

NOTARIAL KYC PRINCIPLE AND LEGAL UNCERTAINTY IN FOREIGN CAPITAL COMPANY FORMATION

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Abstract

The increasingly globalized investment climate has made Indonesia a strategic destination for Foreign Direct Investment (FDI), particularly through the establishment of Foreign Investment Limited Liability Companies (PT PMA). However, the regulatory framework surrounding the Know Your Customer (KYC) principle—locally known as Prinsip Mengenali Pengguna Jasa (PMPJ)—implemented by notaries in this process remains incomplete. This creates legal uncertainty and potential risks for both notaries and foreign investors, especially in the context of anti-money laundering enforcement. This study addresses two main problems: the impact of regulatory incompleteness regarding PMPJ on foreign investors in the PT PMA establishment process, and how PMPJ should be regulated for notaries dealing with foreign investment. The research uses normative juridical methods with a statute and conceptual approach, relying on primary, secondary, and tertiary legal materials and analyzed using grammatical and systematic interpretation. The findings reveal that existing regulations, including the Minister of Law and Human Rights Regulation No. 9 of 2017, do not adequately specify the verification and transaction monitoring procedures for foreign users of notarial services. This regulatory gap results in procedural confusion, potential legal liability for notaries, and hampers the state's efforts to combat transnational financial crimes. The study recommends the formulation of clearer and integrated PMPJ regulations, the development of digital verification systems, and enhanced institutional coordination to ensure legal certainty and protection for all stakeholders involved.

Keywords: Notary, Know Your Customer, Foreign Investment, Legal Uncertainty, PT PMA

INTRODUCTION

The acceleration of global financial integration has transformed cross-border investment into a vital instrument of economic growth, especially for developing countries such as Indonesia. As one of the preferred destinations for Foreign Direct Investment (FDI), Indonesia facilitates foreign capital participation primarily through the establishment of Foreign Investment Limited Liability Companies (PT PMA). According to the Indonesian Investment Coordinating Board, in 2023 alone, FDI contributed more than half of the total national investment realization. However, alongside this economic gain lies the increasing threat of misuse of foreign investment channels for illicit purposes, particularly money laundering.

One of the regulatory countermeasures adopted by the Indonesian government is the implementation of the Know Your Customer (KYC) principle—referred to domestically as Prinsip Mengenal Pengguna Jasa (PMPJ)—in various professional sectors, including the notarial profession. As stipulated in Regulation of the Minister of Law and Human Rights No. 9 of 2017, notaries are obliged to perform client due diligence (CDD) and enhanced due diligence (EDD), particularly in transactions involving foreign parties. However, the regulation lacks specific procedural guidance for verifying foreign investors' identities and monitoring their transactions, creating legal ambiguity and administrative challenges.

Existing legal scholarship has acknowledged the crucial role of notaries in preventing transnational financial crimes by ensuring the integrity of legal documentation. For example, Veiga (2021), Nila Amalia (2023), and Bitu (2024) have studied the notary's role in suspicious transaction reporting and KYC application. Nonetheless, these studies fall short of addressing the unique regulatory gaps notaries face when dealing with foreign investment cases. The absence of clear, detailed standards in existing regulations not only complicates the application of the PMPJ but also exposes notaries to potential legal liability due to inconsistent interpretations.

This study aims to analyze the impact of regulatory incompleteness related to the PMPJ on the legal certainty and accountability of notaries in the process of PT PMA establishment. It also seeks to identify legal reforms that can improve procedural clarity and institutional coordination, thereby reinforcing anti-money laundering safeguards in the context of foreign investment.

REVIEW OF LITERATURE

The notarial profession plays a crucial role in ensuring legal certainty and compliance in various civil law transactions, especially in the formation of business entities such as Foreign Investment Limited Liability Companies (PT PMA). According to Indonesian Law Number 2 of 2014 concerning the Amendment to the Notary Position Law, notaries act as public officials who are authorized to draw up authentic deeds and are required to uphold legal integrity and professional responsibility. In the context of globalization and foreign capital inflow, their role becomes increasingly strategic in preventing legal abuses such as money laundering and other transnational financial crimes.

To address these risks, the Indonesian government mandates the implementation of the Know Your Customer (KYC) principle, or Prinsip Mengenal Pengguna Jasa (PMPJ), as stipulated in the Regulation of the Minister of Law and Human Rights No. 9 of 2017. This regulation

requires notaries to conduct identification, verification, and monitoring of service users, including foreign investors. However, the regulation remains general and lacks specific technical guidance for handling foreign clients. This regulatory gap raises legal uncertainty and increases the burden of due diligence on notaries.

Several scholars have previously discussed the application of PMPJ by notaries. Veiga Lintang Mulwada (2021) highlights the obligations of notaries as reporting parties in suspicious financial transactions and their responsibility to comply with the principles of client recognition. Nila Amalia (2023) examines the role of notaries in monitoring client transactions as part of efforts to prevent and eradicate money laundering, especially in relation to the obligations outlined in the 2017 ministerial regulation. Syahril Gunawan Bitu (2024) investigates the application of customer due diligence (CDD) by notaries in Yogyakarta and identifies practical challenges in verifying client identities and reporting illicit activity.

Although these studies provide valuable insights into notarial duties and legal compliance, they do not specifically focus on the challenges arising from PMPJ implementation in the foreign investment context. The specificity of dealing with foreign entities, shell corporations, and nominee directors requires a more targeted regulatory approach to guide notaries in their preventive legal duties. The lack of standard operating procedures (SOPs) and integrated digital verification systems further complicates the process.

This research seeks to fill the gap in the literature by focusing on the incomplete regulatory framework concerning PMPJ when applied to foreign investors in PT PMA establishments. It aims to contribute to the development of notarial law by recommending a comprehensive and enforceable set of guidelines that strengthen both legal certainty and the professional protection of notaries.

RESEARCH METHOD

This study employs a normative juridical research method, which focuses on the examination of legal norms, doctrines, and statutory provisions relevant to the regulation and implementation of the Know Your Customer (KYC) principle by notaries in the establishment process of Foreign Investment Limited Liability Companies (PT PMA). Normative juridical research aims to analyze legal issues through a conceptual and regulatory lens, using legal reasoning to identify gaps, ambiguities, and inconsistencies in the law. This method is suitable for studying the incomplete regulation of PMPJ (Prinsip Mengenal Pengguna Jasa) in the context of foreign investment, where the clarity and specificity of norms are crucial.

The data used in this research consists of secondary data gathered through library research. Data collection was conducted by reviewing relevant laws and regulations, academic journals, books, and legal commentaries that discuss the notarial profession, KYC principles, foreign investment procedures, and anti-money laundering laws. The primary sources of legal data include statutory instruments such as the Law on Notary Office (UUJN), the Investment Law, the Limited Liability Company Law, the Anti-Money Laundering Law, Government Regulations, and the Regulation of the Minister of Law and Human Rights No. 9 of 2017.

The types of data used are legal materials categorized as primary, secondary, and tertiary. Primary legal materials consist of binding laws and regulations. Secondary materials include scholarly writings that explain or critique the primary sources. Tertiary materials consist of dictionaries, encyclopedias, and other reference works that support the interpretation of legal terms and principles. The data analysis technique used in this study is qualitative, conducted through grammatical and systematic interpretation of legal texts. Grammatical interpretation is used to understand the literal meaning of the legal provisions, while systematic interpretation is used to analyze their relation to other relevant norms and doctrines to ensure coherence and consistency in legal understanding.

RESULTS AND DISCUSSION

The implementation of the Know Your Customer (KYC) principle by notaries in Indonesia, referred to as Prinsip Mengenali Pengguna Jasa (PMPJ), remains legally ambiguous when applied to the establishment of Foreign Investment Limited Liability Companies (PT PMA). This research reveals that there is a significant normative gap in how notaries are expected to verify the identities, background, and transactional behavior of foreign service users. Such gaps not only hinder the professional duties of notaries but also undermine Indonesia's anti-money laundering framework.

The existing legal framework, particularly Minister of Law and Human Rights Regulation No. 9 of 2017, mandates notaries to apply client due diligence (CDD) and enhanced due diligence (EDD). However, articles 19, 20, and 21 of the regulation do not provide detailed procedural steps for verifying foreign documents or monitoring cross-border financial behavior. In practice, this results in inconsistent application, procedural uncertainty, and increased legal risks for notaries. As highlighted in the table below, multiple areas of concern persist in the current regulatory regime.

Table 1.
Legal and Procedural Gaps in PMPJ Application

Issue Area	Description
Identification Procedure	Unclear steps for identifying foreign users
Verification of Foreign Documents	Lack of standard procedure for verifying overseas legal documents
Transaction Monitoring	No detailed guidelines for continuous transaction monitoring
Regulatory Coordination	No detailed guidelines for continuous transaction monitoring
Legal Protection for Notaries	No detailed guidelines for continuous transaction monitoring

Source: Processed from field analysis and statutory review.

The incomplete regulation creates legal uncertainty (*rechtsunsicherheit*), which is contrary to the principle of legal certainty emphasized by Sudikno Mertokusumo, who argues that legal norms must be clear, applicable, and non-contradictory to ensure predictability and justice in legal implementation. In the current scenario, notaries are left to exercise discretionary judgment without institutional support or guidance, making them vulnerable to

administrative or even criminal liability should errors occur in dealing with shell corporations or nominee directors.

Syahril Gunawan Bitu's (2024) study in Yogyakarta also confirms that notaries often struggle to apply CDD procedures due to the lack of access to reliable foreign databases and insufficient institutional coordination. These findings align with the results of this research, which highlight the need for integrated digital systems and cross-border verification protocols. Without these systems, it is difficult for notaries to determine the legitimacy of foreign investors and their sources of funds, especially when structured through anonymous corporate vehicles.

Furthermore, the lack of procedural clarity directly conflicts with the notary's role as a public official (*pejabat umum*), who is tasked with ensuring that legal acts, such as company incorporation, are in full compliance with the law. According to Philipus M. Hadjon's theory of legal authority, public officials must act within a clear attribution of powers. When norms are vague or absent, the authority becomes discretionary and potentially *ultra vires*, which in turn risks the validity of the legal acts created by such officials.

Legal protection for notaries must also be strengthened. Under current conditions, should a notary fail to detect the use of a nominee director or shell company, they may be accused of negligence or complicity in money laundering. Veiga Lintang Mulwada (2021) notes that notaries are now recognized as reporting parties under anti-money laundering law, but are not given adequate legal protection in carrying out such high-risk obligations.

This research argues that a reformulation of PMPJ regulations is urgently needed. This includes the establishment of clear Standard Operating Procedures (SOPs) for foreign investor identification, standardized verification mechanisms for foreign documents, and the creation of a centralized verification platform that connects notaries with institutions such as the Ministry of Foreign Affairs, PPATK, and BKPM. In addition, continuous training for notaries on international financial crime typologies and reporting obligations must be institutionalized.

In examining the verification component of the PMPJ, it becomes evident that Articles 19 and 20 of the Ministerial Regulation No. 9 of 2017 merely require notaries to collect valid identity documents from service users, but do not elaborate on how to authenticate foreign documents or legalize foreign corporate identities. This creates a dilemma when foreign investors submit documents issued in jurisdictions with different legal standards or languages. Notaries, without an established verification channel, are forced to rely on translations or embassy legalizations, which may not sufficiently guarantee the document's authenticity. This procedural weakness increases the risk of accepting forged or manipulated documentation, especially in high-risk jurisdictions known as tax havens.

From a theoretical standpoint, this situation contradicts the notion of legal protection as defined by Philipus M. Hadjon, who posits that legal certainty and preventive legal measures must be present to ensure that public officials—such as notaries—are not left vulnerable to arbitrary accountability. The absence of an official legal basis for rejecting or further scrutinizing suspicious foreign documents places the burden of judgment entirely on the notary, which could later be used against them in court proceedings.

In addition, the monitoring aspect of PMPJ, which is governed by Article 21 of the same regulation, is broadly framed and lacks practical enforcement mechanisms. There are

no time intervals specified for transaction reviews, nor any requirement for notaries to update client risk assessments after company incorporation. This is in stark contrast with international standards set by the Financial Action Task Force (FATF), which emphasize ongoing due diligence and the dynamic nature of client risk profiles. Without clear monitoring parameters, the entire effort of applying KYC becomes static, potentially allowing high-risk clients to engage in laundering schemes post-incorporation without further notarial oversight.

The research further found that institutional fragmentation contributes to this regulatory weakness. Coordination between PPATK (Financial Transaction Reports and Analysis Center), the Ministry of Law and Human Rights, BKPM (Investment Coordinating Board), and notaries is minimal and unstructured. As a result, information about suspicious foreign transactions often does not flow efficiently. There is no dedicated platform that allows real-time data sharing or flagging of high-risk applicants across agencies, which significantly reduces the effectiveness of PMPJ enforcement.

Table 2 below summarizes the key institutional barriers that hinder the integration of PMPJ implementation across different legal and administrative entities.

Table 2.
Institutional Barriers to Effective PMPJ Enforcement

Institution	Barrier Description
Ministry of Law & Human Rights	Limited scope of ministerial regulation; no digital support platform
PPATK	No direct reporting mechanism tailored to notaries
BKPM	Investment licensing not synchronized with PMPJ screening
Notary Association (INI)	Lack of training and practical PMPJ guidelines

Source: Processed from field findings and legal instrument review.

These findings suggest that PMPJ implementation is not only hindered by incomplete legal norms but also by systemic infrastructural gaps. In contrast, countries such as Singapore and the United Kingdom provide notaries and legal professionals with access to centralized databases for corporate beneficial ownership, politically exposed persons (PEPs), and international sanction lists. This access enables more accurate risk profiling and protects legal professionals from unintentional complicity.

In Indonesia, such infrastructure remains absent. While the 2018 Presidential Regulation on Beneficial Ownership encourages corporate transparency, its execution at the notarial level is minimal due to lack of training and the absence of automated tools. Consequently, notaries are often unaware of how to identify nominee arrangements or shell entities effectively.

Thus, this study affirms that reform in the legal and operational framework of PMPJ must adopt a dual approach: normative and technical. Normative reform requires the revision

of existing regulations to include detailed and binding verification protocols. Technically, the government must provide an integrated online verification system and training modules to ensure that every notary, regardless of their region, has the capability and confidence to fulfill their KYC obligations in cross-border investment cases.

The broader implication of this research lies in its contribution to strengthening notarial integrity in Indonesia's investment climate. With growing pressure to attract foreign capital while also combating transnational financial crime, it is imperative that legal professionals such as notaries are empowered by a regulatory framework that is both precise and enforceable. This will not only increase the legitimacy of legal instruments in PT PMA establishment but also protect Indonesia's financial system from being exploited by illicit actors.

CONCLUSION

This study finds that the regulatory framework governing the implementation of the Know Your Customer (KYC) principle, or Prinsip Mengenali Pengguna Jasa (PMPJ), by notaries in the establishment of Foreign Investment Limited Liability Companies (PT PMA) remains incomplete, particularly in aspects of verification and transaction monitoring of foreign clients. The absence of detailed procedures and integrated institutional support creates legal uncertainty and increases the professional liability of notaries. Theoretically, this research contributes to the understanding of legal certainty, legal authority, and legal protection in notarial practice by highlighting the consequences of normative fragmentation and lack of coordination among state agencies. It also offers new perspectives by advocating for a regulatory framework that integrates digital systems and cross-border verification tools. Practically, the study proposes the establishment of clear standard operating procedures (SOPs), centralized KYC platforms, and targeted training for notaries to strengthen legal compliance and investor due diligence. These contributions are expected to enhance the credibility of Indonesia's legal and financial systems, particularly in the face of global financial crimes. Future research should focus on comparative models from countries with advanced KYC enforcement, the design of risk-based monitoring systems, and the role of notarial associations in standardizing compliance protocols across jurisdictions.

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