

Legal Protection for Notaries in Making Deeds of Statements of Meeting Decisions Based on Circular Decisions of Limited Liability Companies

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Abstract. *This study aims to determine the legal protection for notaries in making a statement of meeting decisions based on a circular decision of a limited liability company. This study uses a normative juridical approach with a statutory approach method. The type and source of data in this study are secondary data obtained from literature studies. The analysis is descriptive analysis. Based on the study, it is concluded that Legal Protection for Notaries in Making a Deed of Statement of Meeting Decisions Based on a Circular Decision of a Limited Liability Company is protection for the deed of statement of meeting decisions based on a circular decision made by a Notary, then based on Article 91 of the Company Law provides space for shareholders to be able to make decisions without physical presence, because with the absence of differences in decisions that can be taken with an extraordinary general meeting of shareholders, this opens up space for rogue shareholders to make a decision that can harm other parties, one of which occurred in decision 105/Pdt.G/2021/PN JKT.SEL. As a result, the deed of statement of meeting decisions that recorded changes in the composition of shareholders lost its legal basis and must be declared null and void to restore the rights of the initial shareholders who were harmed.*

Keywords: *Circular; Decision; Deed; Notary.*

1. Introduction

Development the economy and business world in Indonesia are developing with significant in this era of globalization. With increasing development modern This needed various device instruments that can support smoothness business That Alone, among them is device law, which in matter This is laws that can arrange Then cross business. One of development laws that occur within society, especially For Indonesian entrepreneurs and the community enthusiast law in general that is with implementation Constitution Number 40 of 2007 concerning Limited Liability Companies, with the implementation of this law, entrepreneurs in our country can wisely carry out business activities in accordance with the provisions

of the law.

The position of a Limited Liability Company as a legal entity is determined by the legal entity approval granted by the Ministry of Law of the Republic of Indonesia, and from that time on the Limited Liability Company has legally become a legal subject that can support the rights and obligations to be independently responsible for all consequences that will arise from all legal actions carried out by the company.¹ The ratification, registration and announcement of the deed of establishment of a Limited Liability Company, then the company's articles of association are not only binding for the founders, shareholders, board of directors and board of commissioners but also binding for all parties who conduct transactions with the company. The articles of association are a positive law for the company in carrying out business activities, therefore the name, position, purpose and objectives, amount of business capital, distribution of company shares and matters relating to the company are described in the company's articles of association,² which are made in an authentic deed made before a Notary.

The Limited Liability Company Law has regulated that shareholders can also make binding decisions outside the GMS, this is known as *a circular resolution* or circular decision, decision making outside the GMS (circular decision) is regulated in Article 91 of the UUPT, where shareholder decision making outside the GMS is carried out by circulating written proposals to shareholders and has binding force as a GMS decision, with the condition that all shareholders give their approval and sign the circular decision without exception.

In reality, in making a deed of statement of meeting decisions based on circular decisions, the parties often attach fake Circular Decisions, or even do not implement anything that has become a decision in the circular decision that has been decided, as happened in the case in Decision Number 105 / Pdt.G / 2021 / PN JKT.SEL, from this decision it was concluded that the shareholders who had taken a circular decision did not implement anything that had been decided in the circular decision that had been signed by the shareholders, this caused the deed of statement of meeting decisions based on the circular decision that had been made by the Notary to be legally null and void.

This research focuses on identifying how Legal Protection for Notaries in Making Deeds of Meeting Decisions Based on Circular Decisions of Limited Liability Companies. This study aims to determine and analyze legal protection for notaries in making deeds of meeting decisions based on circular decisions of limited liability companies.

¹ Budiarto Agus. (2002). *Responsibilities of Establishing a Limited Liability Company*. Jakarta: Ghalia. p. 106.

² Sentosa Sembiring. (2006). *Corporate Law Concerning Limited Liability Companies*. Bandung: Nuansa Aulia. p. 78.

2. Research Methods

The type of research used is normative legal research, the approach method used is the statute approach, this means that the researcher uses statutory regulations as a basis for conducting analysis.³ The data collection method in this study was conducted through a literature review of legal materials, including primary, secondary, and tertiary legal materials.⁴ The technique for reviewing and collecting these three legal materials was documentary research. Documentary research examines various documents, both those related to legislation and existing documents.⁵ The data analysis method used in this study is descriptive. Descriptive analysis aims to provide arguments for the research findings.

3. Results and Discussion

3.1. Legal Protection for Notaries in Making Deeds of Statements of Meeting Decisions Based on Circular Decisions of Limited Liability Companies

Notary Public often considered as target soft when A company experience dispute in the company, especially If those decisions taken without holding a meeting physical. This is where the law present give protection namely through Constitution Position Notary (UUJN) which UUJN confirms that not quite enough answer Notary Public is not quite enough answer procedural. As long as the Notary operate task in accordance with procedure existing laws, such as inspect identity and ensure existence document circular decision original, then in a way automatic d ia is at in state protection.⁶

Notary Public absolutely not may only believe in what is conveyed facing, but rather notaries should documenting every sheet proof circular to in minutes deed. Practice good documentation is form insurance law in the future. If later day there will be later holder shares that claim No Once sign circular said, Notary can show warkah supporters that he save as proof that formally in the has do verification of documents brought by the person appearing.⁷ Protection preventive This can ensure that Notary Public has do what is required by law, so error material that is done facing No Can accused to the notary.⁸

³ Mukti Fajar and Yulianto Achmad. (2023). *Dualism of Normative and Empirical Legal Research*. Yogyakarta: 7th Edition, Pustaka Pelajar. p. 185.

⁴ *Ibid*, p. 188.

⁵ Salim. and Erlies Septiana Nurbani. (2013). *Application of Legal Theory in Thesis and Dissertation Research*, Depok: Grafindo Persada. p. 19.

⁶ Habib Adjie. (2009). *Civil and Administrative Sanctions Against Notaries as Public Officials*. Bandung: PT. Refika Aditama. p. 67.

⁷ Herlien Budiono. (2013). *Basic Techniques for Making Notarial Deeds*. Bandung: Citra Aditya Bakti. p. 58.

⁸ Anastasia Lucia Margaret. (2019). Legal Implications of Deeds Made Based on Legally Defective Circular Decisions "(Study of Jakarta State Administrative Court Decision Number 105/G/2019/PTUN-JKT)". *Indonesian Notary*. Volume 2 Number 1. p. 308.

Operate duties as a notary are often reported to party police with accusation forgery deed or even the description false whereas d ia only take notes whatever the viewer wants. It's here role Notary Honorary Council becomes very important. Where the Honorary Council Notary on duty ensure that Notary Public No can be summoned by investigators in a way carelessly. If the Notary proven Already Work in accordance standard as determined by law, the Notary Honorary Council is obliged to reject to give permission upon summons the.⁹ Protection This is very vital for the Notary Can Work with a sense of security and without fear will pressured by the parties who will later be in dispute internally within company.¹⁰

Notary Public no way need feel Afraid to content decision circular that d ia deed right, because fully responsible answer about truth above content decision the rests on the shoulders of the holder shares. This limitation it becomes very clear, that the Notary responsible answer on the deed, whereas facing responsible answer on the contents of the decision. As long as it is not There is element intention wicked or Work The same between Notary Public with one of them party for falsify data, then protection law must still attached close to the position Notary Public the.¹¹

Decision Number 105/Pdt.G/2021/PN JKT.SEL provides an illustration of the vulnerability of notaries in making a deed of statement of meeting decisions based on circular decisions. This case began when one of the shareholders sued another shareholder, namely ASN (Plaintiff 1) and AM (Plaintiff 2) with PT. BKM (Defendant 1), PT. SR (Defendant 2), PT. ACN formerly PT. ASN (Co-Defendant 1) and SM, SH (Co-Defendant 2), in short ASN and AM are shareholders of the Limited Liability Company ACN formerly PT. ASN, where ASN owns 1,118,000 shares out of 1,200,000 shares and AM 12,000 shares out of 1,200,000 shares, feeling aggrieved by the deed of Circular Decision Statement of Shareholders of PT. ASN Number 31 dated July 23, 2019, made before SM, SH Notary in Jakarta, the deed explains the transfer of share ownership in PT. ASN, in the deed it is stated that 356,400 shares have been transferred to PT. BKM (Defendant 1), and 356,400 shares to PT. SR (Defendant 2), so that the composition of PT. ASN shares (Co-Defendant 1) with the deed becomes: ASN (Plaintiff 1) 475,200 shares; AM (Plaintiff 2) 12,000 shares; PT. BKM (Defendant 1) 356,400 shares; and PT. SR (Defendant 2) amounting to 356,400 shares, with a total of 1,200,000 shares, the change in the composition of shareholders has been recorded in the Legal Entity Administration System of the Ministry of Law and Human Rights of the Republic of Indonesia, with a letter of

⁹ See Article 66 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.

¹⁰ Gusnia Hanako, Hasim Purba and Mahmul Siregar. (2025). "Unlawful Acts of Notaries Against the Deed of Partij of the General Meeting of Shareholders (GMS) and the Deed of Partij of the Circular Decision of Shareholders of Limited Liability Companies (Study of Decision Number 46/PDT.G/2023/PN CBI Jo 236/PDT.G/2019/PN.BDG Jo 141/PDT.G/2018/PN/BLB)". *Lex Generalis Law Journal*. Volume 6 Number 4. p. 14.

¹¹ Heriyanti. (2016). "Legal Protection for Notaries Indicated to Commit the Criminal Act of Making Authentic Deeds". *Yustisia Journal*. Volume 5 Number 2. p. 330.

acceptance and notification of changes to the company data of PT. ASN Minister of Law and Human Rights of the Republic of Indonesia Number: AHU-AH.01.03-00313928 dated August 14, 2019.¹²

The change was actually implemented based on the share sale and sale agreement on July 22, 2019, where ASN (Plaintiff 1) sold its shares to PT. BKM (Defendant 1) amounting to 356,400 shares; and PT. SR (Defendant 2) amounting to 356,400 shares, in fact, PT. BKM (Defendant 1) and PT. SR (Defendant 2) since the share sale and purchase agreement jo. The Shareholder Circular Decision Statement Deed has been negligent and has not carried out its obligations, namely not providing payment for the sale and purchase of shares, then ASN (Plaintiff 1) and AM (Plaintiff 2) filed a lawsuit with the South Jakarta District Court, the court decided that the actions taken by Defendant 1 and Defendant 2 had committed a breach of promise or default, and decided that: (a) the share sale and purchase agreement (*agreement of share and sales*) made between plaintiff 1 and defendant 1 dated July 22, 2019, (b) the share sale and purchase agreement (*agreement of share and sales*) made between plaintiff 1 and defendant 2 dated July 22, 2019, and (c) the Shareholder Circular Decision Statement Deed Number 31 Dated July 23, 2019 made before co-defendant 2 is null and void, and sentenced co-defendant 1 and co-defendant 2 to pay court costs.¹³

The decision annulled the deed of statement of meeting decisions based on the circular decision made before a notary, which was caused by a party having bad intentions in taking over the company, where the circular decision had been signed and the deed of statement of circular decision had also been registered with the Ministry of Law and had been notified to the Ministry of Law and had received a response with a letter regarding receipt of notification of changes to the limited liability company data from the Ministry of Law of the Republic of Indonesia.

This decision certainly underlines that the notary does not have the authority and obligation to provide material evidence to ensure whether each shareholder has received payment for the sale and purchase of shares made by means of a private deed, namely only made between the related parties without involving a notary, which is then based on the creation of a company circular decision and followed by a request to create a deed of statement of meeting decisions based on the circular decision.

The panel of judges finally granted the plaintiff's lawsuit and canceled the deed of statement of meeting decisions based on the circular decision made by the notary, the cancellation of this deed was not due to the notary's negligence in making the deed of statement of meeting decisions based on the circular decision, but this

¹² Copy of the Decision of the South Jakarta District Court Number: 105/Pdt.G/2021/PN JKT.Sel. pp. 1-6.

¹³ Copy of the Decision of the South Jakarta District Court Number: 105/Pdt.G/2021/PN JKT.Sel. pp. 8-26.

was in line with the share sale and purchase agreement that had been made by the plaintiff with the defendant where the share sale and purchase agreement was made privately between the parties, the legal consequences of the defendant's negligence regarding the share sale and purchase agreement made by the parties resulted in the deed of statement of meeting decisions based on the circular decision being legally void.

In this case, the notary is not a guarantor of the truth of the actions and wishes of the parties appearing before him, where the notary only plays a role as a public official who sets out the legal events that occurred, namely in the form of a circular decision which is then made in the form of an authentic deed.¹⁴ Acceptance of the lawsuit from the plaintiff does not automatically prove that the notary was also at fault in making the deed because in fact the notary has followed the standard procedures stipulated in the law in making the authentic deed.¹⁵

Article 91 of Law Number 40 of 2007 provides justification for shareholders to be able to make valid decisions without going through a physical general meeting of shareholders. This article emphasizes that shareholders can also make binding decisions outside of the GMS provided that all shareholders with voting rights agree in writing by signing the relevant proposal. The words agree in writing and signing are absolute requirements that must be met in making circular decisions. This means that the legality of a circular decision depends not only on the substance of the agreement but also on physical evidence of approval, which can certainly be verified visibly by a notary before the decision is recorded in an authentic deed.¹⁶

3.2. Advantages and Disadvantages of Making a Deed of Statement of Meeting Decisions Based on Circular Decisions of Limited Liability Companies

Business world move with fast, where the motto of time is money is proof of the importance of time in the business world. With the existence of a mechanism circular, company No need to rent room, arrange timetable difficult meeting for holder busy stock, or even do procedure summons convoluted meeting. Circular decisions can implemented only with send document in a way gradually to each holder shares. Where is this of course it makes things very easy company in do actions law of its nature urge.¹⁷

General meetings of shareholders held physically often incur large costs, ranging from accommodation costs, transportation to the cost of organizing the event, so

¹⁴ Herlien Budiono. (2013) *Collection of Civil Law Writings in the Notary Sector*, Bandung: Citra Aditya Bakti. p. 110.

¹⁵ Jonathan Adi Biran Munandir and Thohir Luth. (2017). "Notary's Responsibility for Deeds of Meeting Decision Statements". *Jurnal Cakrawala Hukum*. Volume 8 Number 1. p. 59.

¹⁶ Kunni Affah. (2017). "Responsibility and Legal Protection for Notaries in Civil Cases Regarding the Deeds They Make". *Lex Renaissance*. Volume 2 Number 1. p. 155.

¹⁷ M. Yahya Harahap. (2021). *Limited Liability Company Law*. Jakarta: PT. Sinar Grafika. p. 341.

that by implementing circular decisions can save the company's operational costs for holding a company meeting. For notaries, this also provides convenience because the notary only needs to write down what has been decided based on *the circular resolution* that has been signed by the shareholders into an authentic deed, namely the deed of statement of meeting decisions based on circular decisions, where the notary does not need to be physically present to lead or witness the meeting.¹⁸ Of course, this advantage makes the circular mechanism a solution for private companies whose shareholders are still related to relatives or close colleagues, but this speed often ignores the principle of prudence.¹⁹

The most fundamental weakness of this circular mechanism lies in the low level of certainty regarding the authenticity of the shareholders' signatures,²⁰ which is certainly different from a physical general meeting of shareholders before a notary where the identity and signature can be verified directly by the notary. Weakness This will open very wide gap for parties company for do manipulation or forgery sign hand. If the thing This happened, of course a kta statement of the meeting decisions produced becomes very fragile and easy sued in court, which ultimately Can harm interest companies and parties the third related with company the.²¹

The weakness of the circular is not only in the forgery of signatures, in the decision of the South Jakarta court number: 105 / Pdt.G / 2021 / PN JKT.SEL where the court annulled the deed of statement of meeting decisions made by a notary due to the existence of an unlawful act committed by the company's shareholders, namely default / breach of promise for the payment of the purchase of shares that has not been paid to the party selling their shares, where the share sale and purchase agreement between the parties was also made with a private deed, so that the notary cannot directly see the payment for the sale and purchase of shares stated in the circular decision. Even though the notary has carried out the procedure for making the deed of statement of meeting decisions correctly, the deed still loses its juridical validity because the legal event stated in the deed, namely the transfer of shares, in reality never occurred perfectly legally because the payment for the sale and purchase of shares was never paid by the buyer. This is certainly a major weakness for the notary, because his name will still be dragged into the court decision even though he is not aware of the dispute in the payment for the sale and purchase of shares.

The cancellation of the deed of statement of the meeting's decision was due to the failure to fulfill the objective requirements for the validity of the agreement,

¹⁸ Abdul Ghofur Anshori. (2007). *Limited Liability Company Law in Indonesia*. Yogyakarta: Gadjah Mada University Press. p. 92.

¹⁹ Silvia Cendana, Devina Trianti, Eva Fortuna Kasan, and Andryawan. (2021). "Analysis of the Legal Force of Decision-Making Using the Circular Resolution Method in Limited Liability Companies." *Adigama Law Journal*. Volume 4 Number 1. p. 1704.

²⁰ Munir Fuady. (2002). *Modern Doctrines in Corporate Law*. Bandung: Citra Aditya Bakti. p. 85.

²¹ Inka Sukma Faradilla. (2021). "The Validity of a Circular Decision of a Limited Liability Company Stated in a Notarial Deed". *Officium Notarium*. Volume 1 Number 1. p. 37.

where the element of lawful cause or fulfillment of performance in the transfer of shares was deemed absent due to the failure of payment by the buyer. As a result, the deed of statement of the meeting's decision which recorded the change in the composition of shareholders lost its legal basis and must be declared null and void by law to restore the rights of the original shareholders who were harmed.

Error in the Circular Decision No is error from Notary, but rather negligence from the parties within decision circular. However, the creation of Deed Statement of meeting decisions based on circular decisions Shareholders created in front of Notary Public own gap laws that can result in Notary Public charged sanctions. Sanctions administrative that can given to Notary Public if the parties submit objections and reports to Assembly Regional Supervisor where Regional Supervisory Board will propose sanctions based on consideration for errors made by the Notary, to see violation to Notary Public Position Act. besides report to Assembly Regional Supervisor, if can proven and have proof violation code ethics can do reporting to the INI Honorary Council (Ikatan Indonesian Notary). As stated in Article 9 paragraph (1) of the Code of Ethics, if there is suspected members do violation to the Code of Ethics, both suspicion originate from the Regional Honorary Council and report from Regional Administrators or report from other parties to the Regional Honorary Council then will held meeting for determine whether Correct to incident violation of the Code of Ethics the.

In a way explicit mentioned in Article 65 of the Notary Position Law No. 2 of 2014, Notary responsible answer on every the deed he made although Protocol Notary Public has handed over or moved to party protocol storage Notary. Mistakes made by Notaries in manufacturing deed so that there is the party experiencing loss due to negligence Notary Public can charged about actions oppose law. Act oppose law the cause there is n yes obligation Notary Public For take responsibility answer truth formal from deed made based on what is stated by the parties interested party. Notary Bert Gracegung answer for always check warkah the required documents for make Changes to Company Data must be noticed in operate his position.²²

4. Conclusion

Legal Protection for Notaries in Making Deeds of Statement of Meeting Decisions Based on Circular Decisions of Limited Liability Companies, namely protection for deed of statement of meeting decisions based on circular decisions made by Notaries, then based on Article 91 of Law Number 40 of 2007 concerning Limited Liability Companies, it provides room for holders share For can take decision without presence physical, throughout decision the approved in a way written by all holder shares, and here the law does not regulate the extent to which decisions can be made through circular decisions, because with the absence of different

²² Ruth Alnila Sinaga. (2022). "Notary Public's Responsibility After the Term of Office Ends for the Deeds He or She Made." *Recital Review*. Volume 4 Number 2. p. 312.

decisions that can be taken by an extraordinary general meeting of shareholders, this opens up space for rogue shareholders to make decisions that can harm other parties, one of which occurred in decision 105 / Pdt.G / 2021 / PN JKT.SEL, where in the company's circular decision there was a transfer of shares from the seller to the buyer, which was proven in court that the buyer had not paid the purchase price for his shares to the seller, this caused the deed of statement of meeting decisions that had been made by the notary to be canceled due to the failure to fulfill the objective requirements for the validity of the agreement, where the element of lawful cause or fulfillment of achievements in the transfer of shares was deemed absent because the buyer had not made payment. As a result, the deed of statement of meeting decisions that recorded the change in the composition of shareholders lost its legal basis and must be declared null and void to restore the rights of the original shareholders who were harmed. This cancellation is not entirely the fault of the notary because the notary has carried out procedures in accordance with the provisions of the Notary Law in making *the deed of deed*. The suggestion in this research is to the government, in order to strengthen regulations on the limits that can be decided in the company's circular decision, because with easy conditions it can make irresponsible parties commit unlawful acts, where in my opinion it is better for circular decisions to only be made for urgent decisions within the company that are not related to Changes to the Company's Articles of Association, Changes to Company Data or Notification of Changes to the Company's Articles of Association, especially regarding the issue of share transfers. Where in my opinion it is better for Changes to the Company's Articles of Association, Changes to Company Data or Notification of Changes to the Company's Articles of Association especially regarding share transfers to be carried out by holding an Extraordinary General Meeting of Shareholders. and for share transfers carried out underhand it is better to make regulations to be carried out before a notary, in order to guarantee the truth and security between the parties and avoid disputes in the future.

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