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## Involvement of Notaries Who Commit Unlawful Acts in Making Deeds of General Meeting of Shareholders and Its Legal Consequences (Case Study of Supreme Court Decision Number 2826 K/Pdt/2021)

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**Abstract:** The RUPS is the highest forum for making company decisions for the benefit of various parties, where shareholders have the opportunity to express opinions, vote, and make decisions regarding company policies. In the GMS, a notary plays a role in making the minutes of the GMS, which records and formulates the entire course of the GMS containing all decisions taken during the meeting, including the results of voting and discussion. The minutes must be signed by the notary and the chairperson of the meeting for legal certainty. In addition, the notary is responsible for ensuring that the GMS is conducted in accordance with applicable regulations, both in terms of form and substance. The notary must verify the validity of the meeting invitation, quorum, and voting rights of the shareholders. However, notaries are often negligent in performing their duties and authorities, which can be categorized as unlawful acts. This research is intended to analyze unlawful acts committed by notaries and the legal consequences arising therein for companies through Supreme Court Decision Number 2826 K/Pdt/2021, using normative juridical methods. The results showed that the unlawful act committed by the notary through the decision was negligence in verifying the results of the GMS due to the absence of the notary in the quorum. This resulted in the actions of a person who served as Director and President Director whose appointment was invalid. This made the notary involved as a defendant in the case and subject to civil sanctions.

**Keyword:** Notary, RUPS, tort, verification.

### INTRODUCTION

In the scope of a limited liability company, the General Meeting of Shareholders (hereinafter referred to as GMS) has a very important role for the company. This is because the GMS is the highest forum in making company decisions for the benefit of various parties, where shareholders have the opportunity to express opinions, vote, and make decisions regarding company policies. Therefore, the role of notaries in the GMS is very important to be involved.

The position of notary is regulated in Law Number 30 of 2004 concerning the Position of Notary and its amendments (hereinafter referred to as UUJN). Article 1 paragraph (1) of

UUJN defines a notary as a public official who is authorized to make legal deeds and has additional authority as stipulated in this UUJN or other laws. In the GMS, a notary has a role to make the minutes of the GMS, which records and formulates the entire course of the GMS containing all decisions taken during the meeting, including the results of voting and discussion. The minutes must be signed by the notary and the chairperson of the meeting for legal certainty. In addition, the notary is responsible for ensuring that the GMS is conducted in accordance with applicable regulations, both in terms of form and substance. The notary must verify the validity of the meeting invitation, quorum, and voting rights of the shareholders. If there are certain decisions that require legal force, such as changes to the articles of association, changes to the management, or capital increases, the notary is required to make an authentic deed as evidence. On the other hand, a notary can provide legal consultation to shareholders and company management regarding legal aspects and help ensure that the decision does not conflict with laws and regulations.

Recording the GMS in the form of an authentic deed has definite legal force because the GMS will affect all legal relations that impact the shareholders themselves and the company. Therefore, an authentic deed regarding the GMS provides justice in fulfilling rights and obligations, with the hope of avoiding internal company conflicts. In principle, an authentic deed contains the formal truth submitted by the parties to the Notary. The Notary is obliged to ensure that the content of the Notarial deed is fully understood and in line with the wishes of the parties, namely by reading it and clarifying its contents, and by providing access to information, including access to laws and regulations, regarding the parties signing the deed. This is regulated by Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning the Procedures for the Supervisory Panel's Examination of Notaries. It is not limited to the freedom of the parties to accept or not in line with the contents of the authentic deed made by the Notary.

The authentic deed itself has three powers of justification, namely the power of external justification, the authority of formal justification, and the power of material justification. The power of external justification determines the authenticity or authenticity of the deed. As a formal justification authority, an authentic deed will guarantee that an event or fact in a deed is really known and heard by the Notary and described by the parties in it. An authentic deed is also a form of certainty regarding the substance of a deed.

In carrying out the role in the GMS, the notary will pour the GMS in the form of a deed of Minutes of the GMS, containing events witnessed directly by the Notary, including all decisions in the GMS. On the other hand, the results of the GMS that are not presented or witnessed by a notary will be stated in the form of minutes under the hand, as stated in Article 21 paragraph (5) of Law Number 40 Year 2007 on Limited Liability Companies (UUPT). The minutes also contain everything discussed and decided in the GMS, then the notary will pour it out in the form of a Deed of Amendment to the Articles of Association or Deed of Statement of Meeting Resolutions. The minutes of the GMS in the form of an authentic deed have strong evidentiary power. This is based on Article 1870 of the Civil Code which states that which has absolute and binding evidentiary power and is perfect evidence so that it no longer needs to be proven by other evidence as long as its untruth cannot be proven. Thus, notarial deeds are the main written evidence so that they become trial evidence that has a very important position.

However, it is still found that notaries are involved in unlawful acts in the performance of their duties at the GMS. Unlawful acts committed by notaries can be in the form of actions that violate laws and regulations, professional ethics, or applicable legal principles, such as the preparation of false minutes, negligence in verification, or abuse of authority. This will have legal consequences for the company and its stakeholders. The legal consequences arising from unlawful acts committed by notaries are the annulment of the GMS decision to the existence of criminal and civil sanctions.

The author will examine how legal consequences arise due to the involvement of a notary as a defendant in Supreme Court Decision Number 2826 K/Pdt/2021.

## **METHOD**

The method of approach used in this research is normative juridical, which is one type of legal research in conducting research utilizing library materials as the basic research material by examining laws and regulations and documents related to research problems. The specifications in this writing use descriptive analysis. This research examines secondary data obtained from literature studies including laws and regulations, papers related to the problem under study.

## **RESULTS AND DISCUSSION**

### **Legal Analysis in Supreme Court Decision Number 2826 K/Pdt/2021**

On June 20, 2019, PT Kadota Textile Industries sued several parties, namely Shankar Sunderdas Manghwani, Tahmid Tirtapradja, Koshii (H.K.) Limited, and Naren Manghwani for tort through the Bandung District Court. PT Kadota Textile Industries (Respondent in Cassation/Appellant/ Plaintiff), a company incorporated in Indonesia, sued a company under Japanese law in the case of demand for payment of sale and purchase number 7389 until it proceeded to the level of appeal at the Osaka High Court. Through the Osaka District Court's decision dated November 17, 2016, the Osaka District Court sentenced Koshii (H.K.) Limited to the sum of USD 177,134.41 and against among others USD 50,421.92 since February 23, 2014, USD 51,229.08 since March 8, 2014, USD 40,120.50 since March 29, 2014, USD 35,362.91 since April 15, 2014, money at the rate of 2% per month until the respective settlement.

In the Profile of PT Kadota Textile Industries (Plaintiff), the following are the positions of the Defendants.

1. Shankar Suderdas Maghwani (Defendant I) is a Director who has been dismissed from his position based on Deed Number 26 dated February 4, 2014 with SP AHU-AH.01.10-20520 number. Then, Defendant I returned as Director and President Director on March 19, 2018 and was again dismissed on August 16, 2018.
2. Naren Maghwani as Defendant II because he is a shareholder of the Plaintiff based on Deed number 264 dated June 28, 2010 with SP AHU-AH.01.10-17634, Deed number 22 dated August 7, 2017 with SP AHU-AH.01.03-0160701, Deed number 11 dated March 19, 2018 with SP AHU-AH.01.03- 0117957 and Deed number 11 dated March 19, 2018 with SP AHU-AH.01.03-0148502. On the other hand, Naren Maghwani is a Co-Defendant in this case because of his position as Commissioner of Koshii based on Deed Number 264 dated June 28, 2010 with SP AHU-AH.01.10-17634 number, Deed number 22 dated August 7, 2017 with SP AHU-AH.01.03- 0160701 number, Deed number 22 dated August 7, 2017 with SP AHU-AH.01.03- 0160701 number. 03- 0160701, Deed number 11 dated March 19, 2018 with SP AHUAH.01.03-0117957 number as well as the President Commissioner of the Company, according to the Company Profile (Exhibit-P1), based on Deed number 11 dated March 19, 2018 with SP AHU-AH.01.03-0148502 number.
3. Tahmid Tirtapradja as Defendant III as the notary who recorded and registered Deed number 11 dated March 19, 2018 with SP AHU-AH.01.03-0117957 and Deed number 11 dated March 19, 2018 with SP AHU-AH.01.03-0148502 with Decree number AHU-0008453.AH.01.02.Tahun 2018.

As a shareholder, Defendant I never received a summons to attend the General Meeting of Shareholders ("GMS") nor was present at the GMS with the agenda to appoint Defendant I as Director based on Plaintiff's CCTV. On April 16, 2016, Defendant III registered Deed number 11 dated March 19, 2018 (Exhibit-P5) made by/before Defendant III with SP AHU-AH.01.03-

0148502 which was accompanied by the issuance of a Decree on the Deed with number AHU-0008453.AH.01.02.Year 2018 by the Director General of AHU regarding the decision to amend the Articles of Association and Amendment of Company Data. However, Defendant III and several shareholders did not attend the GMS held at the Plaintiff's domicile. Meanwhile, the actions of Defendant I and Defendant II held the GMS without considering the votes of other shareholders because almost all shareholders in the Plaintiff never received a summons to attend the GMS and never attended the GMS, so that Defendant I and Defendant II had committed an unlawful act by holding a GMS without first summoning all shareholders, so that the Plaintiff declared the GMS dated March 19, 2018 invalid and Deed Number 11 was null and void.

The involvement of Defendant III in this case was the making and registration of Deed No. 11 dated March 19, 2018 constituted an unlawful act because the Deed was made in the form of minutes of the GMS which stated that Defendant III attended the GMS even though Defendant III never attended the GMS as evidenced by the Plaintiff's CCTV recording, so the veracity of the GMS decisions contained in the Deed cannot be ascertained and the Deed was also made without taking into account the process of holding the GMS as in Article 80 paragraph (1), Article 81 paragraph (1) and Article 82 paragraph (1) of the Company Law.

On June 8, 2018, Defendant I withdrew the entire lawsuit on appeal against Koshii on the basis of his recognition as Director and President Director of the Plaintiff based on Deed No. 11 dated March 19, 2018. Meanwhile, Defendant I and the Co-Defendants are siblings. This renders Defendant I unauthorized to act for and on behalf of the Plaintiff in conducting the Revocation of the Entire Lawsuit in the Sale and Purchase Payment Request Case No. 7389 in the case between the Plaintiff and the Defendant: 7389 in the case between the Plaintiff and Koshii.

Thus, the Plaintiff demands that the Defendants who have committed an unlawful act are obliged to pay material damages to the Plaintiff in the total amount of USD 397,082.82 (three hundred ninety-seven thousand eighty-two United States Dollars and eighty-two cents) and plus total interest of 2% per month until a legally enforceable decision is obtained (inkracht van gewijsde). The Defendants filed an exception that the Plaintiff's lawsuit was premature, the lawsuit was wrongly addressed, and the lawsuit lacked parties because it did not involve the shareholders of Suntech Kadota Ltd, Mr. Otong Tjandradinata. Mr. Otong Tjandradinata, PT Insansansandang Internusa, and Koshii (H.K) Ltd. The Plaintiff's lawsuit was considered vague by the Defendants and stated that the implementation of the EGMS was in accordance with the proper summons and the rule of law.

At the first level, the Panel of Judges rejected the Defendants' exceptions and granted the Plaintiff's claim in part through Decision Number 236/Pdt.G/2019/PN Bdg dated May 12, 2020 which contained the following ruling.

"2. Stating that the decision of the Extraordinary General Meeting of Shareholders (EGMS) as outlined in Deed Number 11 dated March 19, 2018 is null and void and therefore Defendant I is not entitled to act for and on behalf of the Plaintiff; 3. Stating that the Defendants (Defendants I, II, III) have committed an act against the law (onrechtmatige daad); 4. Punish the Defendants (Defendants I, II, III) jointly and severally to pay compensation to the Plaintiff for material losses, namely payment obligations based on the Osaka District Court Decision in the form of principal and interest payments calculated until June 2019 with a total loss of USD400. 624.95 (four hundred thousand six hundred twenty four United States Dollars and ninety five cents) and plus total interest of 2% per month from June 2019 until a legally binding decision is obtained (inkracht van gewijsde) on the case a quo; 5. Punish the Defendants (Defendants I, II, III) to pay interest of 2% (two percent) per month jointly and severally from June 2019 until the verdict is legally binding (inkracht van gewijsde); 6. Punish the Defendants (Defendants I, II, III) to pay all court costs incurred in this case amounting to

Rp3,375,000.00 (three million three hundred seventy-five thousand) rupiah; 7. Reject other than and the rest".

At the appeal level, the Panel of Judges of the Bandung High Court actually upheld the decision with Decision Number 484/PDT/2020/PT BDG on October 6, 2020. Furthermore, the Defendants filed an appeal to the Supreme Court on February 1, 2021 and the Panel of Judges rejected the application through Supreme Court Decision Number 2826 K/Pdt/2021 on October 19, 2021.

Referring to the consideration of the Panel of Judges of the Supreme Court, the actions of Defendant I and Defendant II have contradicted Article 86 paragraph (2) of the Company Law for not summoning the second GMS. In the facts of the trial, Defendant I and Defendant II did not summon all of the Plaintiff's shareholders with the absence of Defendant III as a notary and several shareholders. This resulted in the GMS not fulfilling the element of ½ of all shares with voting rights being present and Defendant I and Defendant II forced themselves to continue to hold the GMS on 19 March 2018 and was categorized as an unlawful act. As a result, the GMS that had been held had the legal effect that all GMS decisions were invalid. In addition, the involvement of Defendant III as the notary who recorded the GMS held at the Plaintiff's domicile is a very important point because of his vital position in the continuity of the company. This is based on Defendant III committing a tort because Defendant III did not carry out his professional ethics in examining the material truth of the legal events in the Extraordinary General Meeting of Shareholders (EGMS) on March 19, 2018 held by Defendant I and Defendant II including the completeness, formal requirements, where the legal events will be set out in a Notarial Deed so that the deed becomes an Authentic Deed. On the other hand, Deed No. 11 dated March 19, 2018 has been registered with the Director General of AHU because it meets the formal and material requirements.

### **Involvement of a Notary who Commits an Unlawful Act in a Case and the Legal Consequences that Arise**

In principle, the role of a notary is to translate the wishes/actions of the parties into a deed by adhering to the applicable laws and regulations and making an authentic deed as a valid deed has complete justification power, so it does not require justification or addition with additional evidence in the event that certain people/parties assess or state that the deed is fake. This is based on the elements of Article 52 paragraph (1) of the UUJN which states that notaries are prohibited from making deeds in certain circumstances. Therefore, notaries are responsible for the deeds they have made.

Often still finding gaps in the potential for fraud or abuse of authority by notaries will bring and ensnare the notary into the realm of law, both criminal and civil. The notary involved in the performance of his duties as a maker of GMS minutes and maker of authentic deeds is also his responsibility for the legal implications that occur. This is in line with Article 1365 of the Civil Code which stipulates that every person who commits an unlawful act is obliged to compensate for the losses arising from his mistake.

The notary will be held accountable for the material truth in the future if it is not true. The legal consequence is civil sanctions, sanctions that can be imposed on the Notary because of his actions. The sanction can be in the form of reimbursement of costs, compensation, or interest. This must refer to the legal relationship between the Notary and the parties who appear before the Notary, and if there are parties who directly suffer losses due to a deed, they can also sue the Notary in a civil court. Notarial deeds only have the strength of underhand justification, which is improper evidence. Similarly, if a deed is said to be null and void, it is treated as if it never existed or was never made if the notary committed an unlawful act before the deed was registered with the Ministry of Law and Human Rights. Notaries may be subject to civil penalties stipulated in Article 41 of the UUJNP.

In addition, the Notary is not responsible for the content of the deed made before him because the content of the deed is the will and agreement desired by the parties. The notary only puts the agreement into the form of an authentic deed so that in this case the Notary is only responsible for the formal form of the authentic deed as stipulated by law. This is because the role of the Notary is limited to recording or pouring a legal action carried out by the parties / faces into the deed. The notary only constatirizes what happened, what he saw, and experienced from the parties / faces along with adjusting the formal requirements for making an authentic deed and then pouring it into the deed. Notaries are not required to investigate the truth of the material content of the authentic deed. This obliges the Notary to be neutral and impartial and provide a kind of legal advice for clients who request legal guidance from the Notary concerned.

In reviewing the case study description above, Defendant III did not examine the material truth of the legal events at the Extraordinary General Meeting of Shareholders (EGMS) on March 19, 2018 held by Defendant I and Defendant II including the completeness, formal requirements, where the legal events would be set out in a Notarial Deed. This is commensurate with the absence of Defendant III at the EGM and Defendant III did not verify the facts that occurred during the EGM. In this case, the author agrees with the consideration of the Supreme Court judge in stating that Defendant III committed a tort. The actions of Defendant III had an impact on the Plaintiff who was pursuing legal action against Koshii which was withdrawn from appeal at the Osaka High Court on the basis that Defendant I was authorized as Director and President Director of the Plaintiff based on the Deed made by Defendant III. As a result, his actions have caused harm to other parties in relation to the authentic deed he made, so he must be legally responsible by being sanctioned for his actions in accordance with applicable law even though there was no malicious intent and it was caused by his carelessness.

With the existence of unlawful acts by Notary, the legal duty to achieve legal certainty for the sake of order and justice in society and to create a safe and peaceful atmosphere in society is not achieved. Notary as a public official authorized to make authentic deeds that have perfect evidentiary power, must make a mandatory Notary deed in the form and conditions specified by law as one of the characteristics of a Notary deed.

## **CONCLUSION**

The basis for the reasoning of the Panel of Judges through Supreme Court Decision Number 2826 K/Pdt/2021 is that the involvement of a notary as the maker of the authentic deed regarding the Plaintiff's GMS has a legal impact that results in material losses to the company. By recording the results of the GMS through an authentic deed, it is very reasonable for Defendant I to exercise authority as Director and President Director representing the Plaintiff in carrying out legal actions to revoke the appeal that the Plaintiff is fighting for material losses committed by Koshi. Thus, the actions of the Notary cause losses to other parties due to negligence or unlawful acts by the Notary which are proven in court, the Notary must be held accountable both administratively, civilly, and code of ethics in accordance with the provisions of the UUJN and the Notary Code of Ethics, and can even be subject to criminal sanctions.

Notary involvement also has a very vital role for the sustainability of the company. Although the role of the Notary is limited to recording or pouring a legal action carried out by the parties / faces into the deed, the notary must verify and constatirize what happened, what was seen, and experienced from the parties / faces along with adjusting the formal requirements for making an authentic deed and then pouring it into the deed. Notaries are not required to investigate the truth of the material content of the authentic deed. This obliges the Notary to be neutral and impartial and provide a kind of legal advice for clients who seek legal guidance from the Notary concerned.

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