

Legal Consequences and Legal Protection of Notarial Deeds Made Based on False Circular Document

Jihan Fernanda¹, Istislam², R. Imam Rahmat Sjafi'i³

^{1,2,3}Faculty of Law, Brawijaya University

Email: Fernandajihan97@gmail.com

Article Info

Received: 2022-11-12

Revised: 2023-04-21

Accepted: 2023-06-31

Keywords:

Legal

Consequences;

Legal Protection;

Fake Notarial Deed.

Abstract

Actual or potential, within the limits of reasonable expectation, a Notary may make an authentic deed, but it turns out that the circular document used as the basis for making the authentic deed turns out to be fake. Therefore, this research aims to analyze the consequences and legal protection of Notarial deeds made based on fake circular documents. This research is a normative research that uses statute and conceptual approach. The conclusion of this research is the legal consequences of a Notarial deed made based on a fake circular document, then the party who feels aggrieved by the validity of the deed can apply for the cancellation of the deed to the Court and the Notary is not liability and accountability for the deed he made. Such legal consequences can also be seen as legal protection for Notaries who make deeds but the deeds are based on fake circular documents presented by the parties, so that Notaries are exempted from liability and accountability as long as Notaries have carried out their profession in accordance with applicable protocols and codes ethics.

I. Introduction

The term company in a limited liability company means the way the capital is determined in the legal entity itself, which consists of shares. Meanwhile, the term limited indicates the limit of liability of the *persero* or shareholders, which is only limited to the nominal value of all shares owned.¹ Article 1 point 2 of Act Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Limited Liability Company Act) stipulates that the company's organs consist of the General Meeting of Shareholders (hereinafter referred to as *RUPS*), the Board of Directors and the Board of Commissioners. These organs have their respective functions and duties, in accordance with the provisions of the Limited Liability Company Act, as well as the Company's articles of association.

With regard to the highest organ of a company, namely the *RUPS*, it is the organ of the company that holds all authority that is not delegated to the Board of Directors and Commissioners. The *RUPS* has all powers not granted to the Board of Directors or Commissioners, within the limits set by the Limited Liability Company Act and/or the articles of association. The *RUPS* is entitled to obtain all information relating to the interests of the company from the Board of Directors and Commissioners. *RUPS* consists of annual *RUPS* and other *RUPS* or Extraordinary *RUPS*.

Article 75 paragraph (3) the Limited Liability Company Act stipulates that the *RUPS* in other agenda items is not entitled to adopt resolutions unless all shareholders are present and/or represented in the *RUPS* and agree to the addition of the meeting agenda. In addition, Article 75 paragraph (4) the Limited Liability Company Act determines that the decision on the added meeting agenda must be approved unanimously.² Extraordinary *RUPS* can be held at any time depending on the needs of the company. The Limited Liability Company Act does not explicitly limit the agenda of the Extraordinary *RUPS*. However, an Extraordinary *RUPS* is usually held in the event that the Company needs approval from the shareholders for a certain matter or will change the composition of the Board of Directors and Commissioners, change the name, domicile, period of establishment of the Company, and others.³

In practice, the company can be found the emergence of the *RUPS* Resolution Statement (resolutions of shareholders outside the *RUPS*) known as the Circular Resolution of Shareholders. Circular Resolution is decision making outside the *RUPS*, in practice known as "circulated resolution proposal".⁴ In other words, the Circular Resolution is basically an Extraordinary *RUPS* document.

Article 91 the Limited Liability Company Act and its Explanation regulates the decision making of shareholders by circulating proposals to shareholders (outside the *RUPS*) for approval or so-called Circular Resolutions are considered to have the same legal force as *RUPS* Resolutions, with the main condition that all shareholders must approve and

¹ C.S.T Kansil, (1996), *Pokok-Pokok Hukum Perseroan Terbatas*, Jakarta: Pustaka Sinar Harapan. Hlm. 31.

² Ridwan Khairandy, (2014), *Hukum Perseroan Terbatas*, Yogyakarta: UII Press. Hlm. 227.

³ Sovia Hasanah, (7 Maret 2018), *Perbedaan RUPS Luar Biasa dengan Keputusan Sirkuler Pemegang Saham*, <https://www.hukumonline.com/klinik/detail/ulasan/lt5a98c6a34d441/perbedaan-rups-luar-biasadengan-keputusan-sirkuler-pemegang-saham>. Diakses pada tanggal 23 Maret 2024.

⁴ M. Yahya Harahap, (2016), *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika. Hlm. 341.

sign the Circular Resolutions unanimously without exception. Therefore, the approval of all shareholders is an absolute requirement for the validity of resolutions outside the *RUPS*. Not a single shareholder is allowed to disagree. If such a thing happens, it will result in the Circular Resolution becoming invalid. In other words, the characteristics of Article 91 the Limited Liability Company Act are provisions of the legal rules that forcing (*dwingend recht*).

In practice, the Notary considers the Shareholders' Circular Resolution as one of the tools to protect himself in making the deed of Shareholders' Resolution Statement (hereinafter referred to as *PKPS*). However, even though the Shareholders' Circular Resolution is used as a tool to protect the Notary, there are still legal problems, especially regarding the making of deeds related to Limited Liability Companies.⁵

Circular resolutions are made by circulating a proposed resolution, without a meeting as required by Act. The proposed resolution must be approved by all shareholders. Meanwhile, resolutions at the annual *RUPS* are considered valid if they have been approved by $\frac{1}{2}$ (one-half) of the total number of votes cast. The discussion of the annual *RUPS* regarding decision-making and its validity is clearly regulated. However, there are no more detailed arrangements (*nulle normen*) regarding the adoption of Circular Resolutions in the Act.

In general, the *RUPS* must be held in a conventional form, where all shareholders are physically present and gathered in one place. However, in practice, there are often difficulties in gathering the shareholders together. This is due to the fact that a *RUPS* Resolution is required for a particular issue, for example, the company will receive credit from a bank and requires the approval of all shareholders in accordance with the provisions of Article 12 of the Articles of Association (in accordance with the latest Articles of Association of Limited Liability Company) or to fulfill the provisions of Article 102 paragraph (1) and (2) the Limited Liability Company Act to pledge the company's assets whose value is most of the company's assets in 1 (one) financial year.

However, in practice, it is still found that Circular Resolution are made without the signatures of all shareholders or the signatures of shareholders are forged by other people with the mode of the shareholders only borrowing names and their whereabouts are unknown. Therefore, the Notary in making a deed should actively explore the authenticity of the signatures contained in the circular resolution of the shareholders brought by the Client. Although the principles of prudence and accuracy have been upheld by the Notary in carrying out his profession, actually or potentially within the limits of reasonable reasoning, there is a possibility that a bad faith shareholder Client comes to the Notary with a fake circular document.

Based on the entire description of the legal issues above, this research draws legal issues: (1) Legal consequences of a Notary deed if the circular document as the basis for making the deed turns out to be forged; (2) Legal protection for Notaries who make deeds based on circular documents if the circular document submitted is forged.

2. Research Method

The This research is a legal research that seeks the truth of coherence. Are the legal consequences of Notarial deeds whose circular documents are used as the basis for making

⁵ *Ibid.*

deeds declared false in determining who is liable coherent with legal principles and is there coherence between legal principles and the protection of Notaries who make the deed. The approach in this research uses statute and conceptual approach. Primary legal materials relevant legislation will be elaborated with secondary legal materials scientific works in order to find certain legal concepts and complemented by tertiary legal materials such as dictionaries and legal dictionaries. The technique of collecting legal materials is library research by inventorying legal materials and critically analyzed so as to arrive at prescriptive conclusions.

3. Results and Discussion

Legal Consequences of Notarial Deeds If Circular Document as Basis For Making The Deed Turns Out to be Falsified

One form of agreement made by an authentic deed by a Notary is the establishment of a Limited Liability Company. In the establishment of a limited liability company, the legal acts of establishment by 2 (two) or more founders does not give birth to an agreement between the founders, but rather results in an agreement between all the founders on the one hand and on the other. Based on the establishment agreement, the founders are entitled to receive shares and at the same time they are obliged to make a full deposit of the shares taken by them.⁶

When viewed from the perspective of agreement law, the establishment of a Limited Liability Company as a legal entity is "contractual" in nature, i.e. the establishment of the Company is a result of an agreement. In addition to being contractual in nature, it is also "consensual" in nature in the form of an agreement to enter into an agreement to establish a Company. In accordance with the provisions of Article 7 paragraph (1) the Limited Liability Company Act, for an agreement to establish a Company to be valid under the Act, the founders must be at least 2 (two) or more persons.⁷ This is confirmed in the elucidation Article 7 paragraph (1) the Limited Liability Company Act which states that the principle applicable under this Act is that a Company as a legal entity is established based on an agreement, and therefore has more than 1 (one) shareholder. With the existence of an agreement as the basis for the establishment of a Limited Liability Company, the provisions of the validity of the agreement are also subject to the conditions for the validity of the agreement in Article 1320 of the Civil Code (*Indonesian Burgerlijk Wetboek*), namely the existence of an agreement and capacity as subjective conditions; and a certain object and a permissible cause (*kausa*) as objective conditions.

If the objective conditions are not met, then the agreement is null and void (*nietig*), without the need for a request from the parties, thus the agreement is considered to have never existed and does not bind anyone. Absolute void agreements can also occur, if an agreement that is made is not fulfilled, even though the rule of law has determined that the legal act must be made in a predetermined manner or contrary to decency or public order,⁸

⁶ Fred B.G. Tumbuan, *Tugas dan wewenang Organ Perseroan Terbatas Menurut Undang-undang Tentang Perseroan Terbatas*, Makalah, disampaikan pada "Sosialisasi Undang-undang tentang Perseroan Terbatas" yang diselenggarakan oleh Ikatan Notaris Indonesia (INI), Jakarta tanggal 22 Agustus 2007. Hlm. 42.

⁷ Hatta Isnaini Wahyu Utomo, (2017), *Penggunaan Surrogate Pada Akta Notaris*, artikel dalam Kumpulan Tesis Pascasarjana Universitas Narotama. Hlm. 28.

⁸ Peter Mahmud Marzuki, (2011), *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group. Hlm. 132.

because the agreement is considered non-existent, there is no longer a basis for the parties to sue each other or sue in any way and form.⁹ If the subjective conditions are not met, then the agreement can be canceled (*vernietigbaar*) as long as there is a request by certain people or interested parties.¹⁰

False information submitted by the confronter in the Limited Liability Company establishment deed results in an agreement not fulfilling the subjective conditions of the agreement because there is a defect in the will. Articles 1322 to 1328 of the Civil Code regulate agreements that have been terminated on the basis of a defect in will. Agreements containing defects in the will in the doctrine are included agreements that contain elements of misdirection, coercion or fraud at the time of the birth the agreement. In agreements containing defects in the will, the will given in the agreement is not based on a pure will (agreement), the agreement there is given because he is mistaken, depressed, deceived or under the influence of others who abuse the existing circumstances. So that this condition is not an agreement that should be given if he is not mistaken, is not afraid of the pressure that exists, if his will is not led to an incorrect picture by his opponent or his trust is not misused by his opponent.¹¹

In a shareholder resolution or circular resolution in which the agreement of the founders contains a defect of will due to false information submitted by one of the founders and the agreement has been written into a Notarial deed, the party who can feel aggrieved can file a lawsuit to the court to cancel the circular resolution. The lawsuit filed by the aggrieved party can be a lawsuit to cancel the contents of the agreement that has been written into the Notarial deed.

Legal consequences are basically the result of an action taken to obtain an effect desired by the legal subject and regulated by law. The form of legal consequences in this context is the birth or loss of sanctions if an action is taken against the law.¹² The legal consequences in relation to a Deed made by a Notary that is based on a fake circular document, then the result is that the Notary is not liability and accountability and the party who feels aggrieved can submit an annulment to the Court to cancel the Deed. This is because the Deed does not meet the subjective condisions for the validity of the agreement or has a defect of will in the form of deceitful forgery, so that the Deed which essentially contains the agreement can be canceled (*vernietigbaar*) by the aggrieved party.

However, if the deed made by the Notary is later problematic or causes harm to one of the parties in the deed, then in this case the Notary cannot be directly blamed or held accountability, because the Notary's deed is the wishes and requests of the parties, not the notary's advice or opinion, but the contents of the deed are the actions parties and not the actions Notary. The notary only formulates the wishes of the parties so that their actions are outlined in the form of an authentic deed or Notarial deed. The party who feels aggrieved and who wants to sue the notary must first be able to prove the following things:

- a. The existence of suffered losses;
- b. There is a causal relationship between the loss suffered and the violation or negligence of the notary;

⁹ R. Subekti, (2005), *Hukum Perjanjian*, Jakarta: Intermasa. Hlm. 29.

¹⁰ Wirjono Prodjodikoro, (1989), *Azaz-Azaz Hukum Perjanjian*, Bandung: Bale Bandung. Hlm. 61.

¹¹ *Ibid.*

¹² R. Soeroso, (2006), *Pengantar Ilmu Hukum*, Jakarta: Sinar Grafika. Hlm. 295-296.

- c. The violation (act) or negligence is caused by an error that can be accountability for by the notary in question.

The conditions described above also apply to the Deed of Limited Liability Company which contains a defect of will due to false information from the Notary's client. This is because in principle, the Notary is passive in serving the parties who appear before him. The Notary is only in charge of recording or writing down in the deed what is explained by the parties, not entitled to change, reduce or add to what is explained by the confronters. In such a situation, the legal consequences on the Notary is lost to be sanctioned through liability and accountability.

The Explanation Act Number 30 of 2004 as amended by Act Number 2 of 2014 concerning the Amendment to Act Number 30 of 2004 concerning Notary Office (hereinafter referred to as Notary Office Act) states that the authentic deed essentially contains the formal truth in accordance with what the parties have told the Notary. This is also confirmed by the Supreme Court Decision Number 702 K/Sip/1973 Dated 5 September 1973 which states "...The function of Notary is only to record or write down what is desired and stated by the parties who appear before the Notary. There is no obligation for the Notary to investigate materially anything (matters) stated by the confronter before the Notary". Thus, the false information submitted by the confrontants is entirely the responsibility of the confrontants and the Notary in this case is not responsible or cannot be held accountability for the losses arising from the false information the confrontants.

The exemption from liability or accountability of a Notary if the deed he/she makes based on the circular document turns out to be forged cannot necessarily mean that the Notary is immune to the law. Notaries can be held liability or accountability for their actions in connection with their work in making authentic deeds. Scope the Notary's responsibilities includes the material truth of the deed he makes. Regarding the responsibility of the Notary as a public official in relation to material truth, Abdul Ghofur distinguishes into four responsibilities, namely:¹³

- a. The civil accountability the Notary towards the material truth of the deed he makes;
- b. Notary's criminal responsibility towards the material truth of the deed he makes;
- c. Notary's responsibility based on the Notary Position Regulation towards the material truth of the deed he makes;
- d. Notary's responsibility in performing his official duties based on the Notary's code of ethics.

Notary responsibility in the Notary Office Act is intended as the attachment of notaries to legal provisions in carrying out their duties and obligations. In other words, all actions of a Notary in carrying out his duties and obligations must be legally accountable, including with all the consequences to be subject to legal sanctions against violations of the underlying legal norms.

Legal Protection of Notaries who Make Deeds Based on Circular Documents if the Circular Documents Delivered are False

Basically, legal protection is a protection of human rights that are harmed by others

¹³Abdul Ghofur Anshori, (2009), *Lembaga Kenotariatan Indonesia*, Yogyakarta: UII Press. Hlm. 22.

and the protection is intended so that every community can enjoy the rights granted by a legal instrument, be it the right to justice, welfare and other rights.¹⁴ Justice and welfare are addressed to legal subjects, namely supporters of rights and obligations, not least for a Notary to obtain legal protection.¹⁵ The legal protection in question is in line with the theory of legal interpretation as stated by Sudikno Mertokusumo, that interpretation is one method of legal discovery that provides a clear explanation text the Act. This method of interpretation is a means of knowing the meaning the Act. Its justification lies in its usefulness to implement concrete provisions and not for the benefit of the method itself.¹⁶

The legal protection rights given to Notaries if they make a deed based on a fake circular document are obtained based on several legal instruments. If the deed made by the Notary is made on the basis of a forged circular document so that the Notary is suspected of participating in a criminal act, the legal protection provided in this context is provided through the legal instrument the Notary Office Act. Article 66 paragraph (1) of the Notary Office Act authorises¹⁷ the Notary Honour Council (*Majelis Kehormatan Notaris*) to approve or reject the collection of copies *minuta* deed¹⁸ (*minuta Akta*) and letters related to the *minuta* deed (*berkaitan dengan minuta Akta*) and summon the Notary to appear in the examination process related to the alleged criminal act in question. The *minuta* deed referred to in the context of this discussion is a deed made by a Notary based on a fake Circular document.

Obtaining approval from the Notary Honor Council to take copies the *minuta* deed and letters related the *minuta* deed and summoning Notaries to be present in the examination process referred to in Article 66 paragraph (1) the Notary Office Act is also seen as legal protection of Notaries. The protection referred to in this context is the legal protection of the Notary as an individual in connection with the actions of administrative power¹⁹ in preventing the arbitrariness of administrative power in the criminal justice sub-system, so that the Notary who is suspected of participating in a criminal act does not get treatment that degrades the honor of Notary profession, so that it must first obtain the approval the Notary Honor Council.

The meaning behind the provisions Article 66 paragraph (1) the Notary Office Act means that Notary is a noble profession, so that legal proceedings cannot be carried out carelessly against Notaries and are carried out strictly by first requesting the approval of the Notary Honor Council to take the *minuta* deed in question. The nobility of the Notary profession as a deed maker is because the Notary has an important role in every legal relationship in the life of the community, because the deed clearly determines the rights and obligations of the parties, so as to ensure legal certainty and protection for the society,

¹⁴ Satjipto Raharjo, (2000), *Ilmu Hukum*, Bandung: Citra Aditya Bakti. Hlm. 53.

¹⁵ Habib Adjie, (2009), *Meneropong Khasanah Notaris dan PPAT Indonesia*, Bandung: Citra Aditya Bakti. Hlm. 83.

¹⁶ Sudikno Mertokusumo, (2009), *Penemuan Hukum*, Bandung: Citra Aditya Bakti. Hlm. 39.

¹⁷ See Article 1 point 1 Regulation the Minister of Law and Human Rights Republic Indonesia Number 7 of 2016.

¹⁸ *Minuta* deed is the original Deed that includes the signatures of the parties, witnesses, and Notary, which is kept as part of the Notary Protocol. See Article 1 point 8 the Notary Office Act.

¹⁹ Phillipus M. Hadjon, (1987), *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: Bina Ilmu. Hlm 1-2.

including in business activities, banking activities, social activities and so on. Notary as a public official is tasked with providing services to members of the public who need his services in making written evidence, especially in the form of authentic deeds in the field of civil law. The existence of a Notary is the implementation the law of evidence.²⁰

By giving the Notary Honor Council the authority to approve or reject the taking of the *minuta* deed in question, it is hoped that it can provide legal protection for the Notary. It is also intended that the Notary is not easily blamed by other parties related to the deed made by the Notary. Because based on the Supreme Court Decision Number 702K/Sip/1973, Notary only functions to record or write down what is desired and stated by the parties facing the Notary. So that the Notary is not obliged to investigate materially the matters raised by the parties facing the Notary, in this case the circular document used as the basis for making the deed, but it turns out that the circular document is fake.

Limited Liability Company Act determines that circular statements or extraordinary *RUPS* are contained or stated in a Notary deed. The statement essentially contains everything that is discussed and decided at the *RUPS* which is attended, witnessed and heard directly by attendees the *RUPS*, in which case the meeting is usually chaired by himself who also doubles as one the directors of company. The chairman General Meeting or the person who receives the power submits the minutes or minutes the *RUPS* to the Notary which is then included in the deed of Statement of Resolutions the *RUPS*. So that in essence, the one who states the existence of the *RUPS* decisions is the person or party who receives the power or the signatory of deed in accordance with the Minutes the *RUPS*, not the Notary.

Based on Article 38 paragraph (3) letter c the Notary Office Act, content the deed is will and desire of the interested parties who come to the Notary. Thus, the content of the Notarial deed in the form of a circular statement or extraordinary *RU{S* is the will or desire the confronters themselves, not the will or desire of the Notary, but the Notary only frames it in the form of a Notarial deed in accordance with the Notary Office Act.²¹ The Notary is not responsible for errors in contents the deed that has been made before him, but the Notary is only responsible for the formal form the authentic deed as required by Act. However, if the person who uses a false identity is not capable of performing legal acts, then the deed only has evidentiary power as a deed under the hand. For example, if the confronters turn out to be minors (not yet 18 years old) according to Notary Office Act.²² Therefore, only a Judge can cancel the deed if the person using a false identity remains as a deed made by a Notary.²³

In addition, Article 1335 the Civil Code states that an agreement without a cause, or made based on a false or forbidden cause, has no force. Article 1335 the Civil Code, if linked or interpreted systematically to provisions Article 38 paragraph (3) letter c the Notary Office Act which determines that Notaries make deeds based on the will and wishes of the interested parties who come to face them, if the Notary makes a deed based on a fake

²⁰ Herlien Budiono, (2013), *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua*, Bandung: Citra Aditya Bakti. Hlm. 31.

²¹ Habib Adjie, (2009), *Sekilas Dunia Notaris dan PPAT Indonesia*, Bandung: Mandar Maju. Hlm. 30.

²² Yuniman Riza, (2008), *Notaris dan Jaminan Kepastian Hukum*, Surakarta: UNS Press. Hlm. 19.

²³ Milinia Mutiara Yushinta Dewi dan Bayu Indra Permana, (2022), *Keabsahan Akta Yang Dibuat Oleh Calon Notaris Yang Sedang Magang di Kantor Notaris*, *Jurnal Ilmu Kenotariatan*, Vol. 3 No. 2. Hlm. 82.

circular document, then the deed he makes has no binding force because the fake circular document which is considered a false cause is a representation the will of the parties which is also considered false. Thus, Article 38 paragraph (3) letter c the Notary Office Act *junto* Article 1335 the Civil Code is considered an instrument of legal protection for Notaries when making deeds based on fake circular documents. However, it needs to be underlined, according to the author's opinion, the falsity that results in the deed not having binding force must first be declared false by the competent authority.

Legal protection can also be carried out by the Notary himself which is seen as mitigation or prevention, the Notary adds 1 (one) Article before closing the Deed which is a protection for himself with a closing clause which generally "the confronter or confronters guarantee that all information and letters submitted and submitted to the Notary are true, therefore if in the future it turns out that the information or letters are untrue, false or invalid, the confronters or the confronters will be responsible for civil and criminal charges". The use of such a self-protection clause when viewed from the Notary Office Act is permissible and valid in its application.

When viewed from the evidentiary nature the Deed made by Notary, it is an evidentiary power that is based on the outwardly circumstances the deed.²⁴ This means that a letter that looks like a deed must be accepted, considered, and treated as a deed until proven otherwise. This outward proof emphasizes that an authentic deed physically has the power to prove its own validity as an authentic deed. If the parties deny or deny that the authentic deed is not an authentic deed then the party in court must prove it in accordance with the *Actori Incumbit Onus Probandi* Principle²⁵ in this case the burden of proof in civil cases is attached to the parties, not to the Notary, principle the burden of proof according to researchers is also part of legal protection for Notaries when the deed they made is allegedly based on a fake circular document.

Therefore, based on the entire description above, the author has analyzed and concluded that if the deed made before the Notary in the future has problems, the matter will be entirely responsibility the parties and the Notary cannot be held liability and accountability as long as the Notary is in good faith and full of prudence.

4. Conclusion

The legal consequences of a Deed made by a Notary based on a forged circular document is that the party who feels aggrieved can submit a cancellation (*vernietigbaar*) the Deed which basically contains the agreement to the Court. This is because the Deed does not meet the subjective requirements the validity agreement or has a defect of will in the form of deceitful forgery. As a result, the Notary is not liability and accountability for making a Deed based on a forged circular document, because the Notary is not a party to the Deed. Based on Supreme Court Decision Number 702K/Sip/1973, the Notary is only limited to recording or writing down what is desired and expressed by the parties, not expressing the will the Notary himself.

²⁴ Yosi Andika Mulyadi, (2016), *Kekuatan Pembuktian Akta Otentik Yang Dibuak Dihadapan Notaris Dalam Perkara Pidana*, Yogyakarta: Tesis Pasca Sarjana Magister Kenotariatan Universitas Gadjah Mada. Hlm. 26.

²⁵ Moh. Dani Pratama Huzaini, (28 Juni 2019), *Singgung Asas Actori Incumbit Onus Probandi*, KPU Bantah Dalil Pemohon Sengketa Pilpres, <https://m.hukumonline.com/berita/baca/lt5d08d3e8227c9/singgung-asas-i-actori-incumbit-onus-probandi-i-kpu-bantah-dalil-pemohon-sengketa-pilpres/>. Diakses pada tanggal 24 April 2024.

Legal protection against Notaries who make Deeds if they are based on false documents includes obtaining approval from the Notary Honor Council to obtain copies of the *minuta* deed, letters related to the *minuta* deed and summoning the Notary in the process of examining alleged criminal acts; the Deed is deemed not to have binding force based on Article 38 paragraph (3) letter c Notary Office Act *junto* Article 1335 the Civil Code so that the Notary is not liability and accountability; Based on Supreme Court Decision Number 702K/Sip/1973, the Notary only records or writes down what is desired and stated by the parties and the Notary is not the party in the Deed so that the Notary is not liability and accountability; the Notary can add a closing clause at the end the Deed to release the for the information and lliability and accountability etters submitted and submitted by the parties to the Notary; and the burden of proof is on the parties if the Deed is made on basis a fake circular document and the burden of proof is not on the Notary.

Refrences

Books

- Abdul Ghofur Anshori. 2009. *Lembaga Kenotariatan Indonesia*. Yogyakarta: UII Press.
- C.S.T Kansil. 1996. *Pokok-Pokok Hukum Perseroan Terbatas*. Jakarta: Pustaka Sinar Harapan.
- Habib Adjie. 2009. *Meneropong Khasanah Notaris dan PPAT Indonesia*. Bandung: Citra Aditya Bakti.
- _____. 2009. *Sekilas Dunia Notaris dan PPAT Indonesia*. Bandung: Mandar Maju.
- Herlien Budiono. 2013. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua*. Bandung: Citra Aditya Bakti.
- M. Yahya Harahap. 2016. *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika.
- Peter Mahmud Marzuki. 2011. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Phillipus M. Hadjon. 1987. *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu.
- Ridwan Khairandy. 2014. *Hukum Perseroan Terbatas*. Yogyakarta: UII Press.
- R. Soeroso. 2006. *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika.
- R. Subekti. 2005. *Hukum Perjanjian*. Jakarta: Intermasa.
- Satjipto Raharjo. 2000. *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Sudikno Mertokusumo. 2009. *Penemuan Hukum*. Bandung: Citra Aditya Bakti.
- Wirjono Prodjodikoro. 1989. *Azaz-Azaz Hukum Perjanjian*. Bandung: Bale Bandung.

Yuniman Riza. 2008. *Notaris dan Jaminan Kepastian Hukum*. Surakarta: UNS Press.

Research Journal Article

Milinia Mutiara Yushinta Dewi dan Bayu Indra Permana. 2022. *Keabsahan Akta Yang Dibuat Oleh Calon Notaris Yang Sedang Magang di Kantor Notaris*. Jurnal Ilmu Kenotariatan, Vol. 3 No. 2.

Internet Article

Moh. Dani Pratama Huzaini, (28 Juni 2019), *Singgung Asas Actori Incumbit Onus Probandi, KPU Bantah Dalil Pemohon Sengketa Pilpres*, <https://m.hukumonline.com/berita/baca/lt5d08d3e8227c9/singgung-asas-i-actori-incumbit-onus-probandi-i-kpu-bantah-dalil-pemohon-sengketa-pilpres/>.

Sovia Hasanah, (7 Maret 2018), *Perbedaan RUPS Luar Biasa dengan Keputusan Sirkuler Pemegang Saham*, <https://www.hukumonline.com/klinik/detail/ulasan/lt5a98c6a34d441/perbedaan-rups-luar-biasadengan-keputusan-sirkuler-pemegang-saham>.

Thesis

Yosi Andika Mulyadi. 2016. *Kekuatan Pembuktian Akta Otentik Yang Dibuat Dihadapan Notaris Dalam Perkara Pidana*. Yogyakarta: Tesis Pasca Sarjana Magister Kenotariatan Universitas Gadjah Mada.

Paper and Others

Fred B.G. Tumbuan. 2007. *Tugas dan wewenang Organ Perseroan Terbatas Menurut Undang-Undang Tentang Perseroan Terbatas*. Ikatan Notaris Indonesia.

Hatta Isnaini Wahyu Utomo. 2017. *Penggunaan Surrogate Pada Akta Notaris*. Surabaya: Kumpulan Tesis Pascasarjana Universitas Narotama.