

**DEED OF MEETING DECISION DECLARATION BASED ON
INVALID EXTRAORDINARY GENERAL MEETING OF
SHAREHOLDERS
(CASE STUDY COURT DECISION NO.141/PDT.G/2018/PN.BLB)**

Jovanka Eugenia Item¹, Mohamad Fajri Mekka Putra²

¹ Magister Kenotariatan, Fakultas Hukum Universitas Indonesia, Depok
Email: jovanka.eugenia@gmail.com

²Magister Kenotariatan, Fakultas Hukum Universitas Indonesia, Depok

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Abstract

The issuing of the deed of the Statement of the Resolution of General Meeting (PKR) is resulted by the General Meeting of Shareholders (“GMOS”) which is done, in order to ensure the certainty of the law for the decision of the Resolutions of GMOS. The problem arising when the deed of PKR is based on the invalid GMOS (as stipulated on the Resolutions of Extraordinary of General Meeting of Shareholders by PT SGY dated 7 September 2017 which is held by the Board of Commissioners). Therefore, this research is focused for the legal impact by the deed of PKR which is based on the invalid Resolutions of GMOS and responsibility of the public Notary as the party who issued its. The decision of the court of this research is to determine the legal practice of the tort possibility in the Resolutions of General Meeting of Shareholders and the execution of deed PKR by the public notary as the issuer of deed of PKR. The Panel of Judges decided that the defendants have done the tort and punish them to pay the redeem to plaintiff for jointly responsibility including the Notary. Therefore, in order to answer the problem above, the researcher using the method juridical-normative. Furthermore, from this research also shows that the legal consequences of the deed of PKR which is executed by the invalid resolutions of GMOS whether the deed or Resolutions of GMOS become null and void and those responsibility could be the responsibility of the Public Notary as the issuer of deed PKR.

Keyboard : *The Deed of the Statement of the Meeting (PKR), the General Meeting of Shareholders, and responsibility of public notary.*

INTRODUCTION

Limited Liability Company organs are the General Meeting of Shareholders, Board of Directors, and Board of Commissioners.¹ The position between these three organs is the same and equal, but what distinguishes it is the division of authority. This is as stipulated in Article 1 number 4 of Law Number 40 of 2007 concerning Limited Liability Companies (Limited Liability Company Law), which states that the GMS has authority that is not given to the board of directors or the board of commissioners within the limits specified in the law and/or articles of association.

Based on article 78 of the Limited Liability Company Law, the General Meeting of Shareholders ("GMS") consists of an annual GMS and other GMS.² The annual GMS is a general meeting held once a year with an agenda in the form of the company's annual report as stipulated in Article 66 paragraph (2) of the Limited Liability Company Law. In practice, other GMS are known as Extraordinary GMS (EGMS). Extraordinary GMS is a general meeting held outside the agenda of the annual general meeting and can be held at any time based on the needs for the benefit of the company.

Based on Article 90 of the Limited Liability Company Law, in the implementation of the GMS, it is mandatory to make the minutes of the GMS and be signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and

by the participants of the GMS, but the signature is not required if the minutes of the GMS are made by a notarial deed, in the Limited Liability Company Law, the minutes of the GMS are known as the minutes of the GMS. The minutes of the GMS are notes containing everything that is discussed and decided in the general meeting of shareholders. Recording that is carried out on a non-notarial basis is called "minutes", where based on the minutes, those authorized by the GMS must face the notary and declare the results of the GMS decision of the GMS in the notarial deed.³ This deed is known as the "Deed of Statement of Meeting Decisions". The deed of statement of meeting decision is included in the *partij* deed, which is a deed containing the information of the parties who came before the notary and the statements of the parties are contended by the notary in an authentic deed. Thus, the *partij* deed or deed of this party is a deed made before a notary. Thus, the deed of *partij* contains the formal truth in accordance with what the parties tell the notary, so that the truth of the particulars themselves is only certain between the parties concerned themselves.⁴ In contrast to the deed of the Minutes of the GMS which is included in the deed of *relaas*, which is a deed made by a notary that describes authentically an action taken or a situation that is heard, known, seen or experienced by

¹ Indonesia, Undang-Undang Perseroan Terbatas, UU No.40 Tahun 2007, LN No.106 Tahun 2007, TLN No.4756, Ps.1 angka 2.

² *Ibid*, Ps.78 ayat (1).

³ Shinta Pangesti, "Akta PKR Dari RUPS Luar Biasa Yang Mengandung Perbuatan Melawan Hukum

(Kajian Putusan Nomor 45/Pdt/2014/PTR)", *Jurnal Yudisial*, Volume 13 Nomor 3, (Desember 2020), hlm.331.

⁴ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Cet.2, (Jakarta: Erlangga, 1983), hlm.53.

the notary himself in carrying out his office.⁵ Thus, the deed of *relaas* or deed of the official contains a description of what is seen and witnessed and experienced by the notary as a general official directly.⁶ The notarial deed is an authentic deed and is one of the strongest and most complete evidence tools so that it has perfect evidentiary power.⁷ Based on this, notaries have an important role in making authentic deeds in a company, be it making deeds of minutes of the general meeting of shareholders, or making deeds of statement of decisions of the general meeting of shareholders.

The implementation of the annual GMS and extraordinary GMS is subject to the procedures and provisions stipulated in the Limited Liability Company Law and the company's articles of association, including changes in the articles of association and changes in the company's management must follow the provisions in the Limited Liability Company Law and in accordance with the procedure for changes as stipulated in the company's articles of association. Provisions regarding the procedure for holding the GMS are regulated in Articles 81 to 90 of the Limited Liability Company Law. Arrangements for the implementation of the GMS include summoning, granting power of attorney from shareholders, quorum of attendance, quorum of decision making, and minutes of the GMS. All provisions regarding the procedure for holding the GMS are mandatory conditions that must be met

because this is related to the validity of the GMS itself.⁸

Changes in the composition of the company's management without going through a valid GMS which is then stated in the deed of statement of meeting decisions made before a notary has legal consequences such as causing losses both to the company's organs themselves, as well as to the validity of the implementation of the GMS and the validity of the deed of statement of the decision of the meeting itself. This is as the author found in Decision No. 141/Rev.G/2018/PN. BLB jo. Decision No. 454/PDT/2019/PT BDG jo. Decision No. 511/K/PDT/2021. In the case of the judgment, Plaintiffs LG and NR are directors and shareholders of PT. SGY filed a lawsuit against BH (Defendant I) who is a commissioner and shareholder of PT. SGY, K (Defendant II) commissioners and shareholders of PT. SGY, Notary S (Defendant III), Minister of Law and Human Rights of the Republic of Indonesia cq Director General of AHU (Also Defendant I), and PT. SGY (Co-Defendant II).

This case began when there was a secret engineering of changes regarding the composition of the company's management outside the procedure for changing procedures as stipulated in the Limited Liability Company Law and in the articles of association of PT. SGY. Plaintiffs LG and NR never received a request for the implementation of RUBSLB from the Commissioner for a change of management

⁵ Hari Sasangka, *Hukum Pembuktian dalam Perkara Perdata untuk Mahasiswa dan Praktisi*, (Bandung: Mandar Maju, 2005), hlm.53.

⁶ Lumban Tobing, *Peraturan Jabatan Notaris*, hlm.51.

⁷ Muhammad Adam, *Asal-usul dan Sejarah Akta Notaris*, (Bandung: Sinar Bandung, 1985), hlm.31.

⁸ Stephanie Munthe dan Arman Nefi, "Tanggung Jawab Notaris Atas Akta Risalah Rapat Umum Pemegang Saham Luar Biasa Yang Diduga Dibuat Secara Melawan Hukum (Analisis Putusan Pengadilan Tinggi Bandung No.484/PDT/2020/PT.BDG)", *Indonesian Notary*, Volume 4 Nomor 1, (2022), hlm.493.

in the company, and never made and issued an Invitation Letter for Summoning the EGMS and never gave power of attorney to Defendants BH and K as stated in the Minutes of the EGMS pt. SGY.⁹ Defendant K has made a Statement of Resolution of the Extraordinary General Meeting of Shareholders (EGMS) of PT. SGY before Defendant Notary S on the basis as if Defendant K had been authorized by Plaintiff LG which was given a meeting as it turned out in the Minutes (referred as RUPSLB PT.SGY).¹⁰ The plaintiffs LG and NR were not aware of the existence of an EGMS with the agenda of changing the management of the company, and did not approve the decision to change the management of the company as stated in the Deed of Statement of Resolutions of the Extraordinary General Meeting of Shareholders of limited liability company PT. The SGY made before the Notary Defendant S. Implementation of the EGMS is contrary to the Limited Liability Company Law and causes losses to the LG and NR Plaintiffs so that the Deed of Statement of Resolution of the RUPSLB of PT. The SGY is null and void or invalid.

For the actions of Defendant BH, Defendant K, and Defendant Notary S which caused harm to the Plaintiff, so the Plaintiff filed a lawsuit against Defendant BH, Defendant K, and Defendant Notary S, who in his petition appealed to the Bale Bandung District Court for an EGMS with the agenda of changing the management of the company dated September 7, 2017 which was then stated in the Deed of Statement of Decision of the General Meeting of Shareholders Number 63 dated September 29, 2017 made

before Defendant Notary S is null and void, and declares Defendant BH, Defendant K, and Defendant Notary S to have committed An Unlawful Act, and punishes the Defendants jointly to pay damages to Plaintiffs LG and NR, as well as declaring valid and legally binding deed number 37 dated June 6, 2015 made before Defendant Notary S, as the last deed of change.

Based on these issues, the author is interested in reviewing the Deed of Statement of Meeting Resolutions Based on Invalid Minutes of the General Meeting of Shareholders.

1.2 Problem Formulation

1. What are the legal consequences of the Deed of Statement of Meeting Resolutions made based on the Invalid General Meeting of Shareholders?
2. What is the responsibility of the Notary to the Deed of Statement of Meeting Resolutions based on the invalid General Meeting of Shareholders?

2. DISCUSSION

2.1 Legal consequences of the Deed of Meeting Resolutions made based on the Invalid General Meeting of Shareholders

Every legal act has legal consequences. The legal consequences of the implementation of the GMS that are not in accordance with the provisions and procedures for the procedures for the implementation of the GMS as stipulated in the Limited Liability Company Law and the Company's Articles of Association cause the GMS to become invalid. To determine the validity of a GMS, it is necessary to analyze

⁹ Mahkamah Agung, *Putusan Pengadilan Negeri Bale Bandung Nomor 141/Pdt.G/2018.PN Blb Tahun 2018*, hlm.4.

¹⁰ *Ibid*, hlm.5

in advance the requirements for the implementation of the GMS as stipulated in the Limited Liability Company Law and which are contained in the Company's Articles of Association, so that the implementation of the GMS is considered valid and the decisions produced in the GMS have binding legal force.¹¹

1) Demand Request for EGMS

In accordance with the provisions of the Limited Liability Company Law for the implementation of the GMS, the conditions must begin with a request for the implementation of the GMS. Requests for the implementation of the GMS can be from the Board of Directors, as well as initiatives from the Board of Commissioners, and can also be from Shareholders. Article 79 paragraph (1) of the Limited Liability Company Law stipulates the authority of the Board of Directors to hold annual GMS and other GMS preceded by the summoning of the GMS. The holding of the GMS may also be carried out at the request of 1 (one) or more shareholders who together represent 1/10 (one-tenth) or more of the total number of shares with voting rights, unless the articles of association specify a smaller one, and the implementation of the GMS can also be carried out at the request of the Board of Commissioners.¹² The request for the holding of the GMS is then submitted to the Board of Directors with a registered letter accompanied by the reasons.¹³ The registered letter is submitted by the shareholders and the copy is submitted to the Board of Commissioners.¹⁴

Related to the holding of the GMS in this case, the initiative to hold an EGMS

PT.SGY comes from the Board of Commissioners of PT. SGY as well as its shareholders, known as BH and K. Based on Article 79 paragraph (3) of the Limited Liability Company Law where the provision requires that the request for the implementation of the GMS by the Board of Commissioners, be submitted to the Board of Directors with a registered letter along with the reasons, but in this case, the request for the implementation of the EGMS by the Board of Commissioners is not accompanied by a registered letter, nor is there any mention of the reasons related to the request of the Board of Commissioners to hold an EGMS PT.SGY dated August 7, 2017. however, even though BH and K as the Board of Commissioners and shareholders of PT. SGY has the right to request the holding of an EGMS, in this case the EGMS of PT. SGY, but the holding of the EGMS of PT. SGY at the request of BH and K as the Board of Commissioners and Shareholders of PT. SGY does not comply with the provisions of Article 79 paragraph (3) of the Limited Liability Company Law because the request for the implementation of the EGMS is not submitted to the Board of Directors with a registered letter along with the reasons.

2) Invitation GMS

The summoning of the GMS is impressive, that is, if no summons is made, the GMS held becomes invalid and the decision resulting from the GMS becomes non-binding.¹⁵ The Board of Directors must call the GMS within a period of no later than 15 (fifteen) days from the date the request for the implementation of the GMS is

¹¹ Stephanie Munthe dan Arman Nefi, *Tanggung Jawab Notaris*, hlm.496.

¹² Indonesia, *Undang-Undang Perseroan Terbatas*, Ps.79 ayat (2).

¹³ *Ibid*, Ps.79 ayat (3).

¹⁴ *Ibid*, Ps.79 ayat (4).

¹⁵ Stephanie Munthe dan Arman Nefi, *Tanggung Jawab Notaris*, hlm.497

received.¹⁶ The call was made in the event that the GMS was held at the request of shareholders and the Board of Commissioners. If the Board of Directors does not call the GMS, then the request for the implementation of the GMS is submitted back to the Board of Commissioners or the Board of Commissioners to call the GMS itself.¹⁷

According to Article 82 paragraph (1) of the Limited Liability Company Law, the summons of the GMS is carried out within a period of no later than 14 (fourteen) days before the date the GMS is held, by not taking into account the date of summons and the date of the GMS. The summoning of the GMS can be through registered mail and or summons through newspapers. In the call to the GMS, the date, time, place, and agenda of the meeting must be included along with notification that the materials to be discussed in the GMS are available at the Company's office from the date of the GMS call to the date the GMS is held.¹⁸ The summons of the GMS will be valid if it meets the provisions outlined above.

The same requirements and complementing article 82 paragraph (1) of the Limited Liability Company Law, are also stated in the articles of association of the Limited Liability Company, where it is required regarding the place, the summoning of the General Meeting of Shareholders, where the GMS must be located in the position of the Company, where the Company carries out activities or in places where required in the Articles of Association of the Company while the call to the Meeting must be conveyed through a registered letter and / or advertisement in the newspaper within 14 (fourteen) days. As for the

Company's articles of association, which are required by article 159 of the Limited Liability Company Law, to be adjusted to the Limited Liability Company Law, it is certain that the provisions of the Limited Liability Company's articles of association are in accordance with or complementary to Article 82 paragraph (1) of the Limited Liability Company Law..

In this case, neither the Board of Directors nor the Board of Commissioners summoned the GMS. That is because from the beginning there was no request for a request for the implementation of the EGMS of PT. SGY to the Board of Directors of PT. SGY with a registered letter accompanied by the reason, namely in this case for changes in the composition of the management of PT. SGY, then the Board of Directors did not follow up on this matter. Based on the provisions of Article 79 paragraph (6) point b, if the Board of Directors does not call the GMS, the Board of Commissioners may call the GMS itself. In this case, there was no summons for the EGMS with the agenda of changing the composition of the company's management by the Board of Commissioners.

3) GMS Shedule

Article 79 paragraph (9) of the Limited Liability Company Law specifies that the GMS held by the Board of Commissioners based on the GMS call for its own summons of the GMS by the Board of Commissioners, only discusses issues related to the reasons as included in the registered letter regarding the request for the implementation of the GMS submitted to the Board of Directors. The Limited Liability Company Law requires that in the call of the GMS, the date, time, place, and agenda of the meeting are

¹⁶ *Ibid*, Ps.79 ayat (5).

¹⁷ *Ibid*, Ps.79 ayat (6).

¹⁸ *Ibid*, Ps.82 ayat (3).

included along with a notification that the materials to be discussed in the GMS are available at the Company's office from the date of the GMS call to the date the GMS is held.¹⁹ The purpose of including the agenda of the GMS in the call is so that shareholders can learn in advance what will be the material of the meeting. EGMS with the agenda of changing the composition of the company's management must follow the provisions in the Limited Liability Company Law. Article 105 paragraphs (1) and (2) of the Limited Liability Company Law determines that members of the Board of Directors can be dismissed at any time based on the decision of the GMS by stating the reasons, and the decision to dismiss members of the Board of Directors is taken after the person concerned is given the opportunity to defend himself in the GMS. Whereas in the Articles of Association regarding the Agenda of the GMS, it is required that as long as all shareholders are present and approve the agenda of the meeting and the decision is approved unanimously, then the summons required in the GMS call can be ignored, so that thus the law and daily practice in the Notary Meeting Call and meeting agenda as required must be included in the Meeting can be ignored as long as the approval of all decisions of the GMS by all shareholders.

Related to this case, based on the Minutes of the EGMS of PT. SGY dated September 7, 2017, the agenda of the EGMS is a change in the composition of the company's management. Plaintiffs LG and NR as Directors of PT. SGY in its argument said that LG and NR were not aware of the agenda. Even since the beginning, Plaintiffs LG and NR have never received a request for the implementation of the EGMS from the

Board of Commissioners for changes in the management of the company, and have never made and issued an Invitation Letter for Summoning the EGMS and never gave power of attorney to defendants BH and K as Commissioners as stated in the Minutes of the EGMS of PT. SGY dated 7 September 2017. That the Lg and NR Plaintiffs were not told the reason why they were dismissed from the Board of Directors and were not given the opportunity to defend themselves in the EGM of PT. The SGY. If further researched, if a GMS does not include an agenda for dismissing the Board of Directors, but in its implementation the Board of Directors is dismissed immediately in its provisions the GMS may only discuss the agenda that has been notified in advance. If the agenda does not exist, it means that the agenda becomes invalid, and if the agenda is invalid, then there is no AGM for the agenda. If there is no GMS for the agenda then the Minutes of Meeting will be flawed, because the agenda never existed. Furthermore, negligence in including the agenda of the meeting in the GMS call and without the approval of all shareholders becomes a legal defect that results in legal defects as well as the GMS as required in the Law and Articles of Association of the Company.

4) GMS Quorum

One of the important things that needs to be considered in organizing the GMS is a quorum because a quorum determines whether the GMS can be held. In Article 86 paragraph (1) of the Limited Liability Company Law, it has been stated that a GMS can be held if in the GMS more than 1/2 (one-second) part of the total number of shares with voting rights is present or represented, unless the law or

¹⁹ *Ibid*, Ps.82 ayat (3).

articles of association determine the number of quorums is greater. Affirming the legality as required in article 86 paragraph (1) of the Limited Liability Company Law, where in the Articles of Association of the Company it is affirmed that the General Meeting of Shareholders can be held if the quorum of attendance as required in the Limited Liability Company Law has been fulfilled.

In this case, the shareholders present were BH and K who each owned 150 shares which when accumulated became 300 shares from a total number of 500 shares. Referring to this percentage if it is related to Article 86 paragraph (1), then 1/2 part of 500 shares is 250 shares. In this regard, both the quorum of attendance and the quorum of the decisions of the GMS are met. However, the problem is that since the beginning of the EGMS of PT. SGY dated September 7, 2017 did not follow the stages specified in the Limited Liability Company Law and the Company's Articles of Association so that the GMS was considered invalid because although the quorum was met, there was no notification of the EGMS with the agenda of changing the composition of the company's management to other shareholders, namely LG and NR who are also directors of PT. SGY, so that both of them were not aware of the existence of an EGM with this agenda, even though Article 85 paragraph (1) of the Limited Liability Company Law requires that shareholders either alone or represented have the right to attend the GMS and exercise their voting rights in accordance with the number of shares they own.

5) Chairman of GMS

In general, in a closed Limited Liability Company Articles of Association, it is required that the head of the GMS is the President Director, if the President Director is unable to be led by other Directors, if all

Directors are unable to do so, the GMS can be led by the Commissioners.

In this case review, the EGMS of PT. SGY, where the GMS is led by the President Commissioner, due to the absence of the Board of Directors, then in the opinion of the author, the chairman of the GMS is possible due to the absence of members of the Board of Directors of PT SGY.

6) Decisions in the GMS

In Article 87 paragraphs (1) and (2) of the Limited Liability Company Law, where deliberation is required for consensus, however, the Law provides another alternative, namely that a decision from the Meeting can be taken and valid if the vote agrees to more than 1/2 (one second) part of the number of votes issued. In the Articles of Association in general, it is not discussed about voting (the number of votes agreed in the GMS), but nevertheless it is discussed about valid votes and how to take votes in the GMS.

In this case, the number of agreeing votes has met the requirements of the Act, where the number of approved votes is 300 shares out of the total number of 500 shares issued thus having been met by the requirements of the Act.

7) Minutes of the GMS

One of the requirements for the GMS is to make a minutes. Article 90 paragraph (1) specifies that every GMS must be made minutes of the GMS and signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and by the participants of the GMS. The signature is not required if the minutes of the GMS are made by a notarial deed. Minutes made without the involvement of a notary are called minutes. Recording involving notaries who were present at the GMS, usually the title of the

meeting was named the Minutes of the General Meeting of Shareholders.

Implementation of EGMS of PT. SGY by Defendants BH and K dated September 7, 2017 resulted in the resolution of the meeting set forth in the Minutes of the EGMS. The result of the EGMS decision was to change the composition of the management of the company PT. SGY and authorize Defendants BH and K to approach the notary. Then based on the minutes of the EGMS, a PKR Deed was made before Notary S with number 63 dated September 29, 2017. Implementation of EGMS of PT. SGY by BH and K, which from the beginning did not follow the procedures and stages regulated in the Limited Liability Company Law, made the GMS invalid, so that the minutes of the meeting became flawed.

Based on the description above, the EGMS of PT. The SGY organized by Defendants BH and K dated September 7, 2017 was considered invalid because its implementation violated the provisions of the Limited Liability Company Law related to the stages of its implementation starting from the absence of an application for holding a meeting, the absence of a meeting call to the Board of Directors and other shareholders, and the absence of an invitation containing the agenda of the EGMS regarding changes in the composition of the company's management to the Board of Directors and other shareholders. Because the procedure does not meet the requirements in accordance with the stages of holding the GMS that have been determined by the Limited Liability Company Law, the decision in the EGMS in the event of a change in the composition of

the company's management becomes invalid. Thus, the minutes of the EGMS made at the meeting also became invalid.

After analyzing the validity of the implementation of the EGMS of PT. SGY, then it is necessary to review the validity of the Deed of Statement of Resolutions of the General Meeting of Shareholders of PT. SGY number 43 made before a Notary S. Deed of Statement of Meeting Resolutions including a *partij deed* (party deed) because the deed is made before (ten overstaan) notary, which contains the statements or statements of the parties given or told by the parties before the notary.²⁰ The law authorizes the notary to pour all the deeds, agreements and stipulations desired by the parties who deliberately come before the notary to contend the information into an authentic deed so that the deed he makes has complete evidentiary power and has its validity.²¹ In this case, the parties in this case BH and K came to the notary based on the power of attorney granted in the EGMS to pour out the results of the decision of the EGMS of PT. SGY into the Deed of Meeting Resolutions (PKR).

Implementation of EGMS of PT. SGY dated September 7, 2017 did not meet the stages and procedures that have been regulated in the Limited Liability Company Law, namely the absence of an EGMS application to the Board of Directors of PT. SGY, there is no invitation that lists the agenda of the EGMS to the Directors of LG and NR who are also shareholders, as well as the decision of the EGMS which dismissed LG and NR from the Board of Directors without a clear reason, and was not given the opportunity to defend. However, the results

²⁰ Shinta Pangesti, *Akta PKR dari RUPS*, hlm.334.

²¹ Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, (Bandung: Mandar Maju, 2011), hlm.119-120.

of the EGMS are still stated in the PKR Deed. The EGMS is not in accordance with applicable regulations so that it is considered invalid and results in the deed made based on the minutes of the EGMS becoming legally defective because it is contrary to applicable regulations so that it is considered invalid and not binding. This is as decided by the Panel of Judges of the Bale Bandung District Court in its decision stating that the EGMS dated September 7, 2017 which was then stated in the Deed of Statement of Resolution of the General Meeting of Shareholders Number 63 dated September 29, 2017, which was made before Notary S was invalid and/or had no legal force with all legal consequences..²²

2.2 Notarial Liability for the Deed of Statement of Meeting Resolutions made based on invalid Minutes of the General Meeting of Shareholders

In making the PKR Deed in accordance with legal provisions, the notary is not responsible for the correctness of the contents of the PKR Deed made before the notary, because the contents of the PKR deed are based on the minutes of the EGMS whose contents are the responsibility of all parties

present at the GMS.²³ The notary is only responsible for the form of the PKR deed in formality only while the validity of the material or content of the agreement and all legal consequences it arises, the notary cannot be sued and held accountable.²⁴ If the notary makes a deed in accordance with the information given by the presenter without reducing or adding to the information given so that the notary cannot be held responsible for the deed he made.²⁵ In making a PKR deed, there are formal and material requirements that must be considered and fulfilled by a notary. The formal requirement is a requirement for making a deed as contained in the Notary Position Law (UUJN), where if the formal requirement for making a deed is not carried out by a notary, the notarial deed becomes null and void. An authentic deed that violates the provisions of the UUJN turns into a deed that only has the power of proof of part of the deed under the hand, and is referred to as a deed that has degraded.²⁶

In carrying out their positions, there are principles that must be held by a notary, namely the principle of accuracy, the principle of proportionality, and the principle of professionalism, where these three

²² Mahkamah Agung, *Putusan Pengadilan Negeri Bale Bandung Nomor 141/Pdt.G/2018.PN Blb Tahun 2018*, hlm.81.

²³ Anang Yuliadi, Siti Hajati Hoesin dan Mohammad Fajri Mekka Putra, "Akta Pernyataan Keputusan Rapat Yang Didasarkan Pada Notulen Rapat Umum Pemegang Saham Luar Biasa Yang Cacat Hukum (Studi Putusan Majelis Pengawas Wilayah Notaris Provinsi Daerah Khusus Ibukota Jakarta Nomor 12/PTS/MJ/PWN.PROV.DKIJAKARTA/XI/2018)", *Indonesian Notary*, Volume I Nomor 003 (2019), hlm.15.

²⁴ Jonathan Adi Biran Munandir dan Thohir Luth, "Tanggung Jawab Notaris Atas Akta Pernyataan

Keputusan Rapat", *Cakrawala Hukum*, (Juni 2017), hlm.55-63.

²⁵ Yasin Tanaka, "Peran dan Tanggung Jawab Notaris dalam Keputusan Pemegang Saham Diluar Rapat Umum Pemegang Saham (RUPS) berdasarkan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas", *Repertorium*, (1 Januari-Juni 2017), hlm.113-120.

²⁶ Dessy Miranti, "Tanggung Jawab Notaris Atas Akta Pernyataan Keputusan Rapat Yang Diputus Batal Demi Hukum Di Pengadilan (Analisis Putusan Pengadilan Tinggi Bandung Nomor 426/PDT/2019/PT.BDG)", *Indonesian Notary*, Volume 3 Nomor 2 (2021), hlm.686.

principles are a reflection of the obligations of a notary in UUJN.²⁷ The principle of accuracy requires the notary to be careful in examining the documents and statements given by the party who came to him. The principle of proportionality requires that the notary should pay attention to the balance between the interests of the parties in the deed he made. The principle of professionalism requires notaries to have the expertise / knowledge to carry out their duties in accordance with the provisions of the UUJN and the Notary Code of Ethics. Although the material truth of a deed made by a notary is not his responsibility, the notary in making the deed needs to assess whether what the parties explain to be stated in the authentic deed does not conflict with the UUJN and applicable regulations, in this case the Limited Liability Company Law and the company's articles of association.

In this case, the notary made a PKR Deed based on the minutes of the EGMS of PT. SGY. Although the notary only consults into the authentic deed what is the decision of the GMS and the information from the company's representative, notary S should be careful and examine the documents submitted to him such as the minutes of the GMS and the agenda set forth in the PKR deed he made, and whether the implementation of the GMS is in accordance with the provisions of the Limited Liability Company Law and the articles of association. If the notary finds that what is to be stated in the PKR Deed is not in accordance with the existing provisions, then the notary can refuse the making of the PKR Deed, however, the determination of whether the actions of Notary S include unlawful acts that can be held accountable in the form of compensation, it must be considered whether

the elements of the unlawful act are fulfilled. The action of Notary S in this case is not an unlawful act because between the actions of Notary S, namely by issuing the PKR Deed and the losses suffered by the Plaintiff due to the dismissal of the Board of Directors through the EGMS do not have a causal relationship. Because the losses suffered by the plaintiff were caused by an invalid decision of the EGMS. So in this case, according to the author of the judgment handed down by the Panel of Judges PN Bale Bandung which sentenced the defendants including Notary S to jointly pay compensation to the plaintiff is not appropriate, and notary S should only be sentenced in the form of administrative sanctions by the Notary Supervisory Panel as stipulated in uujn and the notary code of ethics, namely a written warning, temporary dismissal, respectful dismissal, dismissal with disrespect.

3. CONCLUDING

3.1 Conclusion

- a. Based on the holding of the Extraordinary General Meeting of Shareholders in violation of several provisions in the Limited Liability Company Law, it leads to a deed of statement of meeting decisions becoming null and void. The implementation of the GMS that is not in accordance with the stages and provisions in the Limited Liability Company Law results in the GMS becoming invalid, because the GMS is carried out not in accordance with the provisions of the applicable laws and regulations, the decision taken in the GMS becomes unenforceable, and the minutes or minutes of the GMS become invalid. The minutes of the GMS which are then

²⁷ *Ibid*, hlm.689.

poured into the Deed of Meeting Resolutions result in the PKR Deed becoming null and void because it is based on an invalid General Meeting of Shareholders.

- b. The notary as a general officer can be responsible for the deed of statement of meeting decisions made by him if it is proven that the notary has made a mistake. The notary can be held liable if the existence of the deed he made causes losses. One of the reasons for holding a notary accountable civilly as a result of the deed he made was based on an unlawful act. The actions of Notary S do not include acts against the law because they do not meet the element of "there is a causal relationship between actions and losses", so that the liability in the form of compensation requested against Notary S is not appropriate, where Notary S should be given administrative sanctions.

3.2 Advice

- a. Penyelenggara RUPS harus memperhatikan ketentuan mengenai penyelenggaraan RUPS seperti permintaan penyelenggaraan RUPS, pemanggilan RUPS, agenda dan kuorum dalam RUPS, dan syarat-syarat lain yang diatur dalam Undang-Undang Perseroan Terbatas serta anggaran dasar perseroan. Dengan mematuhi ketentuan-ketentuan yang ada, tentunya RUPS yang diselenggarakan tidak akan mengandung suatu perbuatan melawan hukum ataupun tidak melanggar ketentuan yang telah diatur dalam UU Perseroan Terbatas dan anggaran dasar perseroan.
- b. Notaris harus cermat, teliti, dan menerapkan prinsip kehati-hatian dalam membuat Akta PKR. Notaris harus

memeriksa setiap dokumen yang diserahkan oleh para pihak yang datang menghadap kepadanya. Apabila dalam proses memeriksa dokumen-dokumen yang diserahkan kepadanya notaris menemukan adanya perbuatan yang melanggar ketentuan Undang-Undang Perseroan Terbatas, maka notaris harus berani menolak menuangkan risalah RUPS tersebut kedalam Akta PKR. Notaris juga bisa meminta keterangan maupun dokumen tambahan dari para pihak untuk memastikan bahwa apa yang dicatatkan oleh notaris dalam Akta PKR telah sesuai dengan ketentuan yang berlaku. Notaris juga harus memberikan penyuluhan hukum kepada para pihak terkait dengan pelaksanaan RUPS sesuai dengan ketentuan yang ada dan apa akibatnya apabila RUPS tersebut dilaksanakan tidak sesuai dengan ketentuan tersebut.

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