



Relevance of the Principle of Precaution in the Preparation of the Deed of Statement of Decisions of the Extraordinary General Meeting of Shareholders (Egms) of Pt Nissihinkan Indonesia (Case Study) Decision Court Tall Banten Number: 74/Pdt/2021/Pt. Btn)

Noviantika Melati Sukma¹, Widodo Tresni Novianto^{2*}, Hari Purwadi³
Universitas Sebelas Maret

Corresponding Author: Noviantika: noviantikamelati21@student.uns.ac.id

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ABSTRACT

A notary is a public official authorized by the Ministry of Law and Human Rights. One of their responsibilities includes creating a Statement of Meeting Resolutions (PKR) based on the Extraordinary General Meeting of Shareholders (EGMS). This research examines the importance of a notary's adherence to the principle of prudence when drafting a PKR Deed based on fabricated meeting minutes, using Decision Number 74/PDT/2021/PT.BTN as a case study. The research employs a normative legal approach with a case study focus. The findings indicate that Lusi Indriani, SH, M.Kn, as a notary, violated procedural rules by failing to apply the principle of prudence. Consequently, the PKR deed number 01 she issued was deemed legally defective and annulled, along with its associated documents, resulting in Lusi receiving a written warning as a penalty.

INTRODUCTION

A notary is a public official with a significant role in the legal field. According to Article 1, number 1 of Law Number 2 of 2014, which amends Law Number 30 of 2004 regarding the Position of Notary (referred to as UUJN), a notary is defined as a public official authorized to create authentic deeds and possesses other powers as outlined in this law or other regulations. One type of authentic deed that a notary can create is the Deed of Statement of Meeting Decisions, which is based on the minutes from a private meeting. The notary's role is to document and express the intentions of the parties in the deed. In this capacity, the notary is only accountable for the formal legality of the deed and ensures legal certainty for the public.

As a public official who is authorized to make authentic deeds, Notaries often act carelessly, resulting in legal problems, both in the realm of criminal law and civil law. This is because the parties who make authentic deeds provide false documents or provide false information to the notary, thus giving rise to legal problems regarding the authentic deeds they make.¹

The Principle of Prudence, as a fundamental guideline, must be applied by Notaries in carrying out their professional duties and obligations. This is done to protect the interests of the public who trust Notaries. The purpose of this principle is to ensure that Notaries always follow established procedures. To maintain public trust in the Notary profession.

The authority and responsibility of a notary in making a deed of minutes of a GMS cannot be separated from challenges and potential legal disputes. One of the problems that often arises is a lawsuit from a director who was dismissed from his position by a GMS and the dismissal was considered detrimental by the person concerned and considered that the deed made by the notary contained an unlawful act ². The GMS was only attended by 1 (one) shareholder who owned 44% (forty-four percent) of shares in the company, which was then made a private minute of the implementation of the GMS which was then stated in the Deed of Statement of Decisions of the General Meeting of Shareholders made by a notary and upon the making of the deed, a Letter of Acceptance of Notification of Changes to the Company's Data was issued. Thus, the composition of the new members of the Company's Board of Directors has been recorded in the company register³

That a Notarial deed must provide certainty of an event and facts explained by the parties appearing in accordance with the procedures determined in making the deed. However, in reality there are still Notaries who are not careful in making authentic deeds, which causes losses to the community. As in Decision Number 74/PDT/2021/PT.BTN which in essence states that Notary Lusi Indriani, SH, M.Kn. was proven to be careless and not

careful in making the Deed of Statement of Meeting Decisions of PT Nisshinkan Indonesia Number 01 Dated October 5, 2015. The Deed of Statement of Meeting Decisions was made based on a fictitious Extraordinary General Meeting of Shareholders or a Meeting that did not actually take place. The Notary's carelessness lies when Notary Lusi Indriani, SH, M.Kn. did not examine or check the Minutes of the Extraordinary General Meeting of Shareholders (EGMS) given to the Notary, did not check the identity of the shareholders, did not ask about the meeting invitation and the attendance list at the EGMS, so that the Deed made by Notary Lusi Indriani, SH, M.Kn. was declared Legally Defective.

Based on the background context that has been explained, the Author has the opportunity to formulate the problem, namely How Relevant is the Implementation of the Prudential Principle by Notaries in Making Deeds of Meeting Decision Statements Based on Extraordinary General Meetings of Shareholders (Study of Banten High Court Decision Number: 74/PDT/2021/PT. BTN)?

This study aims to examine the legal consequences that arise for Notaries who ignore the Principle of Prudence in the process of making Deeds. Referring to the issues that have been presented, this study aims to reveal and analyze the challenges faced by Notaries related to maintaining confidentiality in their profession, as well as assessing how the Principle of Prudence is applied by Notaries in an effort to ensure its adequate implementation. The research conducted is based on the normative method, which involves analysis of secondary data or library materials. This approach examines regulations and scientific literature related to the legal issue being examined. In addition, the Conceptual Approach is also applied, which requires researchers to understand the various views and doctrines that exist in the legal discipline. In the context of normative law, this study examines legal documents and doctrines to identify approaches to certain issues. Observations are made on the practices of Notaries in preparing Deeds, assessing whether they have complied with the Principle of Prudence to prevent losses.

In order to compile this research, the data collection used comes from several types of research data as follows:

- a) Primary legal materials, which include literature studies covering legislation and related documents that are relevant to the research process.
- b) Secondary legal materials, which involve data mining through explanations related to primary legal materials.

DISCUSSION

Relevance of the Prudential Principle in Making the Deed of Statement of Decisions of the Extraordinary General Meeting of Shareholders (EGMS) of PT Nissihinkan Indonesia

A notary is a public official empowered to create authentic documents. The creation of these authentic documents is mandated by laws and regulations to ensure certainty, order, and legal protection. Article 1868 of the Civil Code defines Authentic Deeds, outlining the elements included in this article as follows::

1. That the deed was made and formalized in a legal form;
2. That the deed was made by or before a public official;
3. That the deed was made before someone authorized to make it at the place where it was made.

A deed serves a formal purpose (*formalitatis causa*), meaning that it is necessary for the completeness or perfection (not validity) of a legal act. In this context, a deed is a formal requirement for a legal act to exist. Besides its formal role, a deed also functions as evidence (*probationis causa*), as it is created with the intention of serving as proof in the future. Authentic deeds, which provide the strongest and most comprehensive evidence, play a crucial role in legal relationships within society. An authentic deed clearly outlines rights and obligations, ensuring legal certainty and helping to prevent disputes. The notary's role is to document what the parties explain in the deed; they do not have the authority to alter, reduce, or add to the information provided. This passive role is not entirely rigid but allows for some flexibility: i) generally, the notary is not responsible for verifying the accuracy of the information given by the parties; ii) however, if the information conflicts with legal regulations, public order, or morality, the notary must refuse to create the requested deed.

The high volume of Notaries has intensified competition among them, leading to a decrease in their diligence in performing their duties. Many Notaries do not prioritize thorough identity verification during in-person meetings. Clients seeking notary services are typically required to present their original Identity Card (KTP) and provide a photocopy. However, some Notaries accept only scanned copies of the ID without requiring the original to be shown.

Notaries who fail to make an effort to provide formal or material evidence as a foundation for creating a deed are considered to have acted negligently. Adhering to the principle of care is a requirement for notaries, as outlined in Article 16, paragraph (1), letter a of the Notary Law, which states that "a Notary is obliged to act carefully in carrying out his position." In this context, "carefully" refers to being diligent, precise, and attentive.

The principle of prudence dictates that notaries must exercise caution in their roles to safeguard the interests of the public who rely on them. The aim of applying this principle is to ensure that notaries consistently operate correctly.

By upholding the principle of prudence, it is expected that public confidence in notaries will remain strong, encouraging the community to seek out notary services without hesitation. It is essential that all actions are taken and prepared with thorough consideration.

According to Law Number 2 of 2014 regarding the Position of Notary (UUJN), one of the responsibilities of a Notary is to create and prepare authentic deeds. The Notary's authority to draft a Meeting Decision Statement (PKR) as a public official is outlined in Article 15 of Law Number 1 of 2014, in conjunction with Law Number 40 of 2007 on Limited Liability Companies. This indicates that a Notary's authority is derived from specific legal provisions, as their role in creating authentic deeds also contributes to the validation of legal entities and amendments to a company's articles of association. The Notary's authority and obligations in preparing a Deed of Meeting Decision for the General Meeting of Shareholders (GMS) of a company are

1. Guarantee the certainty of the date and signature of the deed he made,
2. The person appearing must be actually present before the notary,
3. Reading the contents of the deed,
4. Signing of the deed on the day and date as stated in the deed,
5. Signing of the deed within the notary's jurisdiction,
6. Keeping the minutes of the deed,
7. Provide a copy of the deed ,
8. Record every deed made in a register of deeds
9. Sending a copy of the deed book to the Regional Notary Supervisory Board

Notaries are solely responsible for the formal aspects of the Statement of Meeting Decision (PKR) deed, and their role is merely procedural. They cannot be held liable for the validity of the agreement's content or its legal implications; that responsibility lies entirely with the parties involved in the agreement. However, if a Notary acts intentionally or negligently in their duties, it may affect the authenticity of the deed and potentially result in losses for the parties.

In Decision Number 74/PDT/2021/PT.BTN which in essence states that Notary Lusi Indriani, SH, M.Kn. was proven to be careless and not thorough in making the Deed of Statement of Meeting Decisions of PT Nisshinkan Indonesia Number 01 Dated October 5, 2015.

Facts of the Case of Decision Number 74/PDT/2021/PT.BTN

On October 5, 2015, Romeo Ura met with Notary Lusi Indriani, SH, M.Kn (the Defendant) and recounted that on September 29, 2015, he, as the President Director, conducted an Extraordinary General Meeting of Shareholders (EGMS) that he claimed was attended by all company shareholders. The agenda included seeking shareholder approval for the sale of company assets. The Minutes of the Meeting indicated that the shareholders approved this sale and designated Romeo Ura to represent the company in the transaction. They also authorized

him to meet with Notary Lusi Indriani to create a Notarial Deed regarding the Meeting Decisions based on the (fictitious) Minutes prepared by Romeo Ura. Subsequently, Notary Lusi Indriani created Notarial Deed Number 01 on October 5, 2015, documenting the Meeting Decisions. However, the Deed of Meeting Decisions for PT. Nisshinkan Indonesia, Number 01 dated October 5, 2015, prepared by Lusi Indriani, SH, M.Kn, is legally flawed and contains false information derived from the fictitious Minutes of the EGMS created by Romeo Ura on September 29, 2015. In reality, the shareholders of PT. Nisshinkan Indonesia—Katsumi Ono, Yutaka Ono, and Fumi Ono—were never invited, attended, approved, or signed the Minutes of the EGMS. They are Japanese citizens and were not in Indonesia on that date, as evidenced by their passports with immigration stamps. PT. Nisshinkan Indonesia has recently learned of Romeo Ura's death, confirmed by the management of Neighborhood Association 004 and Citizens Association 04 in Balekambang Condet, East Jakarta, at his last known address. The actions of the Notary have been examined by the Tangerang

City Regional Notary Supervisory Board, which escalated the matter to the provincial level, specifically the Banten Province Notary Supervisory Board. Following two hearings conducted by the Banten Province MPWN, on February 27, 2020, the PLAINTIFF attended the hearing for the DEFENDANT's case decision and received a copy of the Banten Province Notary Supervisory Board's decision Number 01/PTS/Mj.PWN Prov. Banten/II/2020 dated February 27, 2020, which included the following verdict:Based on the above considerations, the Banten Province Regional Audit Board decided:

1. Declaring that the Reporter in this case will be examined and decided with the Reported Party present.
2. Declaring that the Banten Province Notary Regional Examination Board has the authority to examine and decide on the report submitted by the Reporter against the Reported Party in this case.
3. Declaring that the Reporter has legal standing to file a report against the Reported Party in this case.
4. Declaring the Reporter's report has been received.
5. Declaring that the Reported Party has been proven to have violated the Notary Code of Ethics and the implementation of the Notary Office as regulated in Article 16 paragraph (1) letter a of Law Number 30 of 2004 concerning the Notary Office as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning the Notary Office.
6. Imposing sanctions on the Reported Party in the form of a Written Warning;

Judge's Consideration

In its deliberation, the Judge noted that the Defendant, acting as a Notary, had engaged in an illegal act by creating a deed for the Statement of Meeting Resolutions of PT. Nisshinkan Indonesia Number 01, dated October 5, 2015, which was based on a fictitious Extraordinary General Meeting of Shareholders

(EGMS) held on September 29, 2015, thereby causing harm to the Plaintiff. The Panel of Judges also took into account that the Examination Panel's minutes indicated that the Defendant/Notary, as a public official responsible for drafting authentic deeds, had been careless and negligent in preparing deed number 1, for the following reasons: Not checking the identity of shareholders as in the company's EGMS, considering that the company's shareholders are foreign nationals.

1. Not checking/asking for meeting invitations;
2. Not checking/asking for the list of attendees of invited meeting participants - related to quorum;
3. Not asking for the initials on the minutes of the EGMS which were only initialed by Romeo Ura, while there were 4 (four) people who signed them;

In the verdict, the panel of judges decided:

1. Granting the Plaintiff's claim in part;
2. Declaring that the Defendant has committed an Unlawful Act;
3. Declare null and void by law and has no binding legal force Deed No. 01 dated 05-10-2015 concerning the Statement of Meeting Decisions of PT. Nisshinkan Indonesia, made by LUSI INDRIANI, SH., MKn., Notary in South Tangerang, along with its derivative deeds;
4. Declaring that the land and building object with an area of 1,072 m², based on the HGB Certificate Number: 7/Balekambang located at Jalan Condet Raya No. 11 RT.04/RW.04, Balekambang sub-district, Kramat Jati District, East Jakarta, belongs to the PLAINTIFF and is currently still under the control of the Plaintiff;
5. Punish anyone who holds and/or controls Deed No. 01 dated 05-10-2015 made by Notary Lusi Indriyani, SH., MKn., and/or other derivative deeds or letters not to use it for any purpose related to the land and building object with an area of 1,072 m², located at Jalan Condet Raya No. 11 RT.04/RW, Balekambang sub-district, Kramat Jati District, East Jakarta, and return it to the Plaintiff (PT. Nisshinkan Indonesia) as its rightful owner, as in its original condition before the legal act that resulted in the transfer of the land object;
6. Reject the Plaintiff's claim for other than and beyond;
7. Ordering the Respondent to pay the court costs at both levels of court, which at the appeal level is set at Rp. 150,000.00 (one hundred and fifty thousand Rupiah);

According to the Decision, it is crucial for Notaries to review each deed they create. During the deed-making process, they should apply the principle of caution more diligently and act with good intentions to ensure the authenticity of the deeds while adhering to relevant legal standards, morals, and ethics. Implementing the principle of caution is particularly important in minimizing unlawful actions by notaries and encouraging them to be more vigilant, as they

play a key role in preventing criminal activities. The author believes that the judge's ruling meets the criteria for a sound decision and emphasizes that Notaries must consistently apply the principle of caution when creating authentic deeds.

CONCLUSION

Based on the research findings outlined above, the significance of the Principle of Prudence in drafting the Deed of Statement of Decisions for the Extraordinary General Meeting of Shareholders (EGMS) of PT Nissihinkan Indonesia can be summarized as follows:

A PKR Deed is a notarial document created before a Notary at the request of the parties, based on the minutes from the decisions made during the General Meeting of Shareholders of a Limited Liability Company. Notaries are expected to perform their duties with care and precision. It is part of a Notary's responsibility to conduct thorough verification of any information provided by the parties involved. However, the current UUJN does not provide detailed regulations regarding the application of the principle of caution by Notaries, leading to legal issues when Notaries are not sufficiently careful and meticulous in creating authentic deeds, which can result in their involvement in criminal activities related to false information and fraudulent documents presented by their clients.

The role and responsibilities of a Notary, based on the types of documents they create, serve as credible proof of the information provided by the parties involved and recorded in those documents. In these documents, the notary verifies that the parties have indeed supplied the information as stated. The principle of caution is crucial in minimizing the risk of misconduct by a notary and encouraging greater diligence. If a notary fails to adhere to this principle, the document they create may be deemed invalid or void, as demonstrated in Decision Number 74/PDT/2021/PT BTN, which declared Deed No. 01 dated 05-10-2015 regarding the Statement of Meeting Decisions of PT. Nisshinkan Indonesia, created by Notary Lusi Indriani, SH., Mkn., in South Tangerang, to be null and without legal effect, along with its related documents. The judge's ruling included a written warning as a penalty for Notary Lusi Indriani, SH., M.Kn.

REFERENCES

- ANANDA MUHAMAD TRI UTAMA. "APPLICATION OF THE PRINCIPLE OF CAUTION IN MAKING A DEED OF POWER OF ATTORNEY TO SELL IN A LAND SALE AND PURCHASE BINDING AGREEMENT" 9 (2022): 356-63.
- Ariesta Rahman, Fikri. "Implementation of the Notary's Principle of Caution in Recognizing Applicants." *Lex Renaissance Journal* 3, no. 2 (2018): 423-40. <https://doi.org/10.20885/jlr.vol3.iss2.art11>.
- BAMBANG RIANGGONO, SH. "THE FORCE OF STATEMENT DEED OF MEETING DECISION (PKR) MADE BASED ON MINUTES OF MEETING UNDER HAND REVIEWED FROM THE RESPONSIBILITY OF THE NOTARY." Diponegoro University, 2008.
- Dewantoro, Fara Deinara. "Notary's Responsibility in Making a Deed of Statement of Meeting Decisions Based on Legally Defective Private Minutes (Study of District Court Decision Number 208/Pdt.G/2019/PN.Tjk)." *Indonesian Notary* 3, no. 3 (2021): 425-47.
- Harahap, MY *Civil Procedure Law Regarding Lawsuits, Trials, Confiscation, Evidence and Court Decisions* . Jakarta: Sinar Grafika, 2008.
- Hendra, Rahmad. "Notary's Responsibility for Authentic Deeds Whose Applicants Use Fake Identities in Pekanbaru City." *Journal of Legal Studies* 3, no. 1 (2013). <https://doi.org/10.30652/jih.v3i01.1029>.
- Liana, Devi, and Isabella Siagian. "CANCELLATION OF DEED OF STATEMENT OF EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS AND NOTARY'S RESPONSIBILITY TOWARDS THE EXTRAORDINARY SHAREHOLDERS' DEED AND NOTARY'S RESPONSIBILITY TOWARDS THE CANCELED DEED (CASE STUDY OF SURABAYA HIGH COURT DECISION NUMBER 693/PDT/CANCELED" 2 (2020).

Ma, Umar, and Dony Wijaya. "LEGAL REVIEW OF THE POSITION AND FUNCTIONS OF A NOTARY AS A PUBLIC OFFICIAL IN MAKING AUTHENTIC DEEDS" II, no. 3 (2015): 299–309.

Thyawarta, Charlie, and Markoni. "Case Study of Notary's Legal Liability in Making Authentic Deeds Reviewed from the Principle of Prudence." *Journal of Education and Teaching Review* 7, no. 976 (2024): 1791–1800.

Wiweko, Bambang. "AUTHORITY AND RESPONSIBILITY OF NOTARY IN PREPARING DEED OF MINUTES OF GMS IN DISPUTES OF UNLAWFUL ACTIONS RELATED TO IMTA (Case Study of District Court Decision No. 150/Pdt.G/2017/PN.Jkt. Pst)." *Sangaji Journal of Sharia and Legal Thought* 8, no. 1 (2024): 137–55.