

Cancellation of the Deed of Statement of Decision of the GMS of PT Based on the Decision of the Kendari District Court (Number 83/Pdt.G/2020/Pn Kdi)

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Abstract. *This study aims to determine and analyze the basis for the judge's considerations in decision number 83/Pdt.G/2020/PN. Kdi, to determine and analyze the validity of the deed of statement of decision of the extraordinary general meeting of shareholders of a limited liability company based on the decision of the Kendari District Court number 83/Pdt.G/2020/PN. Kdi, to determine and analyze the notary's responsibility for the cancellation of the deed of statement of decision of the extraordinary general meeting of shareholders of a limited liability company based on the decision of the Kendari District Court number 83/Pdt.G/2020/PN. Kdi. The approach method in this study is the statute approach. This type of research is a normative juridical research. The types and sources of data in this study are secondary data obtained through literature studies. The analysis in this study is perspective. The results of this study indicate that they have never received an invitation to attend the EGMS and have not given power of attorney to other parties to represent them in attending the EGMS. The cancellation is also based on the provisions of Article 79 paragraph (2) and paragraph (3) of the PT Law, as well as the existence of unlawful acts (Onrechtmatige Daad) committed by the defendants and co-defendants which caused losses to the plaintiffs, in accordance with Article 1365 of the Civil Code. The holding of the EGMS of PT Tomia Mitra Sejahtera by Defendant 1 is considered invalid because it is contrary to the provisions stipulated in the Limited Liability Company Law (UUPT) and contains legal defects in its implementation. The actions of the Co-Defendant, in this case the notary, are considered unlawful acts by the court decision which fulfills the elements of Article 1365 of the Civil Code, which causes losses to the Plaintiff. However, in the decision, the notary is not charged with paying compensation because in making the Deed of Statement of Decisions of the Company's General Meeting of Shareholders, the notary is only responsible for the formal form of the deed, considering that the notary was not present in person at the GMS. Therefore, the notary is not responsible for the contents contained in the deed. The validity of*

the material or contents of the deed is the responsibility of the party organizing the EGMS and making decisions at the meeting, namely Defendant 1.

Keywords: *Cancellation; Company; Liability; Limited.*

1. Introduction

The law functions as a regulator to create an orderly and just order of life in the nation and state, as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.¹As a country of law, Indonesia is responsible for protecting and ensuring legal certainty in the life of society. The principle of a country of law ensures certainty, order, and legal protection based on truth and justice.²For this purpose, written evidence is required that has an authentic nature related to the circumstances, events, or legal acts carried out through a certain position. In making written evidence that is authentic regarding an event or legal act, which has benefits for the administration of the state and community activities, the government gives authority to a Notary to prepare and ensure the truth of a deed that becomes written evidence with legitimate power.³This is regulated in Law Number 2 of 2014 concerning the Position of Notary.

One type of legal entity according to Indonesian law is a Limited Liability Company (PT), which is regulated in Article 1 of Law Number 40 of 2007, which states that:⁴

"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in this Law and its implementing regulations."

Thus, a limited liability company is established based on an agreement and carries out business activities with authorized capital that is fully divided into shares. The founders who are also shareholders will not be liable for more than the number of shares they own.⁵

¹See Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia

²Anand, Ghansham, 2014. Characteristics of Notary Positions in Indonesia, Zifatama Publisher, Sidoarjo, p. 4.

³Ibid p. 9.

⁴See Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies

⁵Agung, SY, 2021. Regulation of the Board of Commissioners in a Limited Liability Company According to the Perspective of the Job Creation Law. *Acta Comitatus: Journal of Notary Law*. Vol 6, No3, p. 6.

In carrying out business activities, there are often disagreements between shareholders of a Limited Liability Company, so that one party submits a request for dispute resolution to the local District Court. The legal action taken is based on an agreement made by the parties, which regulates the rights and obligations of each. The agreement must meet the requirements stipulated in Article 1320 of the Civil Code in order to be considered valid. The agreement agreed upon by the parties is binding and must be complied with, and becomes evidence in the event of a dispute.⁶

The deed made by a Notary is an authentic deed, where the Notary acts as a public official appointed by the government and is given attributive authority to assist the community in providing authentic evidence. This authentic deed is made based on the provisions of the Law that require the making of a deed or at the request or will of the parties who will carry out legal acts.⁷

A limited liability company is a form of business that has legal entity status in Indonesia.⁸As a legal entity, a limited liability company requires organs to carry out its business activities, which include the General Meeting of Shareholders (GMS), Board of Directors, and Commissioners. The GMS is a company organ that has the position as the organ with the highest power in the company, as regulated in Article 1 paragraph 4 of Law No. 40 of 2007, namely:⁹

"The General Meeting of Shareholders, hereinafter referred to as the GMS, is a company organ that has authority that is not granted to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the articles of association."

The highest power held by the GMS only includes authority that is not transferred to the Board of Directors and Board of Commissioners.¹⁰Thus, it can be concluded that the Board of Directors and the Board of Commissioners have authority that cannot be influenced by the GMS. The case to be discussed in this journal relates to the implementation of the GMS which was not attended by shareholders who own 150 shares, with a total share value of IDR 150,000,000, (one hundred and fifty million rupiah), who are also members of the Board of Directors. The shareholders were not aware of the holding of the EGMS. The EGMS was carried out unofficially and then stated in the Deed of Statement of

⁶Prayojana, DA, Murni, RR, & Dharmawan, NK S, 2018. Implementation of Settlement of Violations of the Notary Code of Ethics Regarding the Installation of Notary Nameplates in Denpasar City. *Acta Comitatus*, p. 2.

⁷Krisno, ADJ, Dharmawan, NKS, & Darmadi, AS W, 2015. Legal Consequences Arising from Default in Authentic Land Lease Agreements. *Collection of Law Faculty Student Journals*, p. 5.

⁸ Sari, AAIP, & Darmawan, NK S, 2015,. Validity of Nominee Share Ownership Agreement in Establishing Limited Liability Company. *Kertha Semaya*, p. 8.

⁹See Article 1 paragraph 4 of Law No. 40 of 2007 concerning Limited Liability Companies

¹⁰Fikriya, TN, 2020. Responsibilities of Directors in Limited Liability Companies Owned by State-Owned Enterprises. *Lex Renaissance Journal*. Vol 3, No 5, p. 11.

Decisions of the General Meeting of Shareholders made by a notary. From the making of the deed, a Letter of Acceptance of Notification of Changes to the Company's Data was issued. Thus, the composition of the new members of the Company's Board of Directors has been recorded in the company register.

The incident occurred as stated in the Kendari District Court Decision Number 83/Pdt.G/2020/Pn.Kdi. Plaintiffs I and II are shareholders who filed a lawsuit against Defendants I, II, III, because the defendants had held an EGMS of PT. Tonia Mitra Sejahtera (PT. TMS) which had decided to dismiss Plaintiff I as Director and Plaintiff II as Commissioner in PT. Tonia Mitra Sejahtera without the plaintiff's knowledge and the decision of the EGMS was included in the Deed of Statement of Decisions of the Extraordinary General Meeting of Shareholders Number 75 Dated January 16, 2017 made by Notary Rayan Riadi, SH, M.Kn., who was also a defendant in this decision.

The plaintiff stated that the holding of the EGMS of PT. Tonia Mitra Sejahtera was an unlawful act because the defendant's actions in carrying out the EGMS and had taken the decision to dismiss the plaintiff without the plaintiff's presence, so the plaintiff also requested that the EGMS which had been stated in the Deed of Decision of the Extraordinary General Meeting of Shareholders Number 75 dated January 16, 2017 was invalid and null and void. Seeing these conditions, the author is interested in conducting research with the title: "Cancellation of the Deed of Statement of PT GMS Decision Based on the Decision of the Kendari District Court (Number 83/Pdt.G/2020/Pn Kdi)."

2. Research Methods

The approach methods in this study include the statute approach and the conceptual approach. The statutory approach is used on the basis of analyzing all relevant laws and regulations with the legal issues being studied.¹¹This approach aims to understand the existing legal basis. In addition, a conceptual approach is applied to analyze legal materials in order to understand the meaning contained in legal terms.¹²This approach aims to identify new meanings or test legal terms in theory and practice.¹³In this study, analysis was conducted. The type and source of data in this study are secondary data. Secondary data refers to information obtained from the literature which is the result of previous research. In this study, the method used is the literature technique (study document). In this study, the analysis was conducted prescriptively, namely to provide arguments for the research results that have been achieved.

¹¹ Mukti Fajar and Yulianto Achmad, 2015, *Dualism of Normative and Empirical Legal Research*, 3rd Edition, Pustaka Pelajar, Yogyakarta, p. 185.

¹²Ibid, p.186

¹³Hajar M, 2015, *Models of Approach in Legal and Fiqh Research*, UIN Suska Riau, Pekanbaru, p. 41

3. Results and Discussion

3.1. The Judge's Consideration in Decision Number 83/PDT.G/2020/PN. KDI

Based on Decision Number 83/PDT.G/2020/PN.Kdi that in the case the identity of Defendant I named Amran Yunus, place of birth Kendari, date of birth July 4, 1963, religion Islam, Indonesian citizenship, occupation Self-employed, residence Jl. Tekukur no. 5, RT/RW 001/001, Punggaloba Village, West Kendari District, Kendari City, Southeast Sulawesi Province. The identity of Defendant II named Ardyansyah Tamburaka, place of birth Parasi, date of birth September 18, 1988, occupation Self-employed, address residence Punggaluku Village, Laeya District, South Konawe Regency, Southeast Sulawesi Province. The identity of Defendant III named Asmawati, place of birth Kendari, date of birth January 13, 1979, occupation Private, address Jl. Manunggal I No. 08, RT/RW 014/005, Punggaloba Village, West Kendari District, Kendari City, Southeast Sulawesi Province. The identity of Defendant IV is PT. Tonia Mitra Sejahtera, a company established based on and subject to the laws and regulations of the Republic of Indonesia, domiciled in Kendari City, last known to have an office address at Jalan Malaka, Perum Citraland, Cluster Green Leaf, Block F1 no. 15, Anduonohu, Poasia, Kendari City, Southeast Sulawesi Province 93231. And the identity of the Co-Defendant is Rayan Riadi, SH., M.Kn., Notary with an address at Jalan Sao-sao No. 222 E, Kendari City, Southeast Sulawesi Province 93118.

Based on Decision Number 83/PDT.G/2020/PN.Kdi that in the case, Plaintiff I named Muhammad Lutfi, place and date of birth in Jakarta, August 16, 1969, Indonesian citizen, male, occupation entrepreneur, address Jl. Tirtayasa V No. 1, Melawai Village, Kebayoran Baru District, South Jakarta City, DKI Jakarta Province. The identity of Plaintiff II named Ali Said, place and date of birth in Indramayu, December 29, 1996, occupation Private, address Jl. Swadaya 1 No. 40, Duren Sawit Village, Duren Sawit District, East Jakarta City, DKI Jakarta Province.

Based on Decision Number 83/PDT.G/2020/PN.Kdi that since the Extraordinary General Meeting of Shareholders (EGMS) was held by Defendant IV and subsequently produced the Deed of Statement of Decision of the Extraordinary General Meeting of Shareholders of the Limited Liability Company PT. TMS Number 75 dated January 27, 2017 before Rayan Riadi, SH, M.Kn Notary in Kendari City, the Plaintiffs have lost the rights that should have been legally attached to the Plaintiffs, because the EGMS is an unlawful act.

That the legal facts that occurred based on the EGMS dated January 16, 2017 in conjunction with Deed No. 75, in addition to the Plaintiffs never transferring or offering to sell the Plaintiffs' share ownership to other Shareholders in the Company, but the sale of shares continued and the sale of shares occurred to other parties outside the Company (incasu Defendant III) against the EGMS dated January 16, 2017 in conjunction with Deed No. 75 which approved the sale of

shares in the company to other parties outside the company without any official and valid notification to either the shareholders or the Board of Directors of the Company is an action that is contrary to laws and regulations and constitutes an unlawful act.

The composition of the Board of Directors and Commissioners of PT. Tonia Mitra Sejahtera based on Deed No. 62 is as follows:

President director	: Hamrin
Director	: Ali Said
Director	: Syaifuddin
The main commissioner	: Amran Yunus
Commissioner	: Muhammad Lutfi

Due to the unlawful act initiated by the Co-Defendant and other Defendants who changed Deed No. 62 to Deed No. 75, up to November 14, 2019, PT. Tonia Mitra Sejahtera has experienced 8 (eight) changes in the composition of management and shareholders, the details of which are as follows:

1) The composition of the Board of Directors and Commissioners of PT. Tonia Mitra Sejahtera based on Deed No. 75 is as follows:

General Director	: Ardyansyah Tamburaka
Director	: Asmawati
Commissioner	: Amran Yunus

2) Amendment to 3 (three) Deed Number 01 dated 19 September 2017 with the composition of directors and shareholders as follows:

President director	: A Syamsul Rijal
Commissioner	: Arinta Nila Hapsari
Director	: Asmawati
Commissioner	: Mr. Amran Yunus
Shareholders	: PT. Tribhuwana Sukses Mandiri
Director	: Yogianto Gozal

3) Amendment to Deed Number 4 (four) dated 28 February 2019 with the following composition of directors and shareholders:

President director : A Syamsul Rijal
Commissioner : Arinta Nila Hapsari
Shareholders : Mr. Amran Yunus
Shareholders : PT. Tribhuwana Sukses Mandiri
Director : Mr. Andi Sulolipu

4) Amendment to Deed No. 5 (five) dated 23 April 2019 with the following composition of directors and shareholders:

President director : A Syamsul Rijal
Commissioner : Arinta Nila Hapsari
Shareholders : Mr. Amran Yunus
Shareholders : PT. Tribhuwana Sukses Mandiri
President director : Andi Ady Aksar A
Director : Mr. Andi Sulolipu

5) Amendment to Deed Number 6 (six) dated May 2, 2019 with the following composition of directors and shareholders:

President director : A Syamsul Rijal
Commissioner : Arinta Nila Hapsari
Shareholders : PT. Tribhuwana Sukses Mandiri
President director : Andi Ady Aksar A
Director : Mr. Andi Sulolipu

6) Amendment to Deed Number 7 (seven) dated 11 October 2019 with the composition of directors and shareholders as follows:

Director : A Syamsul Rijal
President director : Andi Ady Aksar A
Commissioner : Arinta Nila Hapsari
Director : Mr. Andi Sulolipu
Shareholders : PT. Tribhuwana Sukses Mandiri
Shareholders : PT. Bintang Delapan Tujuh Abadi

Shareholders : PT. Dua Delapan Investama

7) Amendment to Deed Number 8 (eight) dated 15 October 2019 with the composition of directors and shareholders as follows:

Director : A Syamsul Rijal

President director : Andi Ady Aksar A

Commissioner : Arinta Nila Hapsari

Director : Mr. Andi Sulolipu

Shareholders : PT. Tribhuwana Sukses Mandiri

Shareholders : PT. Bintang Delapan Tujuh Abadi

Shareholders : PT. Dua Delapan Investama

Shareholders : Didi Basuki

That as a public official, the Co-Defendant should have known the procedures for making a deed, especially one containing the transfer of shares, of course it must be examined carefully and proven with evidence of the transfer and/or purchase of the Plaintiff's shares by the buyer. However, in reality there is not a single evidence of the transfer of shares in question, and moreover the Extraordinary General Meeting of Shareholders (EGMS) held on January 16, 2017 was carried out in a manner that was against the law and did not meet the requirements as mandated in the Limited Liability Company Law.

It is clear that the actions of the Defendants in the Extraordinary General Meeting of Shareholders dated January 16, 2017 held by the Defendants in conjunction with the Deed of Statement of Decision of the Extraordinary General Meeting of Shareholders of the Limited Liability Company PT. Tonia Mitra Sejahtera Number: 75 dated January 27, 2017, made before Rayan Riadi, SH, M.Kn, Notary in Kendari City, have been against the law which has caused losses to the Plaintiffs, so that it can be qualified as an Unlawful Act. The decision of the Deed of the Extraordinary General Meeting of Shareholders of the Limited Liability Company Tonia Mitra Sejahtera dated January 27, 2017 is declared invalid, not binding, and null and void. Sentencing the Co-Defendants to comply with the contents of the decision in the case.

In decision number 83/Pdt.G/2020/PN Kdi Judge decided 6 (six) points. The Plaintiff's lawsuit was partially granted by the Panel of Judges. Declaring that the actions of the Defendants and co-defendants in holding the Extraordinary General Meeting of Shareholders (EGMS) dated January 16, 2017 which was then stated in the Deed of Statement of Decision of the Extraordinary General Meeting of Shareholders of the Limited Liability Company PT. Tonia Mitra Sejahtera Number;

75 dated January 27, 2017, made before Rayan Riadi, SH., M.Kn, Notary in Kendari City, is an Unlawful Act. Regarding the Extraordinary General Meeting of Shareholders (EGMS) which was stated in the Deed with number 75 made before a Notary including changes to the Articles of Association of PT. Tonia Mitra Sejahtera in any form made and carried out after January 16, 2017 is invalid, not binding and null and void. Then due to the Defendants' Unlawful Acts, the Plaintiffs suffered material losses of IDR 100,300,000,000, (one hundred billion three hundred million rupiah) and USD 48,991,310.33 (forty eight million nine hundred ninety one thousand three hundred ten point thirty three United States dollars). The Panel of Judges sentenced the Defendants and Co-Defendants to comply with the contents of the Decision in this Case and pay all court costs incurred in this case. The final point of the Panel of Judges Rejected the Plaintiff's Lawsuit other than and beyond.

Description of the Plaintiffs' Claims that the problem arose from the Transfer of Share Ownership in PT. Tonia Mitra Sejahtera, which originally the Plaintiffs' shares were 150 (one hundred and fifty) shares for Plaintiff I and 150 (one hundred and fifty) shares for Plaintiff II, the ownership of the shares has been transferred, namely, Plaintiff I's total of 150 (one hundred and fifty) shares to Defendant I, and Plaintiff II's total of 150 (one hundred and fifty) shares to Defendant III.

Based on these considerations, the author concludes that the legal basis used by the judge in canceling the deed of statement is because the plaintiffs never received an invitation to the Extraordinary General Meeting of Shareholders (EGMS), nor did they give power of attorney to any party to represent them in attending the meeting. This decision is also based on the provisions of Article 79 paragraph (2) and paragraph (3) of the Limited Liability Company Law (UU PT), which regulates the procedures that must be fulfilled in the implementation of the EGMS. In addition, there are also considerations regarding the legal consequences of unlawful acts (On rechtmatige Daad) committed by the defendants and co-defendants, which resulted in losses for the plaintiffs. These actions are contrary to Article 1365 of the Civil Code (KUHPperdata) which regulates unlawful acts and their consequences.

Strengthened by the expert's statement explaining that in holding a General Meeting of Shareholders (GMS), every shareholder must be officially invited. The expert also explained that if an Extraordinary General Meeting of Shareholders (EGMS) is held without a written invitation, especially if it is only delivered by telephone, then the EGMS is considered invalid. Based on this, the panel of judges decided to declare that the EGMS held on January 16, 2017, which was then stated in the Deed of Statement of Decisions of the Extraordinary General Meeting of Shareholders of PT. Tonia Mitra Sejahtera Number 75 dated January 27, 2017, made before Rayan Riadi, SH, M.Kn, Notary in Kendari City, along with all decisions of the shareholders' meeting, including changes to the Articles of Association of PT.

Tonia Mitra Sejahtera, made after January 16, 2017, is invalid, not binding, and null and void.

3.2. Validity of the Deed of Statement of Decisions of the Extraordinary General Meeting of Shareholders of a Limited Liability Company Based on the Decision of the Kendari District Court Number 83/PDT.G/2020/PN. KDI.

To assess the validity of the implementation of the EGMS of PT. Tonia Mitra Sejahtera which is the basis for the plaintiffs' lawsuit, it is necessary to review the provisions that must be met in order for the EGMS to be valid. This aims to ensure whether PT. Tonia Mitra Sejahtera has fulfilled the provisions stipulated in the implementation of the EGMS which has the agenda of dismissing the Board of Directors and Board of Commissioners. The provisions that must be met based on applicable law include:

1) Invitation to General Meeting of Shareholders

The holding of a GMS must begin with a summons for a GMS to all shareholders by the Board of Directors. This summons must be made at least 14 (fourteen) days before the GMS is held, excluding the date of the summons and the date of the GMS. In addition, a GMS may also be held at the request of shareholders who together represent at least 1/10 (one tenth) of the total number of shares with voting rights, or at the request of the Board of Commissioners. In this case, the Board of Directors is required to summon a GMS within 15 (fifteen) days after receiving the request.

Based on Article 79 paragraph (5) of the Limited Liability Company Law (UUPT), the Board of Commissioners has the right to submit a request to hold a GMS to the Board of Directors. The Board of Directors is required to issue a summons within a specified period of time, namely 15 (fifteen) days from the time the request is received. If the Board of Directors does not issue a summons within the said period, then the Board of Commissioners has the right and authority to issue a summons itself to hold a GMS.

Based on the explanation above, it can be concluded that the right of Defendant 1 as the Board of Commissioners to call for an EGMS of PT. Tonia Mitra Sejahtera arises if Defendant 1 as the Board of Commissioners has submitted a request for the holding of an EGMS to the Plaintiff who acts as the Board of Directors. If after the request, the Plaintiff as the Board of Directors does not make a call within the specified time period, then the right of Defendant 1 to file a call for an EGMS becomes valid. In addition, it should be noted that the actions of Defendant 1 in his capacity as the Main Commissioner, while according to the provisions of the UUPT, if there is more than one Commissioner, then the decision must be taken jointly by the entire Board of Commissioners, and cannot be done individually.

Based on the explanation above, it can be concluded that the summons for the EGMS of PT. Tonia Mitra Sejahtera carried out by Defendant 1 in his capacity as the Main Commissioner is invalid and contradicts the provisions stipulated in Article 79 paragraph (6) letter b of the UUPT concerning the summons for the EGMS by the Board of Commissioners, as well as Article 108 paragraph (4) of the UUPT. In addition, the summons media used by Defendant 1 to carry out the summons for the EGMS does not meet the provisions stipulated in the UUPT, which requires that the summons for the EGMS can only be carried out by registered letter and/or advertisement in a nationally circulated newspaper. However, Defendant 1 only made the summons by telephone, so the summons is considered invalid because the media used does not comply with applicable legal provisions.

2) Parties Who Have the Right to Attend the General Meeting of Shareholders

Shareholders are parties who have the right to attend and vote in the GMS, as regulated in Article 52 of the UUPT. Thus, the parties who have the authority to attend the GMS of PT. Tonia Mitra Sejahtera should be Defendant 1, Plaintiff 1, and Plaintiff 2. Meanwhile, Defendant 2 and Defendant 3 do not have the capacity to attend the GMS of PT. Tonia Mitra Sejahtera because they are neither shareholders nor managers of the company. Therefore, Plaintiff 1 and Plaintiff 2 are the parties who should be present in the GMS of PT. Tonia Mitra Sejahtera.

Therefore, the absence of Plaintiff 1 and Plaintiff 2 in the EGMS of PT. Tonia Mitra Sejahtera, even though both are shareholders and parties authorized to attend the EGMS, resulted in the holding of the EGMS being considered invalid, because the meeting was attended by parties who did not have authority in PT. Tonia Mitra Sejahtera.

3) Quorum of Attendance at the General Meeting of Shareholders

Basically, decision-making in an EGMS is done through deliberation to reach consensus, as regulated in Article 87 paragraph (1). However, if deliberation to reach consensus is not achieved, a decision can be taken using a quorum. Provisions regarding the quorum for decision-making are regulated in Article 87 paragraph (2) of the UUPT, namely with the approval of more than half of the total votes cast. In the EGMS, which was only attended by Defendant 1, decisions could not be taken through deliberation to reach consensus and voting could not be carried out. Therefore, no valid decision could be taken in the EGMS. Thus, the decision of the EGMS of PT. Tonia Mitra Sejahtera which dismissed Plaintiff 1 as Director and Plaintiff 2 as Commissioner was invalid, because it was not attended by other shareholders, namely Plaintiff 1 and Plaintiff 2.

In relation to the failure to achieve a quorum in the GMS, which resulted in the decision-making not being able to be implemented, Defendant 1 could not immediately take a decision to dismiss Plaintiff 1 and Plaintiff 2 as Director and

Commissioner at the EGMS of PT. Tonia Mitra Sejahtera without the presence of Plaintiff 1 and Plaintiff 2.

4) The Right to Defend Yourself

The agenda of the EGMS of PT. Tonia Mitra Sejahtera is to dismiss Plaintiff 1 as Director and Plaintiff 2 as Commissioner. In the case of dismissal of a member of the Board of Directors, the dismissed party must be given the opportunity to defend themselves in the GMS. Plaintiff 1 was not present at the EGMS and did not know about the implementation of the EGMS that had dismissed him. In fact, Plaintiff 1 should have been given the right to defend himself. Therefore, the dismissal of Plaintiff 1 from his position is considered an invalid decision, because it does not fulfill the provisions stipulated in Article 106 paragraph (5) of the UUPT.

Based on the legal considerations that have been explained, the validity of the Deed of Statement of Decisions of the Extraordinary General Meeting of Shareholders (EGMS) of the Limited Liability Company PT. Tonia Mitra Sejahtera as stated in Deed Number 75 dated January 27, 2017, as stated in the Decision of the Kendari District Court Number 83/PDT.G/2020/PN. KDI, is declared invalid. This is due to non-compliance with the applicable legal provisions in the implementation of the EGMS, both in terms of procedure and substance, so that the decisions taken in the meeting are null and void.

3.3. Notary's Responsibility for the Cancellation of the Deed of Statement of Decision of the Extraordinary General Meeting of Shareholders of a Limited Liability Company Based on the Decision of the Kendari District Court Number 83/PDT.G/2020/PN. KDI

If someone suffers a loss due to the actions of another person, and there is no agreement (legal relationship of agreement) between the two, then based on the law, a legal relationship still arises between the two parties who caused the loss. This is regulated in Article 1365 of the Civil Code which reads:¹⁴

"Every unlawful act that causes loss to another person, requires the person who legally causes the loss to compensate for the loss."

An unlawful act, according to Article 1365 of the Civil Code, is an act that is contrary to the law committed by a person and causes harm to another person due to the mistake made. In legal studies, there are three categories of unlawful acts, namely:¹⁵

1) Unlawful acts due to intent;

¹⁴See Article 1365 of the Civil Code

¹⁵Kamagi, G. A, 2018. Unlawful Acts (Onrechtmatige Daad) According to Article 1365 of the Civil Code and Its Development. Lex Privatum, Vol 6, No 5, page 9.

- 2) Unlawful acts without fault (without any element of intent or negligence);
- 3) An unlawful act due to negligence.

the legal responsibility model is as follows:¹⁶

- 1) Responsibility with an element of error (without an element of intent or negligence) is partly contained in Article 1365 of the Civil Code;
- 2) Responsibility with an element of error, especially negligence, as contained in Article 1366 of the Civil Code;
- 3) Absolute liability (without fault) as stated in Article 1367 of the Civil Code.

According to Abdulkadir, there are several elements of civil wrongdoing related to unlawful acts, namely:¹⁷

- 1) Violation of rights refers to the legal recognition of certain rights, whether related to personal rights or property rights, and provides protection by forcing the violating party to provide compensation to the party whose rights have been violated;
- 2) Liability in civil torts generally requires an element of fault or intent on the part of the party committing the offense, although the degree of intent required is usually relatively low.
- 3) The main element in civil wrongs is generally the existence of a loss that arises from an act, although the loss does not always occur simultaneously with the civil wrong. In some cases, when a wrongful act is filed as a lawsuit, it is the defendant who must prove that the loss was suffered.

Roscoe Pound stated that one form of responsibility is an unlawful act, which will impose responsibility on someone who is legally required to bear it.¹⁸In the context of employment law, it is stated that employers include individuals, entrepreneurs, legal entities, or other bodies that provide compensation in the form of wages or other forms to the workforce they employ. In this case, a notary is considered an employer or superior, because he is an individual who provides wages to his workers. Thus, the relationship between a notary and an employee is an employment relationship. Based on Roscoe Pound's opinion, which states that responsibility will be imposed on the party required by law, in an employment

¹⁶Runtuuwu, R. T, 2022. Study of Liability for Default and Unlawful Acts Based on the Civil Code. *Lex Privatum*, Vol 10, No 1, 140.

¹⁷Apriani, T, 2021. The Concept of Compensation in Unlawful Acts and Default and Its Regulatory System in the Civil Code. *Ganec Swara*, Vol 15, No 1, pp. 9-10.

¹⁸Sari, I, 2021. Unlawful Acts (PMH) in Criminal Law and Civil Law. *Scientific Journal of Aerospace Law*, Vol 11, No 1, page 13.

relationship, the Civil Code has special provisions regarding responsibility for unlawful acts.

Roscoe Pound argued that responsibility can be divided into three types, namely:¹⁹

- 1) Liability for intentional damage;
- 2) Losses due to negligence and unintentional;
- 3) The loss was not caused intentionally and was not due to negligence.

Abdul Kadir stated that the forms of notary responsibility related to the making of deeds can be understood as follows:²⁰

- 1) Notaries are required to make deeds in a good and correct manner, which means that the deeds drawn up must be in accordance with legal provisions and fulfill the wishes of the interested parties according to their position.
- 2) Notaries are required to produce quality deeds, which means that the deed must be in accordance with legal regulations and reflect the wishes of the interested parties accurately, without engineering. In addition, notaries must provide an explanation to interested parties regarding the truth of the contents and procedures for making the deed.
- 3) Having a positive impact means that the deed made by a notary will be recognized by all parties as having perfect evidentiary power.

A notary can be held accountable if it is proven that he/she has made a mistake. According to Mudofir Hadi, in practice, a notary can make various mistakes in carrying out his/her duties. Some of the mistakes that may occur include:²¹

- 1) Typos in notarial copies can occur, and these errors can be corrected by making a new copy that is identical to the original deed. Only a copy that is in accordance with the original deed will have the same legal force as the deed.
- 2) Notarial deed form errors can occur, for example, it should be made as a meeting report, but instead it is made as a statement of meeting decisions. In addition, errors in the contents of the deed can also occur, for example related to the statements of the parties who appear before the notary, where at the time of making the deed the information provided is considered correct, but later proven to be inconsistent with reality.

¹⁹Ibid, p. 14.

²⁰Apriani, T, Op.Cit, pp. 15-16.

²¹Moertiono, R. J, 2020. Unlawful Acts Due to Unauthorized Land Acquisition (Case Study of Supreme Court Decision No. 1319 K/Pdt/2011). METADATA Scientific Journal, Vol 2, No 1, pp. 11-12.

In relation to errors made by notaries, the term used is *beroepsfout*. *Beroepsfout* refers to errors made by professionals with special positions, such as doctors, advocates, and notaries. In this case, a notary's error occurs when there is a discrepancy with the applicable provisions in the process of making a deed in terms of the formal aspects regulated by UUJN, resulting in the authentic deed he made losing legal force. If the court decides that the deed only has the power of proof like a private deed or is even null and void, then the notary can be asked to pay costs, compensation, and interest on the decision.

Notaries, as public officials who exercise part of the state's power in the field of civil law, have an important role in making authentic deeds. Notaries are responsible for deeds made before them if the deed contains legal defects or does not meet formal requirements. In this case, the notary has a moral responsibility and can be asked to provide compensation to the party who is harmed due to the notary's negligence in making the deed. Compensation arising from such negligence is a form of the notary's moral responsibility for his position as an official tasked with making authentic deeds.

In carrying out their duties, notaries have an obligation to act with integrity, honesty, thoroughness, and impartiality, as stipulated in the provisions of the law. Notaries are responsible for the deeds they make, so that if an error occurs, the notary can be held accountable for their actions. The notary's responsibility includes the material truth of what is stated in the deed. If there is a party who feels disadvantaged by the deed made by the notary, the party has the right to file for cancellation of the deed through a lawsuit in court, because cancellation of a deed can only be done based on a court decision that has permanent legal force. The party filing for cancellation must be able to prove that the contents of the deed do not correspond to reality.

A deed made by a notary that does not meet the legal requirements can result in several legal consequences. The deed can be canceled if it does not meet the subjective requirements of the agreement, such as agreement and capacity to act. In addition, the deed can be considered null and void by law if it does not meet the objective elements of the agreement, such as the existence of certain things and legitimate reasons. A notarial deed will also only have the power of proof as a private deed if it meets the following requirements:²²

- 1) The public official who made the deed is not authorized.
- 2) Public officials are not competent to make the deed.
- 3) The form of the deed does not meet the provisions stipulated in the law.

²²Subekti, 2017. Principles of Civil Law, PT. Intermasa, Jakarta, p. 122.

If the violation committed by the Notary results in the deed only having evidentiary force as a private deed or the deed is cancelled by law, the injured party has the right to claim costs, damages, and interest from the Notary. If a Notarial deed is cancelled through a judge's decision in court, and this causes losses to the interested party, the Notary may be asked for compensation, provided that the loss is caused by the Notary's error. However, if the cancellation of the deed by the court does not harm the interested party, even though it may damage the Notary's reputation, then the Notary cannot be asked for compensation.

4. Conclusion

The judge's basis for canceling the deed of statement was because the plaintiffs never received an invitation to attend the EGMS and did not give power of attorney to another party to represent them in attending the EGMS. The cancellation was also based on the provisions of Article 79 paragraph (2) and paragraph (3) of the PT Law, as well as the existence of unlawful acts (On rechtmatige Daad) committed by the defendants and co-defendants which caused losses to the plaintiffs, in accordance with Article 1365 of the Civil Code. The holding of the EGMS of PT Tomia Mitra Sejahtera by Defendant 1 was invalid because it was carried out in conflict with the provisions stipulated in the UUPT and there were legal defects in its implementation. The holding of the EGMS of PT Tomia Mitra Sejahtera by Defendant 1 was invalid because it was carried out in conflict with the provisions stipulated in the UUPT and there were legal defects in its implementation. The actions of the Co-Defendant in this case the notary were declared as unlawful acts by a court decision that fulfilled the elements of 1365 of the Civil Code, which had caused losses to the Plaintiff. However, in the decision, the notary is not charged to pay compensation because in making the Deed of Statement of Decisions of the General Meeting of Shareholders of the Company, the notary is responsible for the form of the deed of Statement of Decisions of the Meeting as a formality only, because the Notary did not attend the GMS in person, so he is not responsible for the contents contained in the deed. For the validity of the material or content of the deed is the responsibility of the party that held the EGMS and has made decisions in the EGMS in this case Defendant 1.

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