

Absence of a Power of Attorney to Appear before a Notary in Making the Deed of Statement of Resolutions of the Extraordinary General Meeting of Shareholders

(Study of Decision of the DKI Jakarta Notary Regional Supervisory Council Number 13/PTS/Mj.PWN.Prov.DKI.Jakarta/XI/2021)

Bellatric Andini Putri¹, Tjhong Sendrawan²

bellatricandini@gmail.com

^{1,2}Notary Masters Study Program, Faculty of Law, University of Indonesia

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Abstract

The background of this research is the absence of a power of attorney to appear before a notary as the basis for the authority of the appearer in making the Deed of Resolutions of Extraordinary General Meeting of Shareholders (PKR deed). The problems studied in this research are the reasons why a power of attorney to appear before a notary is needed in the process of making a PKR deed and efforts that can be made by a notary so that the deed he makes still complies with statutory provisions, if the power of attorney does not exist. The research was conducted using a literature study with an analytical descriptive research typology by examining secondary data in the form of primary and secondary materials. Primary legal materials consist of the Civil Code, Notary Office Law, and Limited Liability Company Law, while secondary legal materials consist of books, journals, articles, and internet media related to Limited Liability Companies, the role of a Notary in making the deeds of Limited Liability Companies, and notary's obligations in making authentic deeds. The results of this study explain that a power attorney with the right of substitution for a appearer who wants to appear before a Notary to state the contents of a meeting decision in a PKR deed is important. With the existence of a power of attorney, the appearer as the proxy holder has the authority to act to represent the interests of other shareholders present at the EGMS. Conversely, if there is no power of attorney, then the appearer does not have the authority to act. The result of the incompleteness of the power of attorney for the appearer in making the PKR deed is that the PKR deed can be canceled because it has violated the subjective terms of the validity of the agreement which also includes the material requirements of an authentic deed, namely the

agreement of the parties. Thus, the Notary can prevent and overcome the cancellation of the deed if the Notary performs due diligence as stipulated in Article 16 paragraph (1) letter a UUJN. The notary can start examining documents from identifying the identity of the appearer, carefully verifying the subject and object data of the appearer, drawing up a deed with sufficient timeframe, fulfilling the formal and material requirements of the deed, reporting if there are indications of money laundering, expanding knowledge and professional expertise in accordance with the times, as well as conducting legal counseling for appearers.

1. Introduction

Law plays an important role in social life. Moreover, in the development of increasingly modern human life, the potential for disputes between one person and another cannot be avoided. As a rule of law, Indonesia has the principle of guaranteeing certainty, order, and legal protection for every country¹. Therefore, genuine written documentation of legal actions, agreements, decisions, and occurrences made before or by an authorized official is essential to provide clarity, order, and legal protection. Documentary evidence may be broken down into two categories: regular writing and deeds, as outlined by the law and legal theory. Since a deed includes an agreement and also explains that the activities described in the deed are real, it is crucial for a legal connection between two or more parties to have a deed that is legitimate. According to Article 1868 of the Civil Code (henceforth referred to as the "Civil Code"), a valid deed is one that is created in the form prescribed by law and is executed or witnessed by public authorities with the authority to do so in the jurisdiction where the deed was formed². Notaries are governmental officials with the authority to witness and authenticate documents and may also perform additional duties as required by law³. An authentic deed drawn up by a notary as a public official has perfect evidence for the parties to the deed, their heirs, and the parties who obtain rights from them regarding what is contained in the deed⁴. Deeds of limited liability company formation, deeds of fiduciary guarantees, deeds of foundation formation, deeds of inheritance rights, and so on are all examples of legal

¹ Undang-Undang Jabatan Notaris, UU No. 30 Tahun 2004, LN Tahun 2004 No. 117, TLN No. 4432, sebagaimana diubah terakhir oleh UU Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Jabatan Notaris Nomor 30 Tahun 2004, LN Tahun 2014 No. 3 TLN No. 5491, selanjutnya disebut UUJN, Penjelasan Umum.

² Pasal 1868 KUHPerdota.

³ Indonesia, *Undang-Undang Jabatan Notaris*, UU No. 30 Tahun 2004, LN No. 117 Tahun 2004, TLN No. 4432, Pasal 1 angka 1.

⁴ Pasal 1870 KUHPerdota.

papers that must be created in genuine deeds to comply with different laws and regulations. Authentic deeds with the highest possible evidential power are made by notaries, who also exercise certain of the state's functions, particularly in the area of private law⁵. As openbare amt benaren, or officials with responsibilities relating to community interests, notaries are accountable for meeting the demands of the public interest via the provision of services. Further, as a person in a position of trust, a notary must uphold the high standards of conduct set out by law and the notarial code of ethics. As an officer of the court, a notary is vested with the powers specified in Article 1 juncto Paragraph 15 (1) of Law No. 2 of 2014 Amending Law No. 30 of 2004 Regarding the Position of Notary (hereinafter referred to as "UUJN"). This is what the text says⁶:

The notary can make authentic deeds for all actions, agreements, and stipulations required by laws and regulations and/or desired by interested parties; guarantee the certainty of the date of making the deed; save the deed, so long as the making of the deed is not also assigned or excluded to other officials or other individuals determined by law; and provide the original, copies, and quotations of the deed. Article 15 paragraph 2 of the UUJN establishes the notary's jurisdictional limitations as follows:⁷ :

1. Registering a letter beneath the hand in a specific book will validate the signature and establish the date with absolute precision.
2. All confidential correspondence should be entered into a separate register.
3. Create a secret duplicate of the first letter that includes the description exactly as it appears and is detailed in the letter.
4. Compare the original letter to the photocopy to make sure it's an accurate representation.
5. Give advice on legal matters concerning the deed's creation.
6. Prepare a property deed.
7. Draft a deed in the auction's minutes.

A notary's duties in exercising these powers and performing these functions are codified in Article 16 of the UUJN, specifically paragraph (1) of that article, which states that a notary must act in a reliable, honest, thorough, independent, impartial, and fair manner when performing his duties, protecting the rights of all parties to a legal proceeding (hereinafter referred to as the "company").

A notary's hand may be seen throughout the lifecycle of a business, from the inception (through the creation of the "deed of establishment") to the

⁵ Laurensius Arliman, *Notaris dan Penegakan Hukum oleh Hakim*, (Yogyakarta: Deepublish, 2015), hlm. 19.

⁶ Indonesia, *Undang-Undang tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, UU Nomor 2 Tahun 2014, LN Tahun 2014 No. 3, TLN No. 5491, Ps. 1 juncto Ps. 15.

⁷ *Ibid.*, Ps. 15 ayat (2).

ultimate dissolution (via the "legalization procedure") through the submission of the relevant papers with the Ministry of Law and Human Rights. Article 1 Point 1 of Law Number 40 of 2007 concerning Companies defines a limited liability company as "a legal organization that is a capital partnership, founded on the basis of an agreement, conducting commercial operations with permitted capital that is entirely split into shares" (hereinafter referred to as "UUPT"). Paragraph one of Article 7 of the UUPT reads, "A business is founded by two or more people using a notarial deed written in Indonesian." The company's credibility depends on the notary's work. Notaries must also advise firm founders, according Article 15 (2), letter e UUJN.

A notary's involvement with a limited liability business extends beyond only preventing harmful acts from being taken, however, and includes participation in the shareholders' meeting (GMS). Within the limits set by this legislation and/or the articles of organization, GMS is a corporate organ with authority that is not delegated to directors or commissioners.⁸ It is mandatory for every GMS to be made in a GMS Minute, which can be made by the GMS participants or with a notarial deed.

The deed of minutes of the GMS is drawn up by a notary if the notary is present and witnesses the GMS in person. However, if the GMS is held without the presence of a notary, the minutes of the GMS must be stated in a notarial deed, which is commonly referred to as a deed of meeting resolutions. A notary must have extensive and adequate insight and knowledge of law when drafting a deed. If the notary does not have sufficient knowledge of the law governing the legal actions that will be included in the deed, it has the potential to cause legal problems. If the notary wants to make a deed related to the company, the notary should understand how the law regulates the company. If the notary wants to make a company-related deed regarding the General Meeting of Shareholders (GMS), then the notary must know and understand how the law regulates the GMS, including the law regarding the place where the GMS is held, the quorum, who has the right to attend the GMS, who has the right to be chairman of the meeting, who has the right to license the minutes of the GMS, what is the procedure for making minutes of the GMS agenda, and so on. With all the functions and obligations of a notary mentioned above, a notary should always carry out his work guided by and referring to laws, regulations, and the notary code of ethics. However, in practice, there are still several notaries who violate these provisions. There was a violation committed by the notary, as evident in the decision of the Regional Notary Supervisory Board for the Province of the Special Capital City Region of Jakarta, number 13/PTS/Mj.PWN.Prov.DKI Jakarta/XI/2021. This case is a dispute between Mr. BHA and the CDU Notary.

⁸ Indonesia, *Undang-Undang tentang Perseroan Terbatas*, UU No. 40 Tahun 2007, LN No. 106 Tahun 2007, TLN No. 4756, Pasal 1 angka 4.

In short, BHA is a director of PT Tapro, where PT Tapro is the legal owner of 1,288 (one thousand two hundred and eighty-eight) shares in PT SSRE. On May 3, 2021, PT SSRE held an EGMS with the agenda of Shareholder Responses to PT GMDS' EGMS Plan, which was attended by shareholders, directors, and commissioners of PT SSRE. The CDU Notary was also present at the GMS to assist in providing information regarding the corporate action plan to be carried out by PT SSRE, for example, notifying how many quorums are needed to increase paid-in capital. BHA found that HA, as chairman of the meeting at the GMS and Director of PT SSRE, made the minutes on May 3, 2021, by hand and before the CDU Notary to be included in the deed. The contents of the GMS were stated in the Deed of Statement of Meeting Resolutions (PKR) Number 14, made by the CDU Notary on May 4, 2021, and stated that PT SSRE agreed not to take part in the additional capital of PT GMDS. Meanwhile, with PT SSRE not taking part in PT GMDS' additional capital, PT SSRE's shares will be diluted in PT GMDS. Furthermore, BHA stated that only HA, as chairman of the meeting and director of PT SSRE, signed the Minutes of May 3, 2021, and that there was no power of attorney from other PT SSRE shareholders for Mr. HA to appear before the Notary to make a deed based on the decision of the third meeting. May 2021. As a result, the BHA determined in its report that the CDU notary's actions violated the provisions of Article 90, paragraph 1, UUPT and Article 16, paragraph 1, UUJN, jo. Article 3 paragraph 4 of the Code of Ethics of the Indonesian Notary Association (INI) and Article 3 point 1 of the INI Code of Ethics Based on the description of the case, the Regional Notary Supervisory Board for DKI Jakarta Province decided that the complainant's complaint had sufficient evidence, and it was decided that the reported party had violated Article 16 paragraph (1) letter an of Law No. 2 of 2014 amending Law No. 30 of 2004 regarding Notary and issued a verbal warning to the reporting party. Looking at the brief description of the decision, it appears that there are problems contained in the deed made by the notary, who became the reported party.

The reporting party, in its capacity as a shareholder of PT SSRE, was harmed as a consequence of conflicts that arose because of violations of provisions in UUPT and UUJN. First, the notary has disregarded Article 90, paragraph (1) of the UUPT, which says that the meeting minutes must be signed by the chairman of the meeting and at least nota shareholder nominated from and by the participants of the EGMS. The chairman of a GMS meeting and one other designated meeting member must both sign the minutes and agenda for the meeting to be valid, however in the minutes from May 3, 2021, only the chairman's signature appears. Second, the notary did not provide a copy of the original or private power of attorney that provided the foundation for the authority to create the deed as required by Article 47 UUJN. The notary must first verify that the individual in front of him has authority to act on behalf of the business and declare the minutes of the GMS in an official document (the PKR deed) before he can proceed with drafting the

document. If the minutes of the GMS do not have all of the necessary signatures, and the appearer does not have a power of attorney, but the notary nonetheless makes the PKR deed, the notary has broken both the code of ethics and the oath of office. In the oath of office required by Article 4 UUJN, the notary swears or commits to do his duties to the best of his ability. Article 16 paragraph 1 of the UUJN and Article 3 paragraph 4 of the Notary Code of Ethics both reflect this cautious approach to the terms of the oath of office.

In reviewing this research, the authors cited several previous studies as references. The following is previous research related to the research topic that the author examines. For starters, there is the study by Anang Yuliadi (2019) titled "Deed of Statement of Meeting Resolutions Based on the Minutes of an Extraordinary General Meeting of Shareholders that are Legally Disabled: Study of the Decision of the Supervisory Council of the Notary Regional Special Province of the Capital City of Jakarta Number 12/PTS/Mj.PWN. Prov. DKI Jakarta/XI/2018." The issue brought up in the journal is the creation of a PKR deed based on the installation of an EGMS that was not carried out in compliance with legislative regulations. The GMS is invalid because those present at the meeting are not the party authorized to attend and have voting rights at the GMS, and the GMS does not reach an attendance or voting quorum. The results of research from the journal are that the deed is considered valid even though the EGMS contains legal defects and the notary may be subject to administrative sanctions for violating his oath of office. Second, research by Shinta Pangesti (2020) entitled "PKR Deed of Extraordinary GMS Containing Unlawful Acts: Study of Decision Number 45/Pdt/2014/PTR" The problem raised in this research is the PKR deed made based on the GMS, which contains PMH, namely that the meeting agenda is not in accordance with the meeting agenda in the meeting invitation, and that in the transfer of shares there is no advance offer to the shareholders. The results of research from the journal show that the PKR deed was made from the GMS, which was legally flawed, resulting in a notary being sued in a district court to be given sanctions and compensation. The difference between the two studies and this research is that this research will focus on the incompleteness of the requirements in making authentic deeds, such as the signature of the minutes of the GMS and also a power of attorney with the right of substitution for agents representing a company. It was for this problem that the author carried out scientific writing with the title "Absence of Power of Attorney to Appear Before a Notary in Making the Deed of Statement of Meeting Resolutions (Study of the Decision of the DKI Jakarta Notary Supervisory Council Number 13/PTS/Mj.PWN.Prov.DKI.Jakarta/XI/2021)".

2. Research Method

This journal takes a normative juridical approach to its research, in which the concept of law is typically reduced to what is written in statutes; statutes, in

turn, are often reduced to rules or norms that serve as a standard by which individuals' actions are measured against the expectations of society⁹. Books, theses, statutes, judicial judgments, and other written materials may all be used in normative legal study¹⁰. The research in this article is both descriptive and analytical. The writers used standard techniques for doing legal research, which included looking at existing works and secondary sources. The term "secondary data" refers to information collected after main research has already been conducted. Personal records such as letters and diaries are examples of secondary sources, as are books and official government document receipts¹¹. In keeping with this, the author classifies the sources of law he or she draws upon as either main or secondary. Lawyers and judges depend on the Civil Code, Law No. 30 of 2004 about the Notary, as amended by Law No. 2 of 2014, Law No. 40 of 2007 about Limited Liability Companies, and any other applicable laws and regulations. This study conducts a literature review by collecting laws, regulations, books, journals, articles, and internet media about limited liability companies, the role of a notary in preparing deeds for a limited liability company, and the responsibilities of a notary in preparing authenticated deeds.

3. Results and Discussion

Power of attorney as the basis for the authority of the appearers in making the deed of Statement of Meeting Resolutions number 14 dated May 4, 2021, made by a CDU notary.

The issue emerged when the PKR Deed was drafted before the CDU Notary, who was also the Reporting Party in the matter addressed by the judgment of the DKI Jakarta Provincial Notary Supervisory Council (Number 14/PTS/Mj.PWN.Prov.DKI Jakarta/X/2021). Mr. HA, in his capacity as chairman of the meeting and director of SSRE, signed the PKR deed made notarized by CDU notary on May 3, 2021. No power of attorney with the authority of substitution was on file for Mr. HA. This is problematic for many people, including Mr. BHA in his role as rapporteur, and hence provides motivation to denounce improper notarial acts. The DKI Jakarta Notary Regional Supervisory Board determined, according to public documents, that the CDU Notary had failed to "act in a trustworthy, honest, thorough, independent, and impartial manner and protect the interests of parties in legal action" (Article 16 paragraph 1 letter an of the UUJN). According to the view of the author, the CDU

⁹ Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum: Normatif & Empiris*, (Depok: Prenadamedia Group, 2016), hlm. 123.

¹⁰ Soejono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tujuan Singkat*, Cet. 10, (Jakarta: Raja Grafindo Persada, 2007), hlm. 4.

¹¹ Soejono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tujuan Singkat*, Cet. 10, (Jakarta: Raja Grafindo Persada, 2007), hlm. 24.

notary was not thorough in assessing crucial elements, such as checking the legitimacy and completeness of the evidence submitted to him.

The first reason was the incompleteness of the signatures in the minutes of the EGMS on May 3, 2021. In his statement, Mr. BHA stated that the meeting ended in a deadlock and did not reach an agreement, so Mr. HA's actions included signing the minutes of the meeting, which contained a statement that PT SSRE agreed not to increase share capital in PT GMDS, which is against the law. This is because the decision in the minutes of the private EGMS to increase the capital must be made based on the approval of the EGMS as required in Article 41 of the Company Law. According to Article 90, paragraph (1) of the UUPT, the meeting's minutes must be signed by the chairman of the meeting and at least one shareholder nominated from among the EGMS participants before they may be considered official. The signature is meant to ensure the accuracy and reliability of the information included in the EGMS minutes. It follows that the minutes of the EGMS held on May 3, 2021, should have been signed by at least 2 (two) people: Mr. HA, in his capacity as meeting chairman, and 1 (one) shareholder who was present. However, only Mr. Ha signed the official minutes of the meeting. A notary should be aware if any signatures in the meeting minutes are missing. This means that the CDU notary did not exercise due diligence while reviewing the source materials used to create the PKR deed.

The minutes were incomplete without a signature, and the absentee lacked a power of attorney from the meeting attendees. The EGMS minutes include a provision in which attendees agree to delegate to the company's Board of Directors, either singly or jointly, the power and authority, with the right of substitution, to state this deed in a notarial deed and to appear before a notary or authorized official to take appropriate steps for the meeting's decision contents. Article 21(5) of the Company Law states that the meeting decision must be posted in the PKR within 30 days after the EGMS decision. Deed minutes must incorporate Article 47 UUJN power of attorney. Having a power of attorney to advocate for absent shareholders is vital. The power of attorney affects the transaction's validity. A notary must also evaluate the parties' legal competence to appear before him and sign a deed.

However, according to Mr. BHA's statement, the shareholders did not authorize Mr. HA to appear before the notary regarding the making of the minutes of the meeting into an authentic deed. This is because the GMS actually ended in deadlock. The CDU notary then continues to make the PKR deed without the appearer's power of attorney. The power of attorney is very important considering that the letter contains the authority or power of a person to carry out an arrangement, in this case, facing the notary to state the minutes of the GMS in a PKR deed. Thus, Mr. HA does not have the authority to act because no power has been given to him to appear before the CDU Notary to turn the minutes of the EGMS into a PKR Deed. The CDU notary has not carefully verified the subject and object data of the appearers, whether the appearers have the authority to act or not. As a result, the CDU notary failed to safeguard and protect the interests of the parties involved in the legal action of making the PKR deed,

both those directly related to the deed and those who are not. The interests of the shareholders who attended the meeting were violated because the contents of the PKR deed, which stated that they did not agree to increase capital, caused PT SSRE's shares in PT GMDS to be diluted.

The validity of the deed will also be affected by the apparent Mr. HA's power of attorney. PKR Deed No. 12, dated May 4, 2021, was null and void because it failed to meet one of the essential criteria for a valid deed: the presence of a power of attorney. The deed must be revoked by filing a petition with the court. So long as the Panel of Judges does not rule the PKR Deed illegal or null and void, it will remain in effect and enforceable under the law. As thus, the notary has fulfilled his or her duty to make a deed in accordance with all applicable legal and technical criteria. Article 1868 of the Civil Code governs the formal conditions for an authentic deed by stating that a deed is considered genuine if it is prepared in the form required by law. In addition, the contents of the deed's heading, body, and cover are governed by Article 38 UUJN. Furthermore, the processes stated in Articles 39–53 UUJN must be followed in order for a deed to be considered valid. In the meanwhile, Article 1320 of the Civil Code outlines the essential elements of the deed's legal terms and conditions.

An agreement between the parties, a necessary element of any valid deed, was missing from the PKR document prepared by a CDU notary. A condition is either "may be cancelled" or "null and invalid" depending on whether it falls within the first or second category under the Civil Code's cancellation provisions. Agreements that fail to meet the subjective criteria for legality as set out in Article 1320, paragraphs (1) and (2) of the Civil Code (i.e., that the parties agree to be bound and competent) are susceptible to cancellation. "Agree" denotes that the agreement was not reached by omission, duress, or deception. Since he is an adult and not a minor, he may make his own decisions "when competent." So, according to Article 1320, paragraphs (3) and (4) of the Civil Code, an agreement is null and invalid if it goes against the agreement's goal and a legitimate reason. A well-defined item is one whose classification is not in doubt.

Meanwhile, a lawful cause is a cause that is justified by law. Based on the material requirements, the CDU Notary's PKR Deed No. 14, dated May 4, 2021, violated the terms of the agreement. This is because Mr. BHA stated that the EGMS ended in deadlock and there was no agreement from the shareholders not to take part in the additional capital in PT GMDS as Mr. Ha wished. In fact, the minutes of the EGMS, which formed the basis for making the PKR deed, were only signed by Mr. HA, thus indicating that the minutes of the EGMS were not the actual results of the EGMS and were made unilaterally by Mr. HA. In addition, the absence of a power of attorney for Mr. HA may also indicate that there was no agreement at the EGMS, and thus Mr. HA is not authorized to represent the company and appear as a representative. Regarding the validity of the material or content of the PKR Deed and all the legal consequences it raises, the notary cannot be prosecuted and held liable as long as the deed is drawn up in accordance with the applicable laws and regulations, but it is the party who makes and signs the minutes or minutes of the meeting who

is responsible. This is because the notary does not attend the GMS, so the notary is only responsible for the statements and documents submitted by the person who will make the PKR deed.

However, because the CDU notary has acted inaccurately by not attaching a power of attorney to the minutes of the deed as stipulated in Article 47, paragraph 1, UUJN, the notary has violated the code of ethics and oath of office and can be held accountable. Mr. BHA and other meeting participants who felt aggrieved by PKR deed No. 14 dated May 4, 2021, which contains a notary's inaccuracy, can take the following steps¹²:

1. The parties can come back to the notary to cancel the contents of the PKR deed, and therefore the canceled deed is no longer binding on the parties from the date of cancellation.
2. The parties can go to the district court to sue Mr. HA with a lawsuit so that the deed is declared invalid or cancelled.
3. The parties can go to the district court to sue the notary regarding compensation, costs, and interest.
4. The parties can report the notary to the Regional Supervisory Council domiciled in the regency or city so that the CDU notary is subject to sanctions.

Efforts that a notary can make if the requirements for making the deed of statement of meeting resolutions are incomplete.

As a public official, a notary must follow several rules and principles, including the precautionary principle. There is a strong connection between prudence and precision, detail, and exactness. Article 16 paragraph 1 of the UUJN reflects this conception by stating that a notary is obligated to operate with confidence, honesty, thoroughness, independence, and impartiality and to safeguard the interests of the parties participating in legal procedures. The KBBI defines "accurate" as "complete" or "complete"¹³. Maintaining public faith in a notary requires adhering to the precautionary principle due to the notary's position of trust. The purpose of this is to ensure that those who need proof of legal events or acts have access to credible documentation provided by a notary. A notary's actions in the course of performing his responsibilities must be taken with the utmost care, precision, and thoroughness, and they must be based on the relevant laws and regulations so as to avoid future legal complications. In order to reduce the likelihood of a legal challenge to a notarial act, a notary must observe certain notarial prudential principles. We must first determine who the poster is.

¹² Sania Salamah, "Prinsip Kehati-hatian dan Tanggung Jawab Notaris dalam Membuat Akta Berdasarkan Pasal 16 ayat (1) huruf a Undang-Undang Jabatan Notaris (Studi Kasus Putusan Nomor 457 PK/Pdt/2019), *Jurnal Kemahasiswaan Hukum & Kenotariatan*, Vol. 2, No. 2, (Juni 2022), hlm. 593.

¹³ Kamus Besar Bahasa Indonesia, tersedia pada <https://kbbi.web.id/saksama>, diakses pada 20 November 2020

Notaries are expected to check and double-check documents in government agency systems, such as checking identity cards (KTP) through the Population and Civil Registry Service online system, as well as asking and matching the correctness of biodata on the KTP to applicants. Second, carefully and thoroughly verifying the subject's and object's data. The notary investigates the credibility of the witnesses and assesses whether or not they are legally able to testify. Many people equate expertise with age. A person is considered an adult under Article 330 of the Civil Code if they are at least 21 years old or are married. Similarly, men and women must be at least 19 years old to be married, as per Article 7 of Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage. Meanwhile, the authority to act has parameters, such as age, position, and an ownership relationship with one object. The authority to act (*recht bevoegdheid*) is related to certain legal actions based on the authority to act, while competence (*handlings bekwaamheid*) means a person's ability to calculate the consequences or legal consequences of the actions he commits¹⁴. Thus, it is not certain that people who have the authority to act also have the skills, and vice versa. This form of effort was not carried out by the CDU notary. The CDU notary has not verified carefully whether the appearer, Mr. HA, has the authority to appear before him to include the minutes of the GMS in the PKR deed. The third prudence principle is having a sufficient grace period for the execution of the deed. This is intended so that the notary can work carefully, meticulously, and thoroughly in the process of making the deed. Fourth, act cautiously, painstakingly, and completely. Fifth, meet all formal and material deed requirements. The CDU notary did not make the following attempts because Mr. HA's incomplete power of attorney breached the deed's material requirements, which are also the agreement's legal provisions. The notary must also disclose any signs of money laundering.

If the notary has completed the following, then, in the case of a mistake in creating the deed, the notary may take preventative or remedial action by performing legal counseling. Article 15 (2), letter e, UUJN allows the notary to offer legal advice on deed creation. Legal counseling is the transmission of knowledge and understanding of legal norms, rules, and regulations, according to Minister of Law and Human Rights of the Republic of Indonesia Regulation Number M.01-PR.08.10 of 2006. Educating the people about the law and its importance helps shape a society that respects the rule of law and follows established procedures. Signers seeking to notarize confidential meeting minutes are often non-lawyers with little experience creating legal documents.

Legal counseling is provided by a notary when he or she advises a client on the best course of action under the law for that client. This is done so that the client and the notary may avoid any potential legal conflicts. The notary's role is to advise and inform the parties, as well as to learn about their needs and desires,

¹⁴ Ade Maman Suherman dan J Satrio, *Penjelasan Hukum tentang Batasan Umur (Kecakapan dan Kewenangan Bertindak Berdasar Batasan Umur)*, (Jakarta: PT Gramedia, 2010), hlm. 123.

and to validate the truth of the information they provide in an official document. A valid deed has certain elements, and the notary should be able to explain them. The goal of this legal advice is to ensure that all parties involved in the drafting of the deed are aware of their rights and responsibilities, as well as the actions that are permissible on the part of appearers and notaries, and those that are not. Within the scope of their training and experience, notaries may provide limited legal counsel to their clients. As a result, notaries have an obligation to continuously learn and grow in their profession.

Koeswadij argues that notaries err because they lack knowledge (onvoldoende kennis), experience (onvoldoende ervaring), or comprehension in their line of work (onvoldoende inzicht)¹⁵. A notary is required to improve his professional knowledge and expertise, both within and outside the science of law and notarial, according to Article 3 paragraph 5 of the Notary Code of Ethics. In this case, the CDU Notary is required to master the provisions of the laws and regulations related to the GMS, including the law regarding the place where the GMS is held, the quorum, who has the right to attend the GMS, who has the right to chair the meeting, what is the procedure for making minutes of the GMS, who has the right to sign the minutes of the GMS, who has the right to appear before the Notary to notarize the minutes of the GMS, and so on. So that the PKR Deed being made based on incomplete signatures in the GMS minutes and the absence of a power of attorney appointing Mr. HA to appear before the CDU Notary can be avoided if the CDU Notary is more careful and provides legal counseling to the appearer.

Also, the notary may provide suggestions for improving the PKR deed's wording before it's finalized. Due to the potential impact on the interests of other shareholders who may be injured by the preparation of the deed, the CDU notary might instruct Mr. Ha's attorney to refrain from acting unilaterally. The CDU Notary can also explain to Mr. HA why he needs a power of attorney with right of substitution to appear before the CDU Notary and why the minutes of the GMS, which form the basis for making the PKR Deed, must be signed by "one" other meeting participant in addition to himself, per Article 90, paragraph 1 of the UUPT. As a result, the PKR deed that will be made can be approached with greater confidence thanks to the CDU Notary's explanation of the legal situation in accordance with the provisions of the applicable laws and regulations and the rights and obligations and legal consequences that will arise in that context.

¹⁵ Sania Salamah, "Prinsip Kehati-hatian dan Tanggung Jawab Notaris dalam Membuat Akta Berdasarkan Pasal 16 ayat (1) huruf a Undang-Undang Jabatan Notaris (Studi Kasus Putusan Nomor 457 PK/Pdt/2019), *Jurnal Kemahasiswaan Hukum & Kenotariatan*, Vol. 2, No. 2, (Juni 2022), hlm. 592.

4. Conclusion

A power of attorney with the right of substitution for an appearer who wishes to appear before a notary to express the contents of a meeting decision in a PKR deed is significant because it pertains to the legality of the PKR deed, as has been explained and analyzed above. The proxy has authority to state the minutes of the EGMS in a PKR deed on behalf of all shareholders who were not present at the EGMS. However, the apparent lacks legal authority since the power of attorney attached to the PKR deed minutes is not in its whole. Therefore, the subjective conditions of the legality of the agreement, namely the agreement of the parties, have been breached due to the incompleteness of the power of attorney for the appearer in creating the PKR deed. This allows the PKR deed to be voided as a result. Those who have been wronged may file a complaint with the DKI Jakarta Notary Regional Supervisory Board, make a deed of cancellation with the notary, or file a civil suit with the local district court under the provisions of Article 1365 of the Civil Code. Forms of notarial effort to prevent and overcome legal disputes due to incomplete requirements in making a deed, including identifying the identity of the appearer, carefully verifying the appearer's subject and object data, having a sufficient grace period to work on the deed, fulfilling the formal and material requirements for making the deed, reporting any indications of money laundering, expanding professional knowledge and expertise in accordance with the changing needs of the profession, and so on.

References

- Adjie, Habib. *Kebatalan dan Pembatalan Akta Notaris*. Bandung: Refika Aditama, 2011.
- Adjie, Habib. *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung: PT Refika Aditama, 2008.
- Ardiansyah, Irfan dan Cucu Solihah. *Nominee Arrangement: Dalam Perspektif Kriminalisasi Hukum Pidana, Hukum Perdata, Hukum Islam, Notaris dan Asas Nasionalitas*. Jakarta: Zahir Publishing.
- Arliman, Laurensius. *Notaris dan Penegakan Hukum oleh Hakim*. Yogyakarta: Deepublish, 2015.
- Damian, Eddy. *Dinamika Hukum dalam Pembangunan Berkelanjutan*. Bandung: Fakultas Hukum UNPAD dan PT Alumni, 2017.
- Efendi, Jonaedi dan Johnny Ibrahim. *Metode Penelitian Hukum: Normatif & Empiris*. Depok: Prenadamedia Group, 2016.
- Indrajaya, Rudi, Yogastio Esa Dimmarca, Prastyo Teguh Pamungkas, dan Rizkika Arkan Putera Indrajaya. *Notaris dan PPAT: Suatu Pengantar*. Bandung: PT Refika Aditama, 2020.

- Lamintang. *Dasar-Dasar Hukum Pidana di Indonesia*. Bandung: PT Citra Aditya Bakti, 2013.
- Kamus Besar Bahasa Indonesia. Tersedia pada <https://kbbi.web.id/saksama>. Diakses pada 20 November 2020.
- Kitab Undang-Undang Hukum Perdata.
- Majelis Pengawas Wilayah Notaris Provinsi DKI Jakarta. Putusan Nomor 13/PTS/Mj.PWN.Prov.DKI Jakarta/XI/2021.
- Pramono, Dedy. "Kekuatan Pembuktian Akta yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia." *Lex Jurnalica*. Vol. 12. No. 3. (Desember 2015). Hlm. 248-258.
- Sasauw, Christin. "Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris." *Lex Privatum*. Vol. 3. No. 1. (Januari-Maret 2015). Hlm 98-109.
- Salamah, Sania. "Prinsip Kehati-hatian dan Tanggung Jawab Notaris dalam Membuat Akta Berdasarkan Pasal 16 ayat (1) huruf a Undang-Undang Jabatan Notaris (Studi Kasus Putusan Nomor 457 PK/Pdt/2019)." *Jurnal Kemahasiswaan Hukum & Kenotariatan*. Vol. 2. No. 2. (Juni 2022). Hlm. 582-610.
- Suherman, Ade Maman dan J Satrio. *Penjelasan Hukum tentang Batasan Umur (Kecakapan dan Kewenangan Bertindak Berdasar Batasan Umur)*. Jakarta: PT Gramedia, 2010.
- Soekanto, Soejono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tujuan Singkat*. Cet. 10. Jakarta: Raja Grafindo Persada, 2007.
- Tobing, G.H.S. Lumban. *Peraturan Jabatan Notaris*. Jakarta: Erlangga, 1996.
- Undang-Undang Jabatan Notaris*. UU No. 30 Tahun 2004. LN Tahun 2004 No. 117, TLN No. 4432. Sebagaimana diubah terakhir oleh UU Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Jabatan Notaris Nomor 30 Tahun 2004. LN Tahun 2014 No. 3, TLN No. 5491.
- Undang-Undang tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*. UU No. 2 Tahun 2014. LN No. 3 Tahun 2014, TLN No. 5491.
- Undang-Undang tentang Perseroan Terbatas*. UU No. 40 Tahun 2007. LN No. 106 Tahun 2007, TLN No. 4756.