comes into force, the Regulation of the Head of the Central Statistics Agency Number 95 of 2015 concerning the Standard Classification of Indonesian Business Fields (State Gazette of the Republic of Indonesia 2015 Number 1635) as amended by Regulation of the Head of the Central Statistics Agency Number 19 of 2017 concerning Amendments to the Regulation of the Head of the Central Statistics Agency Number 95 of 2015 concerning the Standard Classification of Indonesian Business Fields (State Gazette of the Republic of Indonesia of 2017 Number 388), is revoked and declared not applicable.

As a result, many companies have used the old KBLI in their deed of establishment, so here the role of a Notary is very much needed where the Notary must make a Deed of Minutes of the General Meeting of Shareholders and replace the old KBLI with a new one.

4.2.4. Invalid Population Identification Number (NIK) and Taxpayer Identification Number which usually occurs when inputting OSS

Population Identification Number or NIK, which includes the NIK status that has not been activated because the business actor has not done finger/retina print. This NIK issue can also be due to changes in business actor data such as name, status (marriage), occupation, and address and NPWP issues such as invalid NPWP which usually

occurs when OSS and OSS input confirms taxpayer status (henceforth KSWP).

21. 5. Implementation Issue

The OSS system is still proving challenging for business actors to secure authorization. When using OSS capabilities like filling in corporate data, location tagging, or uploading documents, there are some initial issues. Another issue that business actors and notaries encounter is that the OSS system has no rollback feature, so if an error happens (inputting data/information or downloading required documents), the procedure must be restarted. Nonetheless, business actors reacted positively to the existence of OSS, which was seen as ensuring a faster permit approval procedure and less bureaucracy. It is easier to obtain permissions with the use of NIB, which serves as a Company Registration Certificate (TDP), Importer Identification Number (API), and customs access. Business actors receive support from digital platforms since they foster business process initiative and decrease direct connection with officials, reducing the risk of levies and corruption.

On the other hand, OSS products have not been recognized by banking institutions and goods/services procurement institutions. In Makassar City and Central Lombok Regency, for example, banks and goods/services procurement institutions still ask for TDP as a prerequisite when applying for loans or participating in government goods/services auctions. In fact, the NIB also acts as a TDP (Company Registration Certificate). In such a situation, the DPMPSTP agency continues to facilitate the issuance of TDP on a limited basis. This can be detrimental to business actors who need more procedures and time to process permits which in turn causes legal uncertainty in doing business.

The database of permits received by the Regional Government from the OSS system is still based on the NIB, not yet classified according to the type of permit submitted by the applicant. To find out the number of business actors who have obtained an NIB, local governments can access the data on the OSS system. However, so far, the data placed in the OSS system has not been classified by permission type. The impact is that the local government must first classify based on permits manually.

Most regions do not yet have a Detailed Spatial Plan (RDTR). One of the steps involved in registering a business in the OSS system is the determination of a business location (Location Tagging). The certainty of determining the location of the business is very dependent on the existence of the RDTR which regulates the block to the land allotment of a location. However, the current reality is that throughout Indonesia only a small number (11 regions) have RDTR. The absence of this RDTR has an impact on the inaccuracy of determining the location of the requested business. A further impact is that the permit granted is potentially not located or not in the appropriate area.

Many areas provide Help Desks and Facilitators to assist with applying to OSS. Filling company data through the OSS system is certainly not familiar to some business actors (especially the elderly). In addition, the understanding of business actors is also not fully the same in registering in the OSS system. The provision of these facilities was helpful in their registration process. A Help Desk is managed by Facilitators who have a good understanding of operating the OSS system. In the city of Surabaya, for example, there are 6 facilitators who work by service area.

Notary Obstacles in Managing Business Entity Permits Through Online Single Submission, a regulation needed to prevent unwanted actions that can eliminate chaos, in this case it is used in Government Regulation of the Republic of Indonesia Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions to overcome the difficulty of access to the OSS website, then the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities to overcome the lack of understanding of business actors, the new information on the website, Central Statistics Agency Regulation Number 2 of 2020 concerning the Standard Classification of Indonesian Business Fields, overcoming problems with the use of the Indonesian Standard Classification of Business Fields (KBLI), and Law Number 11 of 2020 concerning Job Creation in overcoming obstacles to aspects of implementation.

In the problem of Notaries in Managing Business Entity Permits Through Online Single Submission, in terms of authority seen from the definition of "authority" is the power that exists in a person or group of people who have support or get recognition from the community. In this regard, "authority" means both rights and obligations (*rechten en plichten*) in this case the obligations of relevant agencies such as the licensing service and the role of DPMPSTP are not carried out so that these obstacles arise such as Difficulty accessing the OSS website, Lack of Understanding of Business Actors on New Information on the Website, Obstacles in the Use of Standard Classification of Indonesian Business Fields (KBLI), Constraints on Implementation Aspects, as well as from the Department of Population and Civil Registry and The Tax Service Office that lacks coordination regarding Invalid Population Identification Number (NIK) and Taxpayer Identification Number which usually occur when inputting OSS.

Normative legal certainty is when a regulation is made and invited for sure because it regulates clearly and logically. Clear in the sense of not causing doubt and logical (Dominikus, 2010). However, in the case of Notaries in Managing Business Entity Permits Through Online Single Submission with legal certainty, almost all

existing problems actually have a clear legal basis⁴⁷ so they have legal certainty such as Difficulty accessing the OSS website having Government Regulation of the Republic of Indonesia Number 6 of 2021 concerning Implementation Business Licensing in the Regions, Lack of Understanding of Business Actors on New Information on the Website¹⁶; has legal certainty in the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 4 of 2021 concerning Guidelines at⁸ Procedures for Risk-Based Business Licensing Services and Investment Facilities, Constraints to the use of the Indonesian Standard Classification of Business Fields (KBLI) are based on the Central Statistics Agency Regulation Number 2 of 2020 concerning the Standard Classification of Indonesian Business Fields, as well as Obstacles to Aspects of Implementation as described in the Job Creation Act.

In light of such obstacles, the law's effectiveness is diminished, and it is not implemented in accordance with its requirements. As a result, a number of issues develop, such as the inability to access the OSS system or the inability of business actors to comprehend information¹⁹ on the website. On the other hand, the government has published Government Regulation of the Republic of Indonesia Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions where DPMPTSP has a role in assisting business players or Notaries authorized by business actors. Nonetheless, there are still numerous Notaries and business actors⁸ who complain about this issue, causing it to not function as intended. In addition, there are obstacles in the use of the Indonesian Standard Classification of Business Fields (KBLI), where there is a change in the use of the KBLI based on the Central Statistics Agency Regulation Number 2 of 2020 concerning the Standard Classification of Indonesian Business Fields, where there are still many Notaries and business actors who do not understand it, and in terms of implementation, it has also not been implemented. This inefficiency is a result of law enforcement variables, such as the parties who make or apply the legislation, law enforcement facilities, and community factors, such as the context in which the law applies or is applied.

5. Conclusion

5.1 Conclusion

On the basis of the findings²⁶ of the study, it is possible to conclude that the Position and Authority of the Notary as an authorized official based on a special power of attorney (mandate) in working on the Notary OSS does not fulfill the three requirements of the Articles. But the notary, as the official who drafted the document establishing a legal entity, will be more effective if the Notary directly registers the legal entity in the OSS system. This will be advantageous for the community, as it will be directly handled by system-savvy officials. Although the Notary does not have complete control over the operation of the OSS, the Notary has complete control over the creation of a legal entity deed so long as it does not contradict the Notary code of ethics.

Furthermore, there are obstacles faced by Notary where there is no legal certainty for Notaries in managing business entity license using OSS both in the Notary Position Act and Guidelines and Procedures for Business Licensing Services. As for additional obstacles, there are Risk-Based and Investment Facilities and its application in using Notary OSS only based on the power of attorney from business actors, along with technical constraints such as difficulty accessing the OSS website, lack of understanding of business actors on new information on the website, invalid population identification numbers²⁸ (NIK) and taxpayer identification numbers which commonly occurs when inputting OSS, difficulty in using the Indonesian Standard Classification of Business Fields (KBLI) and obstacles in the aspect of implementation.

18 Suggestion

A Notary as a General Officer who creates a Deed of Establishment must always have access to information and complete knowledge of business activities, since a Notary also acts as the Proxy of the Company and, according to Law Number 40 of 2007 relating to Company (PT), has access to register the legalization of the establishment of a Company (PT) in the system. AHU Online, which will connect the data automatically to the OSS system. This must be complemented by the commitment of business players in developing their business sectors and meeting their obligations for all issued permits. The involvement of the government is also crucial, especially in terms of its responsiveness in monitoring the fulfillment of commercial players' obligations. It is envisaged that the relevant authorities will make changes to the OSS system itself, and as this business license involves multiple parties, it is vital for them to coordinate in order for this OSS program to operate effectively and efficiently.

References

- Alfiatul, K., Erika, D. H., Ika, M., Pradiayu, F. A., Dwi, S. R., Sumiati, Lifya, W. R., Ria, D. O., Liliana Mahirotul Azizah, Syayyidatus, S., Ahmad, A. S., Debby, S. R., Mar'atus, S., Muhammad, R., Yulia, E. H., Roisal, H., Ach. Fatahillah, Dewi, N. S., Alfiyati, N. H., ... Jumiatun. (2018). *Homo Digitalis: Manusia dan Teknologi di Era Digital* (M. A. Hidayat, Ed.). Elmtera.
- Dewata, M. F. N., & Achmad, Y. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar.

- Dominikus, R. (2010). *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. Yogyakarta: Laksbang Pressindo.
- Hutabarat, D. T. H., Salam, A., Zuwandana, A., al Azmi, C., Wijaya, C. R., Darnita, Tania, I., Lubis, L. K. A., Sitorus, M. A. P., Adawiyah, R., & Sinaga, R. (2022). Analysis Of The Implementation Of Law In Every Level Of Society In Indonesia. *Policy, Law, Notary and Regulatory Issues (POLRI)*, 1(2), 9–14. <https://doi.org/https://doi.org/10.55047/polri.v1i2.80>
- Kosasih, A., Kennedy, J., & Mahdi, I. (2017). *Dinamika Hukum Administrasi Indonesia, Mengenal Konstruksi Baru Hukum Administrasi Pasca Terbitnya Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan*. Penerbit Vanda.
- Persad, G. (2014). When, and how, should cognitive bias matter to law. *Law & Ineq.*, 32, 31.
- Prabawa, I. G. N. W., & Rudy, D. G. (2020). Peran Notaris Dalam Pendirian Koperasi Setelah Diberlakukannya Online Single Submission. *Jurnal Jatiswara*, 33(2), 1–20.
- Ridwan, H. R. (2020). *Hukum administrasi negara*.
- Salim, H. S. (2013). *Penerapan Teori hukum pada penelitian tesis dan disertasi*.
- Sari, S. F. D. N. (2018). Peran Notaris Dalam Proses Pembuatan Akta Pendirian Perseroan Terbatas. *Lex Renaissance*, 3(2), 407–422.
- Sjaifurrachman, & Adjie, H. (2011). *Aspek pertanggungjawaban notaris dalam pembuatan akta*. Mandar Maju.
- Suarda, I. (2009). *Kapita Selekta Hukum Pidana*.
- Zulianti, D., & Aslam, N. (2022). Implementation Of Management System On Halal Certification For Medan City MSME Actors. *CASHFLOW: Current Advanced Research On Sharia Finance And Economic Worldwide*, 1(3), 11–16. <https://doi.org/https://doi.org/10.55047/cashflow.v1i3.166>

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