

# Analysis On Court Decision No 147/Pid.B/2022/Pn Denpasar On Notary Liability In Adopting Minutes Of Extraordinary General Meeting Based On Circular Resolutions Inconsistent With Actual Facts

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## Abstract

*The purpose of this research is to analyze and examine the accountability of a notary as the creator of the minutes of an extraordinary general meeting of shareholders based on a circular decision that does not reflect the actual facts. The type of research used in this study is normative legal research. The research conducted by the author is prescriptive in nature. The approaches used in this research are the statutory approach and the case approach. The types of legal materials used in this study are primary legal materials and secondary legal materials. In an effort to find and collect the necessary data, this research uses the technique of collecting library research or document study. The analysis technique used in this research is the syllogism method using deductive thinking patterns. The results of this research indicate that the accountability of a notary as the creator of the minutes of an extraordinary general meeting of shareholders based on a circular decision that does not reflect the actual facts can be qualified as an unlawful act due to negligence as regulated in article 1365 of the civil code, which regulates the notary's civil liability or sanctions against the notary to compensate for the losses suffered by the disputing parties due to such unlawful acts. Based on this, the accountability of the notary who has been convicted for violating the provisions of article 264 paragraph (1) in conjunction with article 55 paragraph (1) number 1 of the criminal code in the making of the minutes of the egm also constitutes administrative violations for violating the obligations of a notary in carrying out his duties and responsibilities as regulated in article 16 paragraph (1) letter a of the notary law as well as violating the notary code of ethics article 3 paragraph (2), (3), (4).*

**Keywords:** *Liability, Notary, Circular Decision and General Meeting Of Shareholders.*

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## I. INTRODUCTION

The authority of a notary in the uujn-p (law on notary public) is stipulated in article 15 paragraph (1), which states: "(1) notaries are authorized to create authentic deeds regarding all acts, agreements, and determinations required by regulations and/or desired by interested parties to be stated in authentic deeds, ensuring the certainty of the date of deed creation, preserving the deed, providing engrossments, copies, and excerpts of the deed, all of which, as long as the creation of the deed is not also assigned or exempted to other officials or individuals designated by law." the position of a notary is a position of trust, therefore the dignity and honor of the notary's position must be upheld, both when carrying out official duties and indirectly affecting the dignity of the notary's position. The position of a notary as a public official, in the sense that the authority vested in a notary is never given to other officials as long as that authority does not become the authority of other officials in creating authentic deeds and other authorities, then that authority remains with the notary. (habib, 2008) the role of a notary in exercising their authority to create deeds is highly essential in daily activities, especially in the operations of limited liability companies (perseroan terbatas). A limited liability company, as defined in article 1 paragraph (1) of law no. 40 as the company, is a legal entity which is a capital alliance, established based on an agreement, engages in business activities with its entire capital divided into shares and meets the requirements stipulated in this law and its implementing regulations." (lin, 2022).

Thus, it can be concluded that a limited liability company is a legal entity whose capital is divided into shares owned by shareholders based on an agreement. Subsequently, in the operation of this limited liability company, corporate organs are required, which are divided into the general meeting of shareholders (rups), the board of directors, and the board of commissioners. decision-making in a company is not limited to annual or extraordinary general meetings of shareholders (rapat umum pemegang saham /rups); it can also

be done through decisions made outside of the rups, known as circular resolutions, regulated in article 91 of law number 40 of 2007 concerning limited liability companies, which states: "shareholders may also make binding decisions outside of the rups provided that all shareholders with voting rights agree in writing by signing the relevant proposal." decision-making outside of the rups is also known as circular resolutions. The difficulty for a company to gather all shareholders at the same time and place serves as the basis for allowing decision-making through circular resolutions. Circular decision-making differs from decisions made during rups as it does not require the physical presence of all shareholders. (lin, 2022).next, in the explanation of article 91 of the company law, it is stated: "the term "decision-making outside of the rups" is commonly known in practice as a circulated resolution. This type of decision-making is conducted without physically holding a rups, but decisions are made by sending written proposals to be decided upon to all shareholders, and these proposals are approved in writing by all shareholders.

The term "binding decision" refers to a decision that has the same legal force as a decision made in the rups."based on the quote from article 91 of the company law and its explanation, it can be concluded, according to yahya harahap, that the mechanism or method of decision-making outside the rups is conducted by sending written proposals to be decided upon to all shareholders (outside the rups) for approval, also known as circular resolution, which carries the same legal force as the rups, provided that the main requirement is that all shareholders must unanimously approve and sign the circular resolution without exception. In other words, matters that can be decided by the rups can also be decided by shareholders through circular resolution while still adhering to the aforementioned requirements. (harahap, 2013).. In the making of this circular decision, issues may arise, the problem such as the notary's accountability for the minutes of the general meeting of shareholders (rups-lb) is based on a circular decision that does not align with the actual circumstances. Such as decision no. 147/pid.b/2022 of the district court of denpasar. In this case, it involves notary i wdw in the criminal domain who has been proven legally and convincingly guilty of committing, ordering, or participating in the forgery of documents concerning authentic deeds, as stipulated and punishable under article 264 paragraph (1) of the criminal code jo. Article 55 paragraph (1) clause 1 of the criminal code.

Based on the case description above, the author is interested in conducting a more in-depth study and analysis to uncover the aspects pertanggungjawaban notaris berdasarkan hukum indonesia terkait dengan notaris as that will be addressed in this article titled: **"Analysis On Court Decision No 147/Pid.B/2022/Pn Denpasar On Notary Liability In Adopting Minutes Of Extraordinary General Meeting Based On Circular Resolutions Inconsistent With Actual Facts"**

## II. METHODS

The type of research used in this study is normative legal research, which according to peter mahmud marzuki in his book "legal research," normative legal research is a process to discover legal rules, legal principles, and legal doctrines to address legal issues faced. In this case, the research conducted by the author is prescriptive, intended to provide arguments based on the research findings. The approach used in this research is both the statutory approach and the case approach. The statutory approach is used by the author to examine regulations related to limited liability companies, especially in the conduct of general meetings of shareholders (rups) and circular resolutions, to address existing issues. Furthermore, the author also intends to assess the regulations governing the position of a notary to determine the notary's liability in rups regarding the deeds produced. The legislation used in this thesis includes: law number 40 of 2007 concerning limited liability companies (*undang-undang nomor 40 tahun 2007 tentang perseroan terbatas*, n.d.), law number 30 of 2004 concerning notary positions, and law number 2 of 2014 concerning amendments to law number 30 of 2004 concerning notary profession. In the case approach, the author attempts to analyze and examine the notary's liability for the validity of the minutes of extraordinary general meetings of shareholders based on circular resolutions that do not reflect the actual facts in the decision of the denpasar district court number 147/pid.b/2022/pn dps.

Legal materials can be divided into two types: primary legal materials and secondary legal materials. (marzuki, 2014). The primary legal sources used in this research are: 1) civil code; 2) criminal code; 3) law number 40 of 2007 concerning limited liability companies; 4) law number 30 of 2004 concerning notary position; 5) law number 2 of 2014 concerning amendments to law number 30 of 2004 concerning notary position; 6) notary code of ethics from the extraordinary congress of indonesian notary association banten, may 29-30, 2015; 7) decision number 147/pid.b/2022/denpasar district court. Secondary legal sources include academic works and relevant research related to this study, including theses, dissertations, legal journals, interviews, as well as legal dictionaries and books related to the issues under investigation. (marzuki, 2014). In an effort to seek and gather the required data, this research employs the technique of literature review or document study (library research). The analytical technique used in this research is the syllogism method, employing deductive reasoning, which involves thinking based on fundamental principles, then presenting the object of study to draw conclusions regarding specific facts. The deductive reasoning pattern starts from basic principles, and then the research presents the object under investigation. Meanwhile, the syllogism method employing a deductive approach, according to the teachings of aristotle, begins with the presentation of a major premise, followed by a minor premise. From these two premises, a conclusion is drawn. (marzuki, 2014).

### III. RESULTS AND DISCUSSION

#### A. Chronology of the case with the verdict of the district court no. 147/pid.b/2022/pn denpasar.

Before the author elaborates analysis on court decision no 147/pid.b/2022/pn denpasar on notary liability in adopting minutes of extraordinary general meeting based on circular resolutions inconsistent with actual facts, here is the chronological explanation of the case in verdict no. 147/pid.b/2022/pn denpasar (*putusan pengadilan negeri nomor 147/pid.b/2022/pn denpasar*, n.d.):

- On january 20, 2019, sdr. Eddy susila suryadi passed away, as per extract of death certificate number 5171-km-03022020-0011 dated august 9, 2021. Subsequently, using invalid civil registry documents, namely marriage certificate number ak 8950071361 dated february 5, 2015, and family card number 5171032204130020 dated february 13, 2015, the witness ni luh widiani and the defendant i wayan darma winata, sh actively created a lineage declaration letter and inheritance declaration letter dated march 12, 2019, which was then formalized into deed of declaration number 6 dated april 20, 2019, by the defendant. The content of the deed essentially stated that the witness ni luh widiani was the heir of eddy susila suryadi and subsequently transferred the shares under the name of eddy susila suryadi in pt. Jayakarta balindo, consisting of 9,900 shares (99%), to the witness ni luh widiani, without the knowledge and consent of the family of sdr. Eddy susila suryadi (deceased). The share transfer process conducted by the defendant and witness ni luh widiani was also not carried out through the process as regulated in the limited liability company law, which requires the creation of a deed of share transfer, which is then submitted to the company and the board of directors to record the transfer of share ownership, and subsequently, the company notifies the ministry to record changes in the shareholding structure.

- After the defendant and witness ni luh widiani created deed of declaration number 6 dated april 20, 2019, the witness ni luh widiani used the deed to apply to the denpasar district court to request that pt. Jayakarta balindo hold an extraordinary general meeting of shareholders, with the agenda of the meeting as follows: a) amend the articles of association of pt. Jayakarta balindo, especially concerning ni luh widiani as the president commissioner; b) record the transfer of ownership of shares in the shareholder or special list; c) inform changes in the composition of shareholders and the composition of management to the minister of law and human rights of the republic of indonesia to be recorded in the company register. Upon this request, the denpasar district court granted it by issuing decree number: 615/pdt.p/2019/pn.dps dated september 9, 2019. However, the family of sdr. Eddy susila suryadi (deceased), who still held control of pt. Jayakarta balindo, namely the witness i made jaya wijaya, se as director, the witness gunawan suryadi as commissioner, and sdr. Putu antara suryadi (deceased) as minority shareholders, refused to hold the egms to

change the articles of association of pt. Jayakarta balindo regarding changes in the composition of shareholders and the composition of management of pt. Jayakarta balindo because deed of declaration number 6 dated april 20, 2019, was a unilateral declaration deed made by the witness ni luh widiani and the defendant and could not be used as a legal basis to declare oneself as the heir of eddy susila suryadi (deceased).

- After the refusal from the director, commissioner, and minority shareholders of pt. Jayakarta balindo, the witness ni luh widiani then created circular resolution dated october 18, 2019, signed by the witness ni luh widiani himself based on the draft provided by the defendant and prepared in the defendant's notary office with typing assistance from the defendant's staff, namely the witness ni ketut ratmini. However, the content of the circular resolution made by the witness ni luh widiani and the defendant did not correspond to the actual facts. The circular resolution stated that the witness ni luh widiani had held a meeting with the witness i made jaya wijaya, se as director, the witness gunawan suryadi as commissioner, and sdr. Putu antara suryadi (deceased) as minority shareholder who attended upon the company's invitation, and in the meeting, all participants unanimously agreed to approve the transfer of shares from eddy susila suryadi (deceased) to the witness ni luh widiani for 9,900 shares and to change the management structure of pt. Jayakarta balindo as follows: president commissioner: ni luh widiani, commissioner: sdr. Gunawan suryadi, director: sdr. I made jaya wijaya, se. And decided to authorize the meeting leader, the witness ni luh widiani, to appear before a notary to declare the decision taken in the circular resolution in the form of a notarial deed.

- However, the actual fact was that the meeting was never held by the witness i made jaya wijaya, se as director, the witness gunawan suryadi as commissioner, and sdr. Putu antara suryadi (deceased) as minority shareholder, and there was no approval for the approval of the transfer of shares from eddy susila suryadi (deceased) to the witness ni luh widiani for 9,900 shares or the change of management structure of pt. Jayakarta balindo by adding the name of ni luh widiani as the president commissioner. After the circular resolution dated october 18, 2019, was made, the defendant, who knew that the circular resolution was made falsely, created a deed of extraordinary general meeting of shareholders of pt. Jayakarta balindo number 6 dated october 23, 2019, affirming the circular resolution previously made, witnessed only by the witness i gede wirya darma kasuma, sh., m.kn, who was the defendant's biological child and also a staff at the defendant's notary office, and the witness ni ketut ratmini, who was also a staff at the defendant's notary office. Subsequently, after the circular resolution and the deed of extraordinary general meeting of shareholders were made, the defendant requested his biological child, the witness i gede wirya darma kasuma, sh., m.kn, to register the change of shareholders and the management structure of pt. Jayakarta balindo to the directorate general of ahu, ministry of law and human rights of the republic of indonesia, using the defendant's notary account iwayandarmawinata, until finally the ministry of law and human rights issued the approval.

- Furthermore, on january 23, 2020, the witness ni luh widiani again made a circular resolution of pt. Jayakarta balindo for the replacement of commissioner by obtaining a draft example from the defendant. Then, the witness ni luh widiani asked for typing assistance from the witness ni ketut ratmini at the defendant's notary office, and after it was typed, the witness ni luh widiani signed the circular resolution herself. The content of the circular resolution of pt. Jayakarta balindo dated january 23, 2020, did not correspond to the actual facts, where the resolution stated that the witness ni luh widiani held a meeting with sdr. Putu antara suryadi (deceased) as a minority shareholder of pt. Jayakarta balindo, the witness i made jaya wijaya, se as director, and the witness i wayan sukayasa as commissioner, and in the meeting, it was agreed unanimously to replace the commissioner previously held by the witness gunawan suryadi with the witness i wayan sukayasa, se. However, the reality was that the meeting was never held, and sdr. Putu antara suryadi (deceased), the witness i made jaya wijaya, se, and the witness i wayan sukayasa were neither informed nor approved of the results of the meeting. After meeting with the defendant and the witness ni luh widiani, the witness i wayan sukayasa, se was then appointed as commissioner of pt. Jayakarta balindo. after the circular resolution dated january 23, 2020, was made, the defendant, who knew that the resolution was

made falsely, again created a deed of extraordinary general meeting of shareholders of pt. Jayakarta balindo number 06 dated january 24, 2020, affirming the circular resolution previously made, witnessed only by the witness i gede wirya darma kasuma, sh., m.kn, and the witness ni ketut ratmini, and subsequently, the circular resolution and the deed of extraordinary general meeting of shareholders were registered by the witness i gede wirya darma kasuma, sh., m.kn, upon the defendant's order, to the directorate general of ahu, ministry of law and human rights of the republic of indonesia, using the defendant's notary account iwayandarmawinata, until finally the ministry of law and human rights issued the approval.

- Furthermore, on april 16, 2020, the witness ni luh widiani again made a circular resolution of pt. Jayakarta balindo to change the position of director, which was initially held by the witness i made jaya wijaya, to be held by the witness ni luh widiani herself. However, the circular resolution made did not correspond to the actual facts, where the resolution stated that the meeting was attended by sdr. Putu antara suryadi (deceased) as a minority shareholder, the witness i made jaya wijaya, se as director, and the witness i wayan sukayasa as commissioner, and the result of the meeting unanimously agreed to dismiss the witness i made jaya wijaya as director and appointed the witness ni luh widiani as a replacement, and decided to authorize the meeting leader, the witness ni luh widiani, to appear before a notary to declare the decision taken in the circular resolution in the form of a notarial deed. However, the reality was that the meeting was never held, and sdr. Putu antara suryadi (deceased), the witness i made jaya wijaya, se, and the witness i wayan sukayasa were neither informed nor approved of the results of the meeting. After the circular resolution dated april 16, 2020, was made, the defendant, who knew that the resolution was made falsely, again created a deed of extraordinary general meeting of shareholders of pt. Jayakarta balindo number 01 dated april 17, 2020, affirming the circular resolution previously made, witnessed only by the witness i gede wirya darma kasuma, sh., m.kn, and the witness ni ketut ratmini, and subsequently, the circular resolution and the deed of extraordinary general meeting of shareholders were registered by the witness i gede wirya darma kasuma, sh., m.kn, upon the defendant's order, to the directorate general of ahu, ministry of law and human rights of the republic of indonesia, using the defendant's notary account iwayandarmawinata, until finally the ministry of law and human rights issued the approval.

- After making several circular resolutions of pt. Jayakarta balindo, to reinforce the results of the previous circular resolutions of pt. Jayakarta balindo, the witness ni luh widiani then made minutes of meeting clarification of the deed of extraordinary general meeting of shareholders of pt. Jayakarta balindo dated june 3, 2020, made at the defendant's notary office, and subsequently, to strengthen the minutes of meeting, the defendant then made a statement deed of decision of meeting of limited liability company pt. Jayakarta balindo number 2 dated june 4, 2020, witnessed only by the witness i gede wirya darma kasuma, sh., m.kn, and the witness ni ketut ratmini. The circular resolutions of pt. Jayakarta balindo and the deeds of extraordinary general meeting of shareholders of pt. Jayakarta balindo made by the witness ni luh widiani and the defendant, registered to the directorate general of ahu, ministry of law and human rights of the republic of indonesia, using the defendant's notary account iwayandarmawinata, resulting in losses to the family of eddy susila suryadi (deceased) with a total loss suffered by the family of eddy susila suryadi (deceased) amounting to approximately rp. 150,000,000,000 (one hundred fifty billion rupiahs). The letters falsified by the defendant and the witness ni luh widiani, namely the circular resolutions of pt. Jayakarta balindo and the minutes of extraordinary general meeting of shareholders of limited liability company pt. Jayakarta balindo, all of which were registered with the ministry of law and human rights of the republic of indonesia, are authentic deeds made by the defendant as a notary based on the decision of the minister of justice of the republic of indonesia number: c-161.ht.03.01-th.1996 dated may 6, 1996.

#### **B. Analysis on court decision no 147/pid.b/2022/pn denpasar on notary liability in adopting minutes of extraordinary general meeting based on circular resolutions inconsistent with actual facts**

The inclusion of sanctions in various legal regulations is a mandatory requirement in each legal rule. The essence of sanctions as a legal coercion is also to provide awareness to the parties who violate them that their actions are not in accordance with the applicable legal rules, and to restore them to act in accordance with the applicable legal rules, as well as to maintain the balance of the enforcement of a legal rule.



Sanctions directed towards notaries also serve as a means of awareness, indicating that notaries, in performing their duties, have violated the provisions regarding the implementation of notarial duties as stipulated in the notary position law. (sjaifurrachman, 2011). From the perspective of public law, the authority over deeds created in line with general principles is that there is no authority without accountability. Generally, experts opine that in the event of a violation by a notary as a public official related to material truth, accountability can be categorized into four types, as follows: (ghofur, 2009):

- a) Administrative liability of notary
- b) Civil liability of the notary,
- c) Criminal liability of the notary

From all explanations about several provisions of notary liability and sanctions that can be imposed by notaries as public officials, in the discussion of the second problem formulation in this article, the author intends to examine and investigate the accountability of notaries as makers of minutes of extraordinary general meetings of shareholders based on circular decisions that do not reflect the actual reality. The following is a discussion of each of their accountabilities, as follows:

**a) Administrative Liability**

In carrying out their duties, a notary must adhere strictly to the uujn (law on notary practice) and the notary code of ethics, as without them, the dignity and professionalism of a notary would be entirely lost. The uujn contains both substantive and procedural law, such as provisions regarding the position and function of a notary. Furthermore, as a position of trust exercising part of the government's authority, a notary is also required to demonstrate an exemplary character and conduct beyond that expected of ordinary members of society. In this regard, a primary requirement is the character and conduct of a notary, and this standard is outlined in the Indonesian notary code of ethics.

Article 85 of the uujn mentions five types of administrative sanctions, namely (undang-undang nomor 30 tahun 2004 tentang jabatan notaris, n.d.):

- 1) Oral reprimand
- 2) Written reprimand
- 3) Temporary suspension
- 4) Dismissal with respect
- 5) Dismissal without respect

Those sanctions are applied progressively, ranging from oral reprimand to dismissal without respect, because the notary violates specific articles mentioned in article 85 of the uujn, namely when the notary: "violates the provisions as referred to in articles 7, 16 paragraph (1) letter a, 16 paragraph (1) letter b, 16 paragraph (1) letter c, 16 paragraph (1) letter d, 16 paragraph (1) letter e, 16 paragraph (1) letter f, 16 paragraph (1) letter g, 16 paragraph (1) letter h, 16 paragraph (1) letter i, 16 paragraph (1) letter j, 16 paragraph (1) letter k, 17, 20, 27, 32, 37, 54, 58, 59, and/or 63". Based on the case discussed in this thesis, notary i wayan darma winata, who was the defendant in the decision of the Denpasar district court number 147/pid.b/2022/pn dps, in the criminal case of falsification of authentic deeds, did not perform his duties in accordance with law number 30 of 2004 concerning notary positions article 16 paragraph (1) letter a. This provision states that, "in carrying out his duties, a notary is obliged: a. To act with trust, honesty, diligence, independence, impartiality, and to safeguard the interests of the parties involved in legal acts." based on article 16 paragraph (1) letter a of the uujn, when linked to the above case and examining the legal facts in accordance with the decision of the Denpasar district court number 147/pid.b/2022/pn dps, the author believes that notary i wayan darma winata did not act with trustworthiness, as the notary did not perform his duties in accordance with the existing laws and was proven to have falsified authentic deeds. Furthermore, the notary was not diligent or thorough in creating an authentic deed, as evidenced by disregarding several provisions in the limited liability company law regarding the minutes of the extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo, including ignoring the quorum requirements for attendance and decision-making.

Moreover, in performing his duties, the notary showed partiality to witness ni luh wardani, who had ill intentions by taking over 99% of the shares of pt. Jayakarta balindo to be controlled by herself, thus controlling the management positions within the company by replacing the board of directors, president commissioner, and commissioners, thereby not safeguarding the interests of the company in question. Ethical sanctions can also be imposed on a notary when they violate the notary code of ethics. These sanctions are imposed by the notary honor council, and the highest sanction from this council is dismissal with or without respect from membership in the notary profession organization. The amendment to the notary code of ethics at the extraordinary congress of the Indonesian notary association in Banten, May 29-30, 2015, stipulates the obligations of a notary. In chapter III article 3, it states that:

A notary as well as anyone else (while holding the position of a notary) must:

- 1) Have good morals, ethics, and personality.
- 2) Respect and uphold the dignity of the notary profession.
- 3) Safeguard and defend the honor of the association.
- 4) Behave honestly, independently, impartially, trustworthily, diligently, responsibly, based on statutory regulations and the oath of office of a notary.
- 5) Enhance knowledge and professional skills beyond legal and notarial knowledge.
- 6) Prioritize dedication to the interests of society and the state.

If we connect it with the case under discussion, notary i wayan darma winata, who was the defendant in the decision of the Denpasar district court number 147/pid.b/2022/pn dps, in the criminal case of falsification of authentic deeds, did not fulfill his duties in accordance with the amendment to the notary code of ethics at the extraordinary congress of the Indonesian notary association in Banten, May 29-30, 2015. In the author's opinion, the notary violated article 3 paragraphs (2), (3), and (4) of the notary code of ethics regarding a notary's obligations in performing their duties, by not respecting and upholding the dignity of the notary profession and by failing to safeguard and defend the honor of the association, as evidenced by the conviction of the notary to three years in prison in the verdict "for participating in the forgery of authentic deeds." This is inconsistent with the fact that the position of a notary is a position of trust granted by the law and society. Therefore, a notary is responsible for carrying out the trust bestowed upon them by always upholding legal ethics and the dignity of their position. Failure to do so by a notary can result in harm to the general public. (ayuningtyas, 2020). Furthermore, in article 3 paragraph (4) of the notary code of ethics, a notary in performing their duties must not favor any one party, and especially the notary as the defendant in this case was not diligent in creating their deed. This is evidenced by notary i wdw's failure to verify the data and the status of the party nlw related to the marriage certificate or family card that was not valid. In the creation of a certificate of inheritance (skw), this is crucial because it determines the eligibility of the party to engage in a legal act, such as determining who is entitled to inherit. This verification is necessary so that the notary can be held accountable for the deeds they create.

#### **b) Liability Form**

In law number 30 of 2004 concerning notary positions, article 84 states: "violation actions committed by a notary against the provisions as referred to in article 16 paragraph (1) letter i, article 16 paragraph (1) letter k, article 41, article 44, article 48, article 49, article 50, article 51, or article 52 which result in a deed having only evidentiary power as an underhand deed or a deed being null and void may be grounds for the injured party to demand reimbursement of costs, compensation, and interest from the notary." if further understood, there are 2 (two) types of civil sanctions / notary liabilities in civil matters in that article. If a notary violates those articles and also sanctions of the same type are scattered throughout other articles, namely (adjie, 2008):

- a) Notarial deeds which only have evidentiary power as underhand deeds; and
- b) Notarial deeds becoming null and void by law.

The provisions mentioned below are specifically stipulated in certain articles of the uujn (law on notary positions), which state that if violated by a notary, the notarial deed will only have evidentiary power as an underhand deed. In relation to the case being discussed, one of the articles violated by the accused notary is:

a) Violating the provisions of article 41 by referring to article 40, namely the failure to fulfill the provisions:

b) Article 40 explains that every deed must be read aloud by the notary in the presence of at least 2 (two) witnesses, each of whom must be at least 18 years old or married, capable of performing legal acts, understand the language used in the deed, able to sign and initial, and not have a marriage or blood relationship in the direct line ascending or descending without degree limitation and lateral line relationship up to the third degree with the notary or the parties.

Referring to the case discussed, in the decision of the denpasar district court number 147/pid.b/2022/pn dps, notary i wayan darma winata (defendant) along with ni luh widiani (defendant in a separate case) actively created minutes of extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo number 6 dated october 23, 2019, minutes of extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo number 06 dated january 24, 2020, minutes of extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo number 01 dated april 17, 2020, statement of meeting decision of the limited liability company pt. Jayakarta balindo number 2 dated june 04, 2020. Regarding all of these deeds, the notary (defendant) used an instrumental witness (identification witness) i gede wirya darma kasuma who is the biological child of the defendant notary. This certainly violates the provisions of article 40 of uujn-p which states that "every deed must be read aloud by the notary in the presence of at least 2 (two) witnesses, each of whom must be at least 18 years old or married, capable of performing legal acts, understand the language used in the deed, able to sign and initial, and not have a marriage or blood relationship in the direct line ascending or descending without degree limitation and lateral line relationship up to the third degree with the notary or the parties".

Then it is mentioned in uujn-p the legal implication or consequence, which is: "violation of the provisions as referred to in article 38, article 39, and article 40 results in the deed only having evidentiary power as an underhand deed." so, in the opinion of the writer, regarding the deeds mentioned above, the deeds are downgraded to underhand deeds (undang-undang nomor 2 tahun 2014 tentang perubahan atas undang-undang nomor 30 tahun 2004 tentang jabatan notaris, n.d.). A notary, as an officer authorized to draw up authentic deeds, if they commit an error whether intentionally or due to negligence, resulting in harm to others (due to the deed being made), it means the notary has committed an unlawful act. If an error committed by a notary can be proven, then the notary may be subject to sanctions as specified by the law (afifah, 2017). As stipulated in article 84 of the uujn, which states that "it may be grounds for the injured party to demand reimbursement of costs, compensation, and interest from the notary." compensation for unlawful acts in civil law is regulated in article 1365 of the civil code (hereinafter referred to as the civil code), which determines: "every unlawful act causing harm to others obliges the person who caused the harm to compensate for it."

According to the provisions in article 1365 of the civil code (kuh perdata), an unlawful act in civil law must contain the following elements (subekti, 2004):

- 1) The existence of an act.
- 2) The act is contrary to law.
- 3) Fault on the part of the perpetrator.
- 4) There is a loss to the victim.
- 5) There is a causal relationship between the act and the loss.

Here is an explanation for each element of the unlawful act and also its relation to the case in the verdict of the district court of denpasar number 147/pid.b/2022/pn dps, which the researcher discusses, as follows:

1) *The existence of an act*

If related to the case discussed by the researcher, the act referred to here is the act of the notary (defendant) in creating a deed that does not correspond to the actual circumstances, including:

- a) Deed of statement number 6 dated april 20, 2019
- b) Minutes of the extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo number 6 dated october 23, 2019



c) Minutes of the extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo number 06 dated january 24, 2020

d) Minutes of the extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo number 01 dated april 17, 2020

e) Deed of statement of the decision of the meeting of the limited liability company pt. Jayakarta balindo number 2 dated june 04, 2020

Regarding all the deeds mentioned above, the actions resulted in losses for the family of the deceased (eddy) and also for the limited liability company pt. Jayakarta balindo caused by the unilateral transfer of 99% of shares to ni luh widiani (defendant in a separate case) and arbitrary changes in the management structure of pt. Jayakarta balindo.

2) *Such actions constitute a violation of the law.*

If related to the case discussed by the researcher, the notary, in carrying out his duties and authorities, should be guided by article 15 of the uujn-p, which states that "a notary is authorized to create authentic deeds regarding all acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guaranteeing the certainty of the date of the deed's creation, keeping the deed, providing authentic deed copies, and excerpts, as long as the deed's creation is not also assigned or exempted to other officials or individuals designated by law." furthermore, the notary's authority related to limited liability companies should also comply with the regulations stipulated in the company law (uupt) in drafting their deeds. However, in the case discussed by the researcher, notary i wayan darma winata did not adhere to several regulations specified in the company law, which can be categorized as actions violating the prevailing laws. Additionally, the notary's failure to exercise due care in creating the deed resulted in the deprivation of inheritance rights of an individual who should have been an heir in the share transfer due to inheritance. This can be categorized as an act violating the rights of others guaranteed by law and morality concerning the bad faith of ni luh wardani (defendant in a separate case).

3) *The presence of errors committed by the perpetrators.*

If related to the case discussed by the researcher, the notary (defendant) in the verdict of the district court of denpasar number 147/pid.b/2022/pn dps, there were elements of negligence in the creation of their deeds, such as the application of various legal regulations such as the limited liability company law, resulting in the indictment of the respective notary.

4) *The presence of losses to the victims.*

If related to the case discussed by the researcher, based on the testimony of witnesses, evidence, and exhibits submitted in the criminal trial, it was found that the decision circular of pt. Jayakarta balindo and the minutes of the extraordinary general meeting of shareholders of the limited liability company pt. Jayakarta balindo made by the witness ni luh widiani and the notary (defendant) were registered with the directorate general of ahu of the ministry of law and human rights of the republic of indonesia using the defendant notary's account, and eventually the ministry of law and human rights of the republic of indonesia issued the approval. This resulted in losses to the family of mr. Eddy susila suryadi (deceased), namely the loss of several assets, including:

Six (6) parcels of land with attached buildings, with a total land area of 6,081 square meters, building area of 5,406.25 square meters, and infrastructure, with a total value of approximately rp 106,000,000,000 (one hundred and six billion rupiah). Ownership of 99% of pt. Jayakarta balindo's shares valued at rp 9,900,000,000 (nine billion nine hundred million rupiah). Company assets, infrastructure, vehicles, workshop equipment, and cash amounting to approximately rp 34,100,000,000 (thirty-four billion one hundred million rupiah). Therefore, the total loss suffered by the family of mr. Eddy susila suryadi (deceased) is approximately rp 150,000,000,000 (one hundred and fifty billion rupiah). Based on the chronology of the case in the verdict discussed by the author, if the plaintiffs feel aggrieved and can prove that their rights have been violated, they can file a civil lawsuit for compensation for the aforementioned losses.

5) *The presence of a causal relationship between the act and the loss.*

If related to the case discussed by the researcher, the consequence of the notary's (defendant) act in creating the minutes of the extraordinary general meeting of shareholders of the limited liability company pt.

Jayakarta balindo number 6 dated october 23, 2019 resulted in the loss of inheritance rights for the family of mr. Eddy susila suryadi (deceased) and the transfer of 99% of the shares to ni luh widiani (defendant in a separate case) who is not an heir of the late eddy susila suryadi. This demonstrates a causal relationship between the notary's actions and the resulting loss. After analyzing the elements of unlawful acts as stated in article 1365 of the civil code, it is believed by the opinion of the notary (defendant) that there are indications of fulfilling the elements of unlawful acts. Therefore, it can be assumed that the notary can be held liable civilly. Civil claims for damages on the basis of unlawful acts can be filed if the perpetrator commits acts that fulfill the elements of article 1365 of the civil code. Regarding who is obliged to prove the existence of unlawful acts, according to article 1865 of the civil code, it is regulated that "every person who alleges that he has a certain right, or to affirm his own rights as well as to contest someone else's rights, referring to an event, is obliged to prove the right to that event." this means that in the case of unlawful acts, the party whose rights are violated is obliged to prove that their rights have been violated by others. Therefore, if a party feels their rights have been violated but cannot prove the violation because one of the elements is not fulfilled, then the civil claim for damages on the basis of unlawful acts will not succeed.

### c) Criminal Liability

In order to determine if the actions of the notary can be held criminally liable under article 264 paragraph (1) in conjunction with article 55 paragraph (1) clause 1 of the indonesian criminal code (kuhp), which has the following elements (*kitab undang-undang hukum pidana (kuhp)*, n.d.):

a) Element whoever, refers to anyone as a legal subject who has rights and obligations, and can be held accountable for criminal acts committed by them. In this case, the public prosecutor has brought the defendant to trial for allegedly committing a criminal act as outlined in the indictment by the public prosecutor. This is supported by the defendant's statement, which is also linked to the statements of witnesses that are mutually related and consistent. The defendant, i wayan darma winata, s.h., has confirmed his identity as stated in the indictment, thus there is no mistake in person (error in persona).

b) The element of making or falsifying a document in the form of an authentic deed, the truth of which must be declared by the deed, refers to someone directing the inclusion of a circumstance that does not correspond to the actual situation into a deed which, by law, is authorized to be created. What is meant by a circumstance whose truth must be declared by the deed is everything that results in a legal relationship that truly occurs, considering that an authentic deed is a strong legal evidence. In this case, the issue revolves around the process of creating a deed for the change of management and replacement of commissioners. At that time, ni luh widiani (defendant in a separate case) came to the office of notary i wayan darma winata, s.h. (defendant) with minutes to create deeds for the transfer of shares, replacement of commissioners, and replacement of directors, all of which did not correspond to the actual situation.

c) The element that can create a right, agreement, debt release, or serve as evidence of something whose truth is declared by the deed. In this case, it is clear that the witness nlw (defendant in a separate case) and the defendant notary have actively agreed to create a deed of transfer of ownership rights (skw) which was then made into a statement deed by the defendant notary, with the content of the deed essentially stating that the witness nlw (defendant in a separate case) as the heir of eds and then transferred 9,900 shares (99%) owned by eds in pt. Jayakarta balindo to nlw without the knowledge and consent of eds's (deceased) family

d) The element with the intention to use or instruct others to use those documents as if they were genuine and not falsified, meaning the perpetrator who instructs the inclusion of false information indeed from the beginning has the intention to use the information in the authentic deed correctly according to the actual situation or will instruct others to use it as genuine. In this case, after facing rejection from the director, commissioner, and minority shareholders of pt. Jayakarta balindo, the defendant notary and witness nlw then created several fake letters and authentic deeds, including the following:

1) Circular decision dated october 18, 2019 signed by witness nlw herself. The content of the circular decision made by witness nlw and the defendant notary does not correspond to the actual situation, namely the transfer of shares from eds (deceased) to witness nlw for 9,900 shares and the change in the management structure of pt. Jayakarta balindo by appointing nlw as the chief commissioner;

2) Minutes of extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo number 6 dated october 23, 2019, which confirms the circular decision dated october 18, 2019 previously made.

3) Circular decision dated january 23, 2020 signed by witness nlw herself. The content of the circular decision does not correspond to the actual situation, namely the replacement of the commissioner previously held by witness gs was replaced by witness iws.

4) Of extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo number 06 dated january 24, 2020, which confirms the circular decision dated january 23, 2020 previously made.

5) Circular decision dated april 16, 2020 signed by witness nlw herself. The content of the circular decision does not correspond to the actual situation, namely the dismissal of witness i mjlw as director and the appointment of witness nlw as his replacement.

6) Minutes of extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo number 01 dated april 17, 2020, which confirms the circular decision dated april 16, 2020 previously made.

7) Minutes of confirmation meeting of extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo dated june 3, 2022.

8) Deed of establishment (pkr) of pt. Jayakarta balindo number 2 dated june 4, 2020.

e) The element that if such use can cause loss, with the word "can" before causing loss, indicates that the offense in article 264 paragraph (1) of the indonesian criminal code (kuhp) is a formal offense, meaning the offense is considered complete once the act of including false information in the authentic deed is done, without the need for any loss to others. In this case, nlw (defendant in a separate case) and the defendant notary who have created authentic deeds and fake documents in the form of circular decisions of pt. Jayakarta balindo and minutes of extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo, could result in a loss for the family of eds (deceased) amounting to approximately rp.150,000,000,000.00 (one hundred fifty billion indonesian rupiah).

f) The element of those who commit, instruct, and participate in the act, as referred to in article 55 paragraph (1) clause 1 of the indonesian criminal code (kuhp), which categorizes or is considered as perpetrators are individuals who commit (plegen), instruct others to commit (doen plegen), or participate in (medeplegen) an offense, where two or more persons are involved in carrying out a criminal act. In the realization of a criminal act, there is close cooperation between the perpetrators (daders), and each perpetrator has a role as either the one who commits, instructs, or participates. Based on the facts revealed in the trial, including witness testimony, documents, and defendant statements, it is evident that witness nlw (defendant in a separate case) did not carry out the act of falsifying documents alone but rather together with the defendant notary, where the role of the defendant notary was to conceptualize the entire falsified documents, namely the circular decisions and minutes of extraordinary general meeting of shareholders (rups-lb) of pt. Jayakarta balindo, which were then handed over to witness nlw (defendant in a separate case).

#### IV. CONCLUSION

Based on the discussion of the two issues examined in this article, the conclusion that can be drawn is that the notary's liability as the maker of minutes of extraordinary general meeting of shareholders based on circular decisions that do not reflect reality can be classified as an unlawful act due to negligence as regulated in article 1365 of the civil code, which regulates the civil liability of notaries or sanctions against the notary to compensate for the losses suffered by the disputing parties due to the commission of such unlawful acts. Based on this, the liability of the notary who has been convicted of violating the provisions of article 264 paragraph (1) in conjunction with article 55 paragraph (1) point 1 of the criminal code in the making of the egm minutes also includes administrative violations because they have violated the obligations of a notary in carrying out their duties and responsibilities as regulated in article 16 paragraph (1) letter a of the notary law and also violated the notary code of ethics article 3 paragraph (2), (3), (4).

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