

Implementation of the Principle of Notarial Prudence in the Preparation of Deeds of Minutes of the Extraordinary General Meeting of Shareholders

Jihan Tri Lestari¹⁾ & Taufan Fajar Riyanto²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: jihantrilestari99@gmail.com

²⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: taufanfajarriyanto@unissula.ac.id

Abstract. *This study aims to examine and analyze the application of the principle of prudence by notaries in the preparation of minutes of the Extraordinary General Meeting of Shareholders (EGMS), the limits of legal protection and the form of the deed according to statutory regulations with a focus on Court Decision Number 366/PID/2025/PT Smg. This study uses a normative juridical method with an analytical and case approach. Data sourced from secondary data consisting of primary, secondary, and tertiary legal materials collected through literature studies, then analyzed evaluatively and prescriptively. The results of the study show that notaries are proven to have ignored the principle of prudence in Article 16 paragraph (1) letter a of the Notary Law (UUJN) through failure to verify identity, prepare a draft deed before the meeting, signing without reading, and manipulating the meeting location. This action damages the material authenticity of the deed, violates Article 38 of the Notary Law (UUJN) and fulfills the criminal elements of falsifying an authentic deed in Article 264 paragraph (1) point 1 of the Criminal Code. As a result, the notary's right to reclaim and legal immunity are forfeited by law. This study concludes that fulfilling the formal structure of the deed must be followed by strict material verification through the Customer Due Diligence (CDD) procedure and synchronization of the AHU Online system to ensure certainty and legal protection for the parties.*

Keywords: *Authentic Deed; EGMS; Notary; Prudential Principle.*

1. Introduction

Indonesia constitutionally affirms itself as a state of law as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The logical consequence is that every legal action of a legal subject must be based on the corridor of legal certainty and substantive justice. Legal certainty in the realm of private law is closely related to strong evidence, where authentic deeds made by Notaries occupy a position with perfect evidentiary power. The presence of previous online legal journals consistently shows that without the application of the principle of strict prudence by public officials, the aim of creating legal certainty in civil traffic will often result in prolonged legal disputes in court.¹In national economic activities, Limited Liability Companies (PT) are the most dominant legal entities used as a means of carrying out business activities due to their limited liability characteristics. PTs take every strategic and fundamental decision through the Extraordinary General Meeting of Shareholders (EGMS). Considering the nature of the EGMS to decide crucial corporate actions such as changes to the articles of association to the restructuring of company organs, Article 21 paragraph (4) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) requires that decisions be set out in the form of an authentic deed.²The notary is present as a public official to guarantee the formal and material validity of the entire series of events for the EGMS.

In formulating the minutes of the EGMS, the Notary issues a deed of release (official deed), with the Notary being fully responsible in material terms for the truth of all events seen, heard and witnessed by himself throughout the meeting.³Therefore, Article 16 paragraph (1) letter a of the Notary Law (UUJN) requires Notaries to apply the principle of prudence. This principle demands rigid accuracy, starting from verifying the validity of the quorum, checking the physical identity of the appearers, to pre-meeting administrative validation. The negligence of Notaries in applying the principle of prudence not only reduces the evidentiary value of the deed to an underhand deed, but also opens up opportunities for malpractice. The legal reality in the field shows a fatal discrepancy between the ideal regulation (*das Sollen*) and the reality of notarial practice (*das Sein*). This is reflected in real terms in Court Decision Number 366/PID/2025/PT Smg, a Notary was given criminal sanctions for ignoring the substantive aspects of the principle of prudence in preparing the deed of minutes of the EGMS.⁴The notary in this case was proven to have drafted in

¹Ghansham Anand, et al., 2024, "Implementation of the Principle of Prudence by Notaries in Exercising Their Authority Based on the Notary Law and the Notary Code of Ethics," *Jurnal Negara Hukum*, Vol. 15, No. 1, p. 45

²S. Nurlaila, 2018, "Legal Implications of Amendments to the Articles of Association of Limited Liability Companies", *Journal of Law and Development*, Vol. 48, No. 2, p. 210.

³Habibul Umam, 2021, "Legal Characteristics of Notarial Deeds of Release (Minutes) in General Meeting of Shareholders Forums", *Jurnal Notariil*, Vol. 5, No. 2, p. 89.

⁴Habib Adjie, 2024, "Notary Malpractice and the Limits of Criminal Liability in the Preparation of Authentic Deeds," *Lex Renaissance Law Journal*, Vol. 9, No. 3, p. 412.

advance (prepared a draft of the deed before the meeting), received unauthorized oral power of attorney, and manipulated the meeting location. These procedural violations damaged the material authenticity of the deed, violated Article 38 of the UUJN, and fulfilled the criminal elements of falsifying an authentic deed based on Article 264 paragraph (1) point 1 of the Criminal Code.

The phenomenon of Notaries being dragged into the realm of criminal justice due to the creation of a release deed confirms that understanding the limits of Notary legal liability remains a crucial gray issue. Therefore, identifying issues regarding the limits of the application of the precautionary principle, the degradation of the evidentiary power of the deed, and the cessation of the Notary's right of recusal and immunity is very important to study. An in-depth analysis of this dispute is needed to formulate more rigid preventive standards, such as the obligation of Customer Due Diligence (CDD) procedures and synchronization of the AHU Online system so that there is balanced legal protection for the Notary profession and business actors in the future. This study aims to examine and analyze the application of the Notary's precautionary principle in the creation of the deed of minutes of the Extraordinary General Meeting of Shareholders (EGMS) based on a case study of Court Decision Number 366/PID/2025/PT Smg.

2. Research Methods

This research uses a normative juridical research type with an analytical approach and a case approach through a case study of court decisions. The research specifications applied are descriptive analytical, evaluative, and prescriptive to examine in depth the application of notary legal principles. The data collection method is carried out through a literature study to collect secondary data sourced from primary legal materials in the form of laws and judges' decisions, secondary legal materials in the form of scientific journals and textbooks, and tertiary legal materials in the form of legal dictionaries. Data are analyzed using an evaluative method by describing and connecting the legal facts found to produce prescriptive conclusions regarding the legal problems studied.

3. Results and Discussion

3.1. Implementation of the Principle of Notarial Prudence in Making the Deed of Minutes of the EGMS according to Court Decision Number 366/PID/2025/PT Smg

The position of the prudent notary principle is not merely a professional ethical norm, but rather an imperative legal obligation based on Article 16 paragraph (1) letter a of the UUJN. This principle demands the integrity and professionalism of a Notary to guarantee the authenticity of the deed and provide legal protection for the parties. In making the deed of minutes of the EGMS which qualifies as a deed of relaas (official), the Notary bears the constitutive responsibility to ensure that every fact stated is an event that actually occurred before him. However, the

legal facts in Court Decision Number 366/PID/2025/PT Smg show a clear disregard for these standards by the defendant Notary YS in the Deed of Minutes of the Extraordinary General Meeting of Shareholders Number 13 dated December 23, 2020. The disregard occurred at the following stages:

a. Verification of the Identity and Authority of the Parties

Defendant Notary YS listed witness ATC as present as the oral power of attorney of shareholder witness MS, even though the trial facts proved that witness ATC was never present and witness MS was abroad and denied having given power of attorney. Notaries are required to conduct multiple validations and implement Customer Due Diligence (CDD) procedures based on Minister of Law and Human Rights Regulation Number 9 of 2017. Notaries must expressly reject oral powers of attorney for permanent legal acts such as the transfer of share rights. Every power of attorney must be based on an authentic power of attorney or a legally legalized private power of attorney. In urgent conditions, Notaries should proactively confirm with the remote power of attorney through electronic communication media (video/telephone calls) to ensure the legal intentions of the parties and be free from any element of forgery.

b. Verification of Legality and Company Status

Defendant Notary YS immediately processed the deed based solely on unilateral instructions from witness DK (an external party) without conducting a legal audit of the company's articles of association and the legitimate composition of the management. Notaries are prohibited from positioning themselves as tools for unilateral interests. As public officials, Notaries are required to uphold independence by conducting a comprehensive audit through the official state database on the SABH (AHU Online) system to confirm the company's active status, current share ownership, and ensure the company is not in a state of bankruptcy or liquidation that could revoke the authority of the legal management.

c. Examination of the Procedure for Summoning an EGMS

The summons for an EGMS is a formal requirement for the validity of a meeting, acting as a filter for legal legitimacy. In this case, the defendant, Notary YS, neglected to verify the summons period of at least 14 days before the meeting and did not check the availability of physical evidence in the form of an invitation letter or official mass media advertisement from the board of directors. A formal summons can only be waived based on Article 82 paragraph (5) of the Company Law if it is attended by 100% of shareholders and approved by unanimous acclamation. The defendant, Notary YS, unlawfully stated in the deed that the summons procedure was valid, which resulted in manipulation of attendance and a fictitious quorum.

d. Examination of Attendance Quorum and Voting Rights,

The defendant, Notary YS, validated the pseudo attendance quorum by including the voting rights of witness MS through illegal verbal power of attorney, so that

legally the decision-making quorum based on Article 86 paragraph (1), Article 88, and Article 89 of the UUPT was never achieved. The quorum examination must be calculated mathematically and transparently by matching the signatures on the physical attendance list to the original identity documents, not simply including the normative clause "the quorum has been met". The act of falsifying the quorum has implications of subjective defects and is null and void by law.

e. Attendance and Direct Supervision of the EGMS.

Based on the principle of *audu et visu* (hearing and seeing for oneself), Article 90 paragraph (2) of the UUPT and Article 1 number 7 of the UUJN require a Notary to be physically present at the meeting location to supervise the dynamics of the discussion, validation of the opening and voting.⁵The trial evidence revealed that the meeting at PT. MAP's office never actually took place. The parties never gathered together, and the deed was signed in succession or at different locations without the supervision of a notary. This fragmented signing undermines the material authenticity of the deed.

f. Objective and Complete Recording of Meeting Results

Defendant Notary YS was proven to have committed dishonesty by preparing the deed only based on a draft that had been prepared in advance by an interested third party. The notary ignored the fact that there was a denial and objection of minority rights from shareholders (witnesses Dr. S and witness SSC) who never agreed to the transfer of shares. Considering that *locus* and *tempus* are imperative formal requirements based on Article 38 paragraph (2) letter a of the UUJN, the manipulation of fictitious locations in the deed is legally qualified as an act of entering false information. Furthermore, after the police report emerged, Notary YS committed administrative malpractice by unilaterally issuing Deed of Correction of Minutes Number 1 dated October 7, 2022 to cover up the absence of certain witnesses. This action strictly violates the provisions of Articles 48 to 51 of the UUJN.

g. Storing Minutes of Deeds as a Form of Responsibility

Based on Article 1 number 8 of the UUJN, minutes of deeds are original documents of Notary protocol that must be managed with a high level of accuracy. The defendant Notary YS ignored the principle of prudence by keeping documents that were formally flawed since their creation and allowed external draft intervention to enter without verification. According to Article 44 of the UUJN, Notaries are required to bind minutes of deeds into a book containing no more than 50 deeds to prevent illegal insertion, replacement, or removal of pages in order to maintain the dignity of the office. The impact of the defendant Notary YS's neglect of the principle of prudence caused multiple losses, both in the realm of private-corporate law and public law. Failure to carry out the function as a legal control (gatekeeper) resulted in the Deed of Minutes of the

⁵I Dewa Gede Alit Budi Utama, 2022, "Degradation of the Evidential Power of Notarial Deeds that Ignore the Principle of Prudence," *Acta Comitas: Journal of Notary Law*, Vol. 7, No. 1, p. 14.

Extraordinary General Meeting of Shareholders Number 13 losing its authenticity and being degraded to having the evidentiary power limited to a private deed.⁶This triggered legal smuggling that harmed the rights of legitimate shareholders, gave rise to a series of new civil disputes (Case Number 584/Pdt.G/2021/PN Smg), and invalidated the reshuffle of the company's management because it was based on data manipulation.

In the realm of public law, the actions of the defendant Notary YS who continued to upload the flawed EGMS results data into the SABH Kemenkumham system despite full awareness of its material untruth, were assessed by the judge as a deliberate act in facilitating pseudo-legality. Consequently, the Notary's right to rebuttal and immunity from legal protection were forfeited by law. The Panel of Judges ruled that the actions of the defendant Notary YS had fulfilled all the elements of a crime and imposed criminal sanctions based on Article 264 paragraph (1) 1 of the Criminal Code concerning falsification of authentic deeds. This case emphasizes that Notaries must shift their paradigm from being merely passive recorders to proactive legal validators and dare to refuse to make deeds if indications of legal violations are found in order to maintain the dignity of their position.

3.2. Legal Protection for Notaries in the Preparation of Deeds of Minutes of EGMS that have Implemented the Principle of Prudence in Decision No. 366/PID/2025

Legal protection for Notaries who have carried out their duties in accordance with the mandate of Article 16 paragraph (1) letter a of the UUJN is essentially guaranteed expressly by law. The state provides legal protection to Notaries from criminal charges through the instrument of the right to refuse, the obligation to keep the contents of the deed confidential, and the requirement for approval from the Notary Honorary Council (MKN) before an examination by law enforcement officers is carried out.⁷Legal protection for the notary profession is a logical continuation of the implementation of official obligations that have perfectly met the standards of law enforcement, where the principle of prudence (the prudent notary principle) acts as a primary barometer. However, in the dynamics of criminal law enforcement, debate often arises about the boundary between actions recognized as fulfilling formal procedures by Notaries and judges' assessments regarding the material neglect of the principle of prudence. The essence of this legal protection is actually conditional, meaning that legal protection only applies fully if the Notary is proven to have acted formally and materially in accordance with the principle of prudence and the strict rules of the UUJN. If in the trial process facts of procedural deviations are discovered, then all

⁶KA Septianingsih, et al., 2020, "The Strength of Authentic Deed Evidence in Proving Civil Cases", Journal of Legal Analogy, Vol. 2, No. 3, p. 336.

⁷Habib Adjie, 2021, Civil and Administrative Sanctions against Notaries Who Commit Violations of Their Position, Refika Aditama, Bandung, p. 84.

legal protection shields provided by the law are declared null and void, and the Notary can be held personally criminally responsible for their involvement.

In examining the limits of such legal protection, it is important to review the ideal measure of the application of the principle of prudence required by the UUJN. In constructing the deed of minutes of the EGMS, which legally qualifies as a deed of relaas (official deed), the standard of prudence imposed on the Notary is very strict, rigid, and cannot be delegated to any party.⁸

a. **First Ideal Size:** It is the notary's obligation to personally witness, in full, and immediately, the entire legal proceedings documented in the deed. The notary must be physically present from beginning to end, overseeing the attendance quorum, decision-making dynamics, and the closing of the meeting. A notary is absolutely not permitted to passively receive reports or copy drafts of meeting minutes prepared by another party (drafting in advance).

b. **Second Ideal Size:** There is rigid documentary evidence through the obligation to ensure the identity of the parties present in person. Based on Article 16 paragraph (1) letter c of the UUJN, the Notary is required to attach letters and documents as well as the fingerprints of the parties present to the minutes of the deed. In the context of the EGMS, this requires the Notary to carry out factual verification by matching physical identity card documents, the actual attendance list, and the validity of the power of attorney from the represented shareholders.

The integrity between the physical presence of the Notary, the certainty of the identity of the parties appearing, and the validation of the documents is what forms the ideal standard of prudence. If all aspects of this ideal measure are cumulatively fulfilled, the Notary is absolutely within the corridor of safe legal protection. This rigid ideal standard of prudence in fact experienced a very fundamental deviation in Decision Number 366/PID/2025/PT Smg. In this case, a wide gap was found between the normative procedure for creating a release deed and the reality of its execution carried out by the defendant Notary YS. The trial facts materially proved that in the Deed of Minutes of the Extraordinary General Meeting of Shareholders Number 13 dated December 23, 2020, the parties appeared in fact never appeared together before the Notary. The signing of the deed was carried out separately and in relay, which this action ignores the absolute essence of a release deed.

Unfortunately, the physical absence of the parties together and the existence of legally flawed supporting documents for the meeting were still accommodated by the defendant, Notary YS. The notary approved the inclusion of legal events and the meeting quorum based solely on a unilateral verbal power of attorney claim, without any real confirmation or validation with the party granting the power of attorney (witness MS). The Panel of Judges assessed that this act of transferring information that did not correspond to real facts into an authentic

⁸Tan Thong Kie, 2011, Notary Studies: All About Notary Practice, Ichtiar Baru Van Hoeve, Jakarta, p. 253.

deed was no longer merely a form of professional administrative negligence, but had fulfilled the element of intention (*dolus*) in committing intellectual falsification. Through legal considerations in Court Decision Number 366/PID/2025/PT Smg, the defense of official formality argued by the defendant, Notary YS, was proven to collapse and was materially invalidated in court. Compliance with formal procedures on paper no longer has binding force before criminal law when the public official concerned clearly ignores the substance of material truth. The essence of legal protection and the right to resign cannot be granted to officials who allow their positions to be controlled by external parties' manipulation.

This case emphasizes the legal limitations in Indonesia, namely that the doctrine of legal protection for notaries is not absolute immunity, but rather a qualified privilege. When a notary knowingly exceeds the ideal safety limits required by law, such actions are categorized as a criminal act of intellectual forgery, which eliminates all forms of professional protection. This decision serves as an important reference, emphasizing that the law expressly refuses to provide protection to public officials who are proven not to apply the principle of prudence in carrying out their duties.

3.3. Form of Deed of Minutes of EGMS according to the Provisions of Statutory Regulations

Based on a comprehensive overview of the structural application of the precautionary principle, an ideal reconstruction of the deed of minutes of the EGMS for a company is required. This construction is compiled by correcting the legal loopholes found in the Deed of Minutes of the Extraordinary General Meeting of Shareholders Number 13 in Decision Number 366/PID/2025/PT Smg, which is presented as a draft model of an ideal deed that meets legal security standards. The existence of the deed of minutes of the EGMS as a *relaas* deed places the Notary as an expert witness in formalizing legal facts into an authentic document of legal events seen, heard, and carried out directly in a meeting. The formal provisions of the deed structure as regulated in Article 38 of the UUJN are not merely administrative fulfillment, but a real manifestation of the extent to which the Notary applies the principle of caution in carrying out his profession. The authority of the Notary in making the deed of minutes of the EGMS is an attributive authority. Notaries serve not only as passive administrative recorders, but also as state officials obligated to guarantee both formal and material accuracy. To concretely analyze the principle of prudence, three anatomical structures of a deed must be rigorously examined: the Head of the Deed, the Body of the Deed, and the Closing of the Deed.

The deed head is the beginning of a deed which is prepared as the main identity and determinant of formal validity related to the relative competence of the Notary's position. Based on the provisions of Article 38 paragraph (2) of the UUJN, the initial part of the deed must contain the title of the deed, the deed number, the time, day, and date of the deed's execution, as well as the full name

and legal domicile of the Notary. In this section, the Notary's accuracy is really tested to ensure that the EGMS is actually held at the company's legal domicile or another place in accordance with the corridor of the articles of association as mandated in Article 76 of the UUPT. Weaknesses in this section often appear in the form of discrepancies between the time (*tempus*) and place (*locus*) of the actual meeting with what is stated in the deed. From a criminal law perspective, this information manipulation can be categorized as an act of providing false information into the contents of an authentic deed as regulated in Article 266 of the Criminal Code.⁹In Court Decision Number 366/PID/2025/PT Smg, it was found that there were clear violations regarding the meeting location and time of implementation. The Deed of Minutes of the Extraordinary General Meeting of Shareholders of PT. MAP Number 13, which stated the meeting time at 15.45 WIB, formally stated that the EGMS was held at the company's domicile office located on Jalan PR [initials], Semarang City. However, the legal facts revealed at the trial materially proved that the signing of the deed was actually carried out at the office of witness DK on Jalan P [initials], Semarang City. In addition, the parties were proven to have never been present together at the time stated in the deed, and the defendant Notary YS himself admitted that the deed had been prepared in advance (drafting in advance) without any actual physical meeting being held.

The body of the deed is the core substance of a release deed which contains the statement of the wishes of the parties and a visualization of the legal facts that occurred in the dynamics of the EGMS.¹⁰In accordance with Article 38 paragraph (3) of the UUJN, this section must contain the complete identity of the parties appearing or the parties representing them as attorneys, information regarding the acting positions of the parties appearing, the contents of the deed containing the substance of the wishes of the interested parties, and the complete identities of the identifying witnesses. The Notary's negligence in verifying supporting documents and failure to ensure the dynamics of the actual running of the meeting is a form of fatal disregard for the principle of prudence which risks damaging the legality of the deed product. Analysis of Decision Number 366/PID/2025/PT Smg shows that the defendant Notary YS unlawfully included witness ATC as present as the oral attorney of witness MS. In fact, the legal facts of the trial legally prove that witness MS was abroad at that time and had never given any form of power of attorney to anyone. The Notary's negligence is further emphasized by the fact that there was never any communication or proactive confirmation regarding the contents of the deed to witness MS as a shareholder. The main factor that makes the structure of this deed legally flawed is the fact that the meeting never actually took place, and the inclusion of the names of the appearers was purely done based on unilateral instructions from the DK witness who is not legally an organ of the PT MAP company.

⁹Adami Chazawi, 2019, Crimes Concerning Counterfeiting, Rajawali Pres, Jakarta, p. 142.

¹⁰GHS Lumban Tobing, 2018, Notary Regulations, Erlangga, Jakarta, p. 165.

The closing of the deed is the final part that functions as a seal of authenticity for the procedure of reading, signing, stating the complete identities of the witnesses to the deed, as well as a written statement regarding whether or not there are changes that occur in the process of making the deed as regulated in Article 38 paragraph (4) UUJN. Based on Article 16 paragraph (1) letter m UUJN, the Notary is imperatively required to read the deed in front of the parties in the presence of at least two instrumental witnesses. The physical absence of the parties at the time of signing the deed becomes a fatal legal loophole that results in the deed losing its authenticity and being degraded to only having the power of proof as a private deed. The legal facts in Decision Number 366/PID/2025/PT Smg prove that the signing process was carried out without being preceded by a reading of the deed by the Notary. Witness dr. S and witness SSC were immediately presented with the document to be signed without being read first by the defendant Notary YS, so that the parties in the court signed it with the mistaken assumption that the document was just an ordinary internal agreement. Furthermore, the presence of instrumental witnesses from the office employees of the defendant Notary YS was manipulated through a unilateral order to sign the deed as if they had witnessed the meeting on December 23, 2020, even though the witnesses were completely unaware of the events that actually occurred.

Based on the anatomical analysis of each part of the deed structure, it can be firmly concluded that the Deed of Minutes of the Extraordinary General Meeting of Shareholders Number 13 dated December 23, 2020 has fulfilled all the elements of the crime of falsifying authentic documents as referred to in Article 266 paragraph (1) of the Criminal Code. In practice, fulfilling the formal structure on paper is not sufficient if there is procedural negligence and deliberate inclusion of false information into the authentic deed. Violation of the formal structure of Article 38 of the UUJN has direct implications for the loss of perfect evidentiary power (*volledig bewijskracht*) of the deed, and causes real legal losses for the parties whose names are used unlawfully.

4. Conclusion

Based on the analysis of Decision Number 366/PID/2025/PT Smg, it can be concluded that the legal protection and right to revoke the position attached to the Notary profession is not absolute immunity, but rather a conditional privilege that will be forfeited by law if it is proven that there has been a neglect of the principle of prudence (the prudent notary principle). The failure of the defendant Notary YS in implementing structural mitigation standards, both at the head, body, and closing stages of the deed such as manipulating the meeting location (*locus*), accommodating fictitious oral powers of attorney, and skipping the obligation to read the deed directly, has materially fulfilled the elements of the crime of intellectual forgery based on Article 266 and Article 264 of the Criminal Code. The legal implications of this cumulative violation of the provisions of Article 16 and Article 38 of the UUJN not only result in the deed of minutes of the

EGMS losing its authenticity and being degraded into a deed underhand, but also gives rise to personal criminal liability that eliminates all forms of Notary protection before the law. It is hoped that the Notary professional association and supervisory institutions will tighten the standardization of guidance and periodic supervision, especially regarding compliance with the obligation of *audu et visu* (hearing and seeing in person) and multi-layered document verification to prevent administrative malpractice. For Notaries, it is recommended to always be proactive and firm in rejecting any draft or instruction for the preparation of a deed of release that is not physically present by the parties simultaneously, and optimize the use of official digital technology for remote identity confirmation to maintain the dignity of the Notary's office. Finally, for future researchers using a similar research basis, it is recommended to expand the scope of this normative legal analysis by referring to variations in normative methodology, in order to examine more deeply the dynamics of the safe limits of Notary office immunity in the ever-evolving corporate criminal law climate.

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