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Notary Liability for The Deed of General Meeting of Shareholders of Limited Liability Companies Against The Law (Analysis of Decision Number 123 / PDT. G-Interven/2019/PN. MKS)

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Abstract

Notary is a public official who has the authority to make an authentic deed. An authentic deed as regulated in Article 1868 of the Civil Code is a deed made in the form determined by law by or before a public official authorized to do so at the place where the deed was made. Based on the Law on Notary Positions, a Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. This study discusses the Notary's Responsibility for Unlawful Acts in making the deed of the general meeting of shareholders of a limited liability company. The research method used is juridical-normative research which refers to the use of written legal norms contained in statutory regulations. The data used in conducting research and collecting data is secondary data, namely as data obtained directly through tracing Court Decisions, library materials, document studies and interviews. The typology of this research is descriptive so that the results of this study are analytical. This study found that the authentic deed made by a notary that contained elements of forgery and fraud was void. The notary may be subject to administrative sanctions based on UUJN ranging from verbal reprimand, writing, temporary dismissal and disrespectful dismissal. In addition, the Notary can also be held accountable based on unlawful acts in a civil manner in accordance with Article 1365 of the Civil Code and forgery of letters based on the Criminal Code.

Keywords: Notary; Acts against the Law; Legal Sanctions.

A. Introduction

In the era of rapid development and economic growth today, Notaries have an increasingly important role in Indonesian society in helping to create certainty and legal protection for the community. The part of this Notary is more preventive or prevents legal problems. This is because the Notary, in carrying out the duties of his position, namely in doing authentic deeds, must have responsibility for the deed he made as a realisation of the wishes of the faceers.¹ and also with regard to the legal status, rights and obligations of a person in law and serves as the most powerful means of evidence and provides tangible assistance to legal settlement in the Court in the event of a dispute over related rights and obligations.²

An authentic deed made by a notary is a perfect proof tool to ensure certainty, order and legal protection for the parties. Fairly and fairly. This is by the position of an independent Notary and does not side with any party. Therefore, the notary deed as a means of evidence can help resolve disputes in front of the court and prevent the parties from a disagreement. Given

¹ Sri Utami, "Perlindungan Hukum Terhadap Notaris Dalam Proses Peradilan Pidana Menurut Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris," *Jurnal Repertorium* 3 (2015): 89.

² Dedy Pramono, "Kekuatan Pembuatan Akta Yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata Di Indonesia," *Lex Jurnalica* 12, no. 3 (2015): 249.



the magnitude of responsibility held by a Notary, the position of Notary is carried out by those who, in addition to having adequate legal knowledge skills, must also be controlled by those who uphold the code of ethics and high character. Notary behaviour that is negligent, undisciplined or violates the implementation of the Notary position can have fatal consequences on the deed he made and for the Notary himself.³

Article 1 number 1 of Law No. 30 of 2014 concerning The Position of Notary, as amended by Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions (UUJN), determines that, "A notary is a general officer authorised to do authentic deeds and has other authorities as intended in the Notary Department Law or other laws". The authority referred to in the understanding of the notary above is regulated in article 15 paragraph (1) of the Law of the Notary Department, which reads:

"The notary is authorized to make an authentic Deed regarding all acts, agreements and determinations required by the laws and regulations and / or desired by the interested to be stated in the authentic Deed, guarantee the certainty of the date of making the Deed, save the Deed, provide grosse, copies and quotations of the Act, all of which as long as the creation of the Deed is not also assigned or excluded to other officials or other persons stipulated by the Law."

Based on the above statement, we can know that, in principle the Notary is the only general official authorized to make authentic deeds, except those that are excluded according to the Law, namely authentic deeds by other general officials concerned.⁴ Notaries as general officials must have a critical nature, have an understanding of the applicable law and be able to provide a proper analysis of every legal and social phenomenon that arises so that it will cause a bold and responsive attitude to every case that he will face later. The bold attitude referred to here is to dare to do the right legal actions in accordance with the prevailing laws and regulations through the deed he made and firmly reject the creation of a deed that is contrary to the law, morals and ethics.⁵ Notaries in carrying out their positions must have broad insights so that they are a solid foothold for the community if they need services in making authentic deeds, besides that honesty, tenacity and objective views are needed so as not to take sides only on one of the parties.⁶

In carrying out the duties of his position, the Notary not only carries out the work mandated by the Law but also, at the same time, carries out an essential social function that is responsible for carrying out the trust given by the general public that it serves. A Notary must adhere to the Notary Department Law and the Notary code of ethics and also be obliged to enforce the Notary code of ethics and have professional behaviour, namely having moral integrity, avoiding something terrible, honest, courtesy, not only based on money considerations and sticking to the professional code of ethics.⁷ where in it is determined all the

³ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Hukum Kenotariatan Buku Kedua, Cet. 3* (Bandung: PT. Citra Aditya Bakti, 2018).

⁴ Alwesius, *Dasar-Dasar Teknik Pembuatan Akta Notaris, Cet. 1* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019).

⁵ Wawan Setiawan, "Sikap Profesionalisme Notaris Dalam Pembuatan Akta Autentik," *Media Notariat* (2004): 25.

⁶ Leovin Ginho, "Analisis Atas Adanya Praktek Notaris Yang Ditetapkan Sebagai Pelanggaran Hukum Di Polresta Medan," *Jurnal Media Neliti*, <https://media.neliti.com/media/publications/164995-ID-analisis-atas-adanya-praktek-Notaris-yan.pdf>.

⁷ Kode Etik Profesi merupakan norma yang ditetapkan dan diterima oleh kelompok profesi, yang mengarahkan atau memberi petunjuk kepada anggotanya bagaimana seharusnya berbuat dan sekaligus menjamin mutu moral profesi itu di mata masyarakat. Kode Etik Profesi merupakan rumusan norma moral manusia yang mengemban

behaviors that must be owned by the Notary.⁸ Notary ethics responsibility is related to moral norms that become a measure for notaries to determine the right or wrong of an action taken in carrying out their profession.⁹

In reality, it turns out that there are still Notaries who abuse the authority and trust carried by him by making the deed not in accordance with the provisions of applicable legislation and even committing Acts Against the Law As can be contained in Decree No. 123 / pdt.g-interven / 2019 / PN.Mks. The ruling basically states that there has been a fraud and falsification of the deed of the General Meeting of Shareholders of limited Liability Companies. That the deeds are made as if there has been a General Meeting of Shareholders, which in fact did not occur and contain the sale and transfer of shares without the deed of transfer of shares, no advance offer of shares sold, or other share transfer carried out without the deed of transfer of shares, out of sync or not in accordance with the previous deed and made by eliminating 2 (two) plots of land that are the company's property.

That defendants in the sale and purchase of shares do not use the deed of transfer of shares, not based on provisions or rules, do not comply with the mechanism of selling shares as stipulated and intended in the Articles of Association of the Company or Law No. 40 of 2007. In Decision No. 123/Pdt.G-Interven/2019/PN.Mks, it finally states the Granting of the plaintiff's lawsuit for the entirety and states that the Defendant committed an Act Against the Law.

Based on this case, there are at least 3 (three) problems that need to be found a solution in this study. First, when the actions of a Notary in his position is an Act Against the Law. Second, whether the Notary has committed acts against the law in accordance with the Decision of the Makassar District Court Number 123 / Pdt.G-Interven / 2019 / PN. MKS. Finally, how the responsibility of the Notary Law for his actions makes a deed that is not in accordance with the prevailing laws and regulations. This issue will be discussed in more detail below.

B. Literature review

Primary legal materials are legal materials that are authoritative, meaning they have authority.¹⁰ Laws and regulations related to the problems presented, namely:

- 1) The Civil Code;
- 2) The Criminal Code;
- 3) Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions.

The court's decision related to the matter is Decree No. 123/Pdt.G-Interven/2019/PN.Mks. Secondary legal materials in the form of all publications about the law that are not official documents that include textbooks, legal dictionaries, legal journals, and comments on court decisions related to notary responsibility for making gms deed that is against the law.

profesi itu dan menjadi tolok ukur perbuatan anggota kelompok profesi. Roesnastiti Prayitno, *ed., Kode Etik Notaris*, Diktat Fakultas Hukum Universitas Indonesia Kenotariatan, (Jakarta: Fakultas Hukum Universitas Indonesia, 2020), hlm 45.

⁸ Abdulkadir Muhammad, *Etika Profesi Hukum, Cet. 3* (Bandung: Citra Aditya Bakti, 2006).

⁹ Ineke Bombing, "Pengawasan Terhadap Pejabat Notaris Dalam Pelanggaran Kode Etik," *Lex Privatum* 2, no. 2015 (3AD): 109.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2010).

C. Research Methods

This research will be prepared using normative juridical research methods to answer the problems formulated above. Normative juridical research method is a legal research method by examining library materials or secondary data as basic materials to be researched by conducting a research on regulations and literature related to the object of the problem.

D. Results and Discussion

1. Unlawful Acts in the Field of Civil Law

An act against the law in the realm of civil law is an act that violates Article 1365 of the Civil Code, which explains that: "Any unlawful act that brings harm to another person, obliges the person who for his wrong resulted in a loss, compensates for the loss". That based on this article then we know that someone who causes others to lose, then that person must bear the loss if the person who feels aggrieved demands to compensate for the loss. In contrast to civil law, an Act Against the Law in the criminal domain is an act that violates the laws and regulations in which the act is carried out outside the power or authority and the act violates general principles in the realm of law.¹¹

Prof. Rosa Agustina stated that acts against the law are a violation of a provision of the Law and cause harm to others.¹² Aris Rahmatdi formulated an Act Against the Law is an act that causes an effect, the consequences of which itself have been governed by the law and considered to be the will of the one who did the deed.¹³ In English the term Unlawful Acts is Tort. Prof. Winfield's defining: "Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damaged". From this definition we can know, that Acts Against the Law are in principle born from the provisions of the legislation, where violations of these provisions can be corrected by an act that repairs the harm caused by the Act Against the Law. From the point of view of Civil Law, Acts Against the Law generally concern the actions of a person individually against others. Although, there can also be the actions of an official in his position against someone personally or against a group of members of the public. Furthermore, Prof. Rosa Agustina explained that an Act Against the Law contains 4 (four) criteria, namely:¹⁴

- a) Contrary to the legal obligations of the perpetrator
- b) Violating the subjective rights of others
- c) Violating the rules of moral order
- d) Conflict with the principle of propriety, thoroughness and careful attitude that a person should have in association with the citizens of society or towards others.

Other legal experts state that the elements that must be fulfilled to be called Unlawful Acts are:¹⁵

¹¹ Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53.

¹² Rosa Agustina; et.al, "Hukum Perikatan (Law of Obligations)" (Pustaka Larasan, 2012), last modified 2012, <http://herlindahpetir.lecture.ub.ac.id/files/2013/04/hukum-perikatan-contract-tort-law.pdf>.

¹³ Aris Rahmatdi, "Gugatan Perdata Perbuatan Melawan Hukum Dalam Perselisihan Partai Golongan Karya," *Jurnal Yudisial* 14, no. 1 (2021): 84.

¹⁴ Rosa Agustina, *Perbuatan Melawan Hukum, Cet. 1* (Jakarta: Program Pasca Sarjana Fakultas Hukum Universitas Indonesia, 2003).

¹⁵ Rini Dameria; et.al, "Perbuatan Melawan Hukum Dalam Tindakan Medis Dan Penyelesaiannya Di Mahkamah Agung (Studi Kasus Perkara Putusan Mahkamah Agung Nomor 352/PK/PDT/2010)," *Dipenogoro Law Journal* 6, no. 1 (2017): 5-6.

- a) There is an Act Against the Law. Acts against the Law can occur because they violate a pearturan or violate the rights of others.
- b) There is an error. Mistakes here can be intentional acts and can also be negligence or lack of caution.
- c) There is a cause and effect relationship between action and loss. In order for someone to be blamed for committing an Unlawful Act, there must be a causal relationship between one's actions and the consequences that arise.
- d) There is a loss. Actions that violate the law must cause excitement from the other party. This kerugian can consist of material losses as well as immateril losses.

Furthermore, Article 1868 of the Civil Code states that "an authentic deed is a deed made in a form determined by law by or before a general official authorised for it at the place where the deed was done". From this formulation, we know that procedures, formats, and conditions have regulated an authentic deed. If it is not by the authenticity, the deed can be invalid and non-binding.

2. Unlawful Acts Under the Notary Department Law

Acts Against the Law that Notaries do, in addition to violating the provisions of civil law, can also conflict with the Law of the notary Department as stipulated in Law No. 30 of 2004, as amended by Law No. 2 of 2014 concerning Notary Positions (UUJN). The Notary Department Law has regulated very detailed procedures and formats of an authentic deed. The Notary Department Law has also clearly held the authority, rights, obligations, obligations and sanctions for a Notary in carrying out his position.

Article 15 (1) of Law No. 2 of 2014 states that: Notaries are authorized to make authentic Deeds regarding all acts, agreements, and determinations required by laws and regulations and/or as desired by the interested to be stated in the authentic Deed, guaranteeing the certainty of the date of making the Deed, saving the Deed, providing grosse, copies and quotations of the Deed, all of which as long as the making of the Deed is not also assigned or excluded to other officials or persons. Others stipulated by law.

Authentic deeds made by notaries are the strongest evidence tools that have an important role in every legal relationship in people's lives. An authentic deed can clearly determine the rights and obligations of the parties bound by the deed, thus ensuring legal certainty and can make a real contribution to the settlement of cases.¹⁶ Authentic deeds made by notaries are valued as the most perfect evidence before the law civilly and criminally and materially and formil.

Furthermore, Article 15 paragraph 2 of UUJN in principle states that notaries in addition to having authority as mentioned in Article 15 paragraph 1, also have other authorities including, certifying signatures and establishing certainty of the date of the letter under hand by registering in a special book, posting a letter under hand by registering in a special book, making a Deed related to land, and others and various other authorities granted by other applicable regulations.

With this enormous and important authority, a Notary in carrying out the mandate of the position he received is obliged to maintain the mandate as well as possible, always act honestly, carefully or thoroughly, independently, independently or impartially or biased, and maintain the interests of the parties involved in the act of law so that it will not complicate and harm the parties in the deed made.

¹⁶ Nurman Rizal, "Implementasi UUJN Kaitannya Dengan Pengawasan" (Universitas Andalas, 2021).

In relation to legal actions in the making of deed carried out by the Notary shall protect the legal interests of other parties interested in the issuance of the deed. Legal protection is the right of every person, not least whether the person is rich or poor and someone whose rights are violated by others and get a loss, has the right to file a lawsuit against the person who violates his or her rights. The basic principles that have been formulated in this UUJN are very important to be understood and strictly adhered to by every Notary. Do not let because of the intense competition between notaries at this time or to maintain the client to continue to use his services or to get an adequate *fee*, the principles or values that must be the handle of each of these Notaries are violated.

Furthermore, Articles 38 to Article 40 regulate the form of the deed, starting from the beginning of the deed, the body of the deed, the cover. The notary in his position to draft, read and sign the deed must meet the requirements in accordance with the provisions of the Notary Department Law, namely the deed must be made in the form specified by the Law, must be made by or in front of a public official, and the general official by or before whom the deed is made must have the authority to make the deed. Then it is also clearly arranged who can face the notary. In essence, the faceer must be a person who is capable of doing legal acts. In carrying out the creation of an authentic deed, the provisions in the laws and regulations state that some groups of people are declared incapable or not authorized to commit a legal act. Similarly, some legal actions, only valid when done in a certain form.

The general provision containing the restriction of a person's freedom of action is stipulated in Article 1335 of the Civil Code which states: "An agreement without cause or which has been made for a false or forbidden cause has no power".

All transactions made and made deed must be supported by valid evidence and documents. Furthermore, Article 40 UUJN basically states that in every tampering of the authentic deed must be witnessed by 2 (two) witnesses who are not in law, understand the language used and are people who are not prohibited from being witnesses either because of blood relations with notaries and with the parties. In order for the authority, rights, obligations and prohibitions stipulated in the UUJN to be obeyed by the Notary, the supervision of the Notary is carried out by the Minister in charge of Law and Human Rights. In carrying out this supervision, the Minister formed a Notary Central Supervisory Assembly, a Regional Supervisory Assembly domiciled at the Provincial level and a Regional Supervisory Assembly domiciled in regencies / cities. The Central, Regional and Regional Supervisory Assembly consists of 9 members consisting of 3 people representing the government, 3 people representing Notaries and 3 people representing experts or academics. This Supervisory Board is tieredly authorized to receive reports of the community and examine violations of the code of ethics committed by the Notary in carrying out his position.

3. Unlawful Acts by Notaries Under Criminal Law

One of the notary's authorities is to make authentic deeds. This authentic deed is very important and has a strong evidentiary power. In other words, anything stated in an authentic deed of assumption is true. However, in all positions are not exception in this case notaries because one reason or another notary commits acts against the law that are contrary to the criminal law. There are various definitions of what a criminal law is. On a good occasion this will be conveyed the opinions of some legal experts. Soedarto stated that the criminal law is:¹⁷ "contains the rules of law that bind to certain conditions of action a result that is criminal."

¹⁷ Amir Ilyas; Andi Maulana Mustamin, *Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan* (Yogyakarta: Mahakarya Rangkang Offset, 2012).

Van Hamel stated that criminal law is a public law because the enforcement of criminal law is in the hands of the government.¹⁸ Another scholar Simon explained that criminal law as a public law that regulates an individual's relationship with society and is enforced arbitrarily for the benefit of society.¹⁹ Satochid Kartanegara basically states that criminal law is the prevailing regulations containing prohibitions and obligations that are part of positive laws containing prohibitions and necessities imposed by the state.²⁰ Prof. Moelyatno in principle formulated the Criminal Law as part of state law, acts that are prohibited and threatened with criminality, when and under the conditions of how the perpetrator can be criminally charged and how the criminal imposition is applied.²¹

Broadly speaking, criminal law can be divided into 2 (two) namely, Materil Criminal Law and Formil Criminal Law. The Materil Criminal Law is the law governing the prohibition and criminal threat to those who violate the prohibition. While the Formil Criminal Law or Criminal Event Law is the law that regulates how the Materil Criminal Law is established. On this occasion, we will discuss briefly about the Material Criminal Law stipulated in the Criminal Code and its relation to the Unlawful Acts committed by the Notary in carrying out his position. According to the provisions of the Criminal Law, a person will be subject to criminal sanctions if the person has committed an act or action that meets all elements of the delik or criminal offense charged against him. Criminal Acts is a translation of '*starfbaar feit*'. Simons formulated a criminal act or criminal event as an act that violates the criminal law, against the law committed by someone who can be blamed and accounted for.²² Other Dutch jurists formulated criminal acts as human acts regulated by law, against the law, which can be convicted and blamed on the perpetrators.²³

From the definition of the criminal act we can know that a criminal offense contains Acts Against the Law. There are various meanings of going against the law including without rights, contrary to the rights of others, contrary to objective law.²⁴ Pompe said that going against the law is against the law, not with the law.²⁵ From that definition, we can know that Pompe interprets against the law as against the material law. While against the law as contrary to the law as against the law formil. In the articles of the Criminal Code, the word against the law is sometimes written or is part of a criminal act. This means going against the law formil. But there are also articles in the Criminal Code that do not include the word against the law. This does not mean that the actions formulated in the article do not violate the law. But in this case, it is against the law in a material sense.

If we analyze the act of notaries making an Authentic Deed based on facts that are not true, among others, based on the fact that there is no GMS, then the act meets the provisions of

¹⁸ E. Utrecht, *Rangkaian Sari Kuliah, Hukum Pidana I Suatu Pengantar Hukum Pidana Untuk Tingkat Pelajaran Sarjana Muda Hukum Suatu Pembahasan Pelajaran Umum* (Surabaya: Pustaka Tinta Mas, 2000).

¹⁹ E. Utrecht, *Rangkaian Sari Kuliah, Hukum Pidana I Suatu Pengantar Hukum Pidana Untuk Tingkat Pelajaran Sarjana Muda Hukum Suatu Pembahasan Pelajaran Umum*.

²⁰ Amir Ilyas; Andi Maulana Mustamin, *Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan.*, h. 4

²¹ Moelyatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008).

²² Amir Ilyas; Andi Maulana Mustamin, *Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan.*

²³ Amir Ilyas; Andi Maulana Mustamin, *Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan.*, h. 20

²⁴ Amir Ilyas; Andi Maulana Mustamin, *Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan.*, h. 139-140

Articles 263, 264 and Article 266. Article 263 of the Criminal Code. Article 263 of the Criminal Code regarding the falsification of letters as follows:

"Anyone who makes a fake letter or falsifies a letter that may give rise to a right, engagement or debt relief, or that is intended as evidence of something with the intention to use or have others use the letter as if the contents are true and not falsified, is threatened if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years. Threatened with the same criminal, anyone who deliberately uses a fake letter or forged as if true, if the use of the letter can cause harm".

While Article 264 paragraph (1) of the Criminal Code regulates the falsification of letters that are strengthened because it is carried out as follows:

"Mail forgery is punishable by imprisonment for a **maximum of 8 (eight years)**, if done against:

- a) authentic deeds;
- b) debt or debt certificate from a country or part thereof or from a public institution;
- c) sero letter or debt or certificate of sero or debt and an association, foundation, company or airline;
- d) talon, a proof of dividend or interest from one of the letters described in 2 and 3, or a sign of evidence issued in lieu of those letters;
- e) a letter of credit or trade letter intended for circulation."

4. Analysis of Unlawful Acts by a Notary in accordance with the Makassar District Court Decision Number 123/Pdt.G-Interven/2019/PN.MKS

Briefly, cases involving 2 (two) Notaries who are suspected of committing acts against the law are as follows. The summary of this case as much as possible is summarized and contains the things that are indicted with the two Notaries of the Defendant. The plaintiff is the Commissioner as well as the Owner of 25 (twenty-five) Shares (25%) or amounting to Rp. 2,500,000, - (two million five hundred thousand Rupiah) based on the Deed of The Company of PT. Mustika Mulia Abadi. PT. Mustika Mulia Abadi (Defendant IX) is a Company whose shareholders are only 2 (two) people, namely Plaintiff who is also a Commissioner and Defendant I (alm. Husein Lewa) who is also the Director.²⁶

On November 25, 2008, Defendant I (alm. Husein Lewa) and Defendant II, Defendant III, Defendant IV, Defendant V, and Defendant VI made a Deed of Statement of Decision of the General Meeting of the Shareholders of PT. Mustika Mulia Abadi, Number: 40, dated November 25, 2008, was made before Defendant VII Notary Frederik Taka Waron, SH. This deed is done without any summons, notice, or invitation to the plaintiff as a shareholder. This deed is also done as if there were a General Meeting of Holders, which is in reality. Stocks when in fact they don't exist. The deed also contains the sale of shares without a deed of transfer of shares and no offer to the Plaintiff, which has priority rights according to Anggarad Dasar Company. This deed also resulted in the loss of 2 (two) plots of land that are the company's assets.

Furthermore, based on deed no. 40 dated November 25, 2008, made before Defendant VII Convention / Defendant intervention VIII Notary Frederik Taka Waron, SH. The derivative deed is made, namely the Deed of Statement of Meeting Decision of PT. Mustika Mulia Abadi Cipta Number: 16, dated November 26, 2010 made by and before Defendant VIII Convention / Defendant intervention IX Notary Ellen Rumambi, SH., MKn; □ Deed of Statement of Meeting Decision of PT. Mustika Mulia Abadi Cipta Number: 11, dated August 10, 2011. The Panel of

²⁶ *Putusan Pengadilan Negeri Makassar Nomor 123/Pdt.G-Interven/2019/PN.MKS, n.d., h. 1*

Judges in its consideration stated that because of the Board of Directors and Commissioners of PT. Mustika Mulia Abadi as in a deed Number 40 dated November 25, 2008, concerning The Statement of The Meeting Decision of PT. Mustika Mulia Abadi cannot prove the existence of a Summons of The General Meeting of Shareholders (referred to as RUPS) to Plaintiff as the holder of 25% of PT. Mustika Mulia Abadi, so according to the Panel of Judges the GMS is contrary to Law No.40 of 2007. The Panel of Judges also argued that because the transfer of shares was carried out not in accordance with the provisions of the Company's Articles of Association and Law No. 40 of 2007 which requires shareholders who will sell their shares must submit a written application to the GMS.²⁷

Based on the considerations, among others, as outlined earlier, the Panel of Judges in this case decided in essence, among others, to declare the Deed of Statement of Decision of the General Meeting of Shareholders of PT. Mustika Mulia Abadi, Number: 40, Dated November 25, 2008, made by and before Notary Frederik Taka Waron, S.H., (Defendant VII), is an Act Against the Law, is invalid and Has No Binding Legal Force. The Panel of Judges also Declares the Deeds made based on or after the Deed of Statement of Decision of the General Meeting of Shareholders of PT. Mustika Mulia Abadi, Number: 40, dated November 25, 2008, which was made before notary Frederik Taka Waron, S.H., in casu Defendant VII, namely: Deed of Statement of Decision of the Meeting of PT. Mustika Mulia Abadi Number 16, dated November 26, 2010 and Deed of Statement of Decision of the Meeting of PT. Mustika Mulia Abadi Cipta No. 11 dated August 10, 2011 made by and before those made by and before Defendant VIII Notary Ellen Rumambi, SH., MKn. is an Act Against the Law is invalid and Has No Binding Legal Force.²⁸

If we analyse the sitting of the case, the consideration of the Panel of Judges and the Decision of the Panel of Judges, then we can know that the notary conversation with Mr. frederik Taka Waron, SH., when making and issuing a Deed of Statement of Decision of the General Meeting of Shareholders of PT. Mustika Mulia Abadi, Number: 40, dated November 25, 2008, and the actions of Notary Ellen Rumambi, SH., MKn. In creating and publishing a Deed of Statement of Decision of the Meeting of PT. Mustika Mulia Abadi Number 16, dated November 26, 2010, and Deed of Statement of Decision of the Meeting of PT. Mustika Mulia Abadi Cipta No. 11, dated August 10, 2011, contrary to laws and regulations, primarily based on Civil Law, UUJN and Criminal Law.

In this case, it is known that the two Notaries have committed acts against the Law so that on the basis of Article 1335 of the Civil Code the deed made by the Notaries is invalid and has no legal force. Acts Against the Law or (*onrechtmatigedaad*) are regulated in article 1365 of the Civil Code, which states: "Any unlawful act that brings harm to another person, requires the person who for his wrong cause harm, compensates for the loss."

In relation to the element of including false statements in the deed in accordance with the case in the decision No.123/Pdt.G-Interven/2019/Pn. Mks, then the deeds are null and void, which means that the law considers there has never been an agreement or void by itself without having a lawsuit. Things are restored as they were before an agreement. The notary, in this case, has also violated UUJN because by falsifying the Authentic Deed he made then, based on Article 16 paragraph (1) b of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions, it is stated that notaries in carrying out their duties are obliged to do deed in the form of deed minuta and keep it as part of the Notary Protocol. This obligation is intended to maintain the authenticity of a deed by storing the deed in its original form, so that

²⁷ Putusan Pengadilan Negeri Makassar Nomor 123/Pdt.G-Interven/2019/PN.MKS.

²⁸ Putusan Pengadilan Negeri Makassar Nomor 123/Pdt.G-Interven/2019/PN.MKS., h. 122.

if there is a grosse forgery or misuse, a copy, or citation can be immediately known easily by matching it with the original. If the Notary violates these obligations, then it is an Act against the Law and can be imposed sankso in accordance with UUJN.

Furthermore, the actions and actions of the Notary falsifying authentic deeds can also be qualified as criminal acts in accordance with articles 263, 264 of the Criminal Code. Based on the provisions of Article 263 of the Criminal Code regarding the falsification of letters as follows:

"Anyone who makes a fake letter or falsifies a letter that may give rise to a right, engagement or debt relief, or that is intended as evidence of something with the intention to use or have someone else use the letter as if the contents are true and not falsified, is threatened if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years."

"Threatened with the same criminal, anyone who is willing to use a fake letter or falsified as if true, if the use of the letter can cause harm."

If we analyze the provisions of Article 263 of this Criminal Code, then the act of notary who makes an authentic deed containing things that are not true where salah-if there is a GMS when there is no GMS, and the act harms other parties in this case plaintiff. The actions of these Two Notaries by entering incorrect data as if the contents are true, where the deed is based as if it has been implemented gms, even though there is no GMS referred to the authentic deed they make, is clearly an act against the law according to criminal law. Plaintiff has clearly been harmed because Plaintiff who has a priority right to stock that is owned by other shareholders has lost the right, as well as Plaintiff is harmed by the reduction of company assets as much as 2 (two) plots of land.

5. Notary Responsibility for Deed Made Not In Accordance With Laws and Regulations

In accordance with the discussion in the previous section, the discussion in this section will also be limited to liability based on Civil Law, Notary Department Law, and Criminal Law. Active is notary to do actions that cause harm to other parties. While passive, notaries do not do not do actions that are mandatory, so the other party suffers losses. So there is an element of error related to going against the law and the loss borne by others. As a result of unlawful acts committed by notaries in making authentic deeds arises the existence of accountability that must be borne by the Notary. Civilly, the judge will involve a Notary to seek the truth of the formil in the deed.

Sanctions that can be given to notaries for illegal acts are civil sanctions. This sanction is in the form of reimbursement of costs, damages, or interest based on a legal relationship between the Notary and the parties facing the Notary and if there are parties who directly suffer losses from a deed, then the party has the right to civilly sue the Notary.²⁹ In addition to being able to be held accountable civilly, a Notary who in order to carry out his position is not in accordance with the procedures, formats and other requirements that in this case have been regulated in detail in the UUJN, then the Notary can be subject to sanctions as stipulated in some articles of UUJN. Sanctions for violations of the provisions in the UUJN are regulated in several articles in accordance with the violations committed. In the case of Notaries make authentic deeds based on untrue facts.

Article 9 (1) c, which regulates notaries, is temporarily dismissed from office for committing despicable acts. The notary may also be subject to sanctions based on the provisions of Article 16 paragraph (11) in the form of a written warning; a temporary stop or a

²⁹ Aprilia Putri Suhardini; Sukarmi, "Pertanggungjawaban Notaris Yang Melakukan Perbuatan Melawan Hukum Dalam Pembuatan Akta Autentik," *Jurnal Akta* 5, no. 1 (2020): 269.

respectful dismissal; or dismissal with disrespect for having committed an act of distrust, dishonesty, not careful, not independent, impartial, and not guarding the interests of the parties concerned in the legal actions committed by the Notary. In this case, it can be said that the Notary has committed serious violations in the form of committing despicable, dishonest, independent, untrustworthy and not protecting and even harming the interests of parties related to the Authentic Deed he made. Therefore, it can be sanctioned in the form of dismissal with disrespect from office by the Minister of Law and Human Rights at the proposal of the Central Supervisory Assembly.³⁰

As explained in the previous section, a criminal offense is an act that violates the criminal law against the law committed by a person and can be blamed and accounted for. In other words, not all perpetrators of criminal acts can be accused and accounted for when the perpetrator has a policy of disclosure, such as self-defence carrying out legal orders, or has a forgiving policy such as overmach, the implementation of office orders.

If we analyze the actions of the Notary in this case, then because the Notary has made a deed based on facts that are not true, then they can be held accountable for falsifying letters based on the authenticity of Article 263 of the Criminal Code which is threatened with imprisonment for a maximum of 6 (six) years. The perpetrator's actions in this case regarding authentic deeds, then based on the provisions of Article 264 of the Criminal Code paragraph (1) a, subject to the basis of ballast so that it can be threatened with a maximum of 8 (eight) years. Furthermore, Psal 266 KUHP also threatens with imprisonment for a maximum of 7 (seven) years to those who tell to enter false statements into authentic deeds.

E. Conclusion

Notaries have the authority to make authentic deeds. As a general official, the Notary in carrying out his duties and authority must be aware of his responsibility for the deed he made, so that it will not cause harm either to the parties concerned or to the Notary. Notaries in the making of the Deed must be in accordance with the provisions of the applicable laws and regulations both regarding the manufacturing process, as well as the substance. In the event that the Notary makes the Deed not in accordance with the provisions of applicable laws and regulations or made by Unlawful, then the Authentic Deed made by the Notary is invalid and has no binding legal force.

For his actions, the Notary can be held accountable both under the Notary Department Law, where the Notary can be sanctioned ranging from the lightest in the form of a written reprimand to the toughest dismissal with disrespect. The notary can also be held accountable by civil law based on the authenticity of Article 1365 of the Civil Code, where the Notary can be subject to compensation and fines. Furthermore, the Notary can also be held criminally responsible by being sentenced to prison in accordance with the provisions of Articles 263, 264, 266 of the Criminal Code.

³⁰ Abi Jam'an Kurnia, "Jerat Hukum Bagi Notaris Yang Memalsukan Akta Autentik," *Hukum Online*, last modified 2019, <https://www.hukumonline.com/klinik/detail/ulasan/lt5c5a568ab332f/jerat-hukum-bagi-Notaris-yang-memalsukan-akta-autentik/>.

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