

The Legal Force of Deed Statement of Meeting Resolutions Made Before a Notary Based on Private Minutes of the General Meeting of Shareholders (Case Study in Pt. Eco Environmental Energy Indonesia)



Nyoman Satria Wibawa Gunawan¹, Johannes Ibrahim Kosasih², Nengah Renaya³

¹ Student of Post Graduate Program of Notary University Warmadewa, Bali, Indonesia.

² Lecturer in Post Graduate Program of Notary University Warmadewa, Bali, Indonesia.

³ Lecturer in Post Graduate Program of Notary University Warmadewa, Bali, Indonesia.

ABSTRACT: This research is a normative legal research that examines the legal force of the deed of statement of meeting resolutions made before a notary based on a private minute of the general meeting of shareholders (a case study at PT Eco Environmental Energy Indonesia), the focus of this research is the legal force of the deed of statement of meeting resolutions made before a notary based on the minutes of the private general meeting of shareholders in the case study of PT. Eco Environmental Energy Indonesia. The focus of research is on the extraordinary general meeting shareholders held at PT. Eco Environmental Energy Indonesia as there were indications of unlawful acts that make the deed of statement of meeting resolutions (PKR) drawn up before a notary null and void. The study employs the evidentiary law theory, which utilizes the statutory, analytical, and case approaches. The analysis concluded that the deed of statement of meeting resolutions number 56 was null and void, due to flaws in the formal requirements specified in the Limited Liability Company Law in the holding of the EGMS on May 21, 2011, which violated laws and regulations, causing the deed of statement of meeting resolutions to lack valid material proof power as an authentic deed.

KEYWORDS: Deed of Statement of Meeting Resolutions, General Meeting of Shareholders, Limited Liability Company, Act Against The Law

I. INTRODUCTION

The Preamble of the 1945 Constitution of the Republic of Indonesia and Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia to realize a just and prosperous society, based on which everyone has the right to live in physical and spiritual prosperity and to obtain a good living environment, Indonesia needs national development on a broad scale, which means equal distribution of development both economically and legally, in order to achieve sustainable development that creates social justice and prosperity. One strategy to achieve this national development is to establish a Limited Liability Company, which is a business engaged in economic activities.

In order to create harmony in legal certainty in the economic sector, the government in its authority issues Company Law, which is greatly needed because, as the Indonesian economy progresses, more and more companies, both private and government, as well as foreign companies, are operating in Indonesia today. To cope with advancements and developments in this company's field, the law must constantly adapt to these developments, because a good and effective regulation is one that is constantly responsive to the changing dynamics of society.

A company in the form of a legal entity is a Limited Liability Company, commonly abbreviated as "PT," is a legal entity that is one of the foundations of national economic development and requires a strong legal foundation to generate legal certainty and justice in order to stimulate the state's economy.

The positive law that serves as the foundation for every company in Indonesia today is the Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies (hereinafter referred to as Company Law). In carrying out its business, a Limited Liability Company certainly has an organizational structure with respective roles and responsibilities, this is

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regulated in Article 1 paragraph (2) of the Company Law stipulating that the organs of the company consist of a general meeting of shareholders (hereinafter referred to as gms), directors, and commissioners. The GMS is an organ of the company that has authority that is not given to the board of directors or the board of commissioners, one of which is making decisions through meetings.

Holding a GMS is a legal act carried out by shareholders in a company for the benefit of the company, in this case amending, reducing or adding to the company's articles of association based on a GMS decision. According to Article 21 paragraph (4), GMS resolutions amending the company's articles of association must be published or specified in a notary deed in Indonesian.

Each GMS generates minutes of the GMS / minutes of meeting (hereinafter referred to as minutes) that include the GMS resolutions and are in compliance with the meeting agenda in the meeting invitation. In practise, there are two types of minutes. Private minutes are also often called the minutes of meetings made directly by the company after obtaining the approval of the GMS. The leader of the meeting/chairman of the meeting as the note taker must make and sign these minutes of meetings followed by the signature of at least 1 (one) shareholder appointed from and by the GMS participants. Following the signing of the deed, the chairman of the meeting submits it to the notary's office for approval by the Ministry of Law and Human Rights of Republic of Indonesia.

According to the above explanation, non-notarial documentation is referred to as "private minutes of meetings." On the other hand, when it is documented by the notary who is present at the meeting, it is commonly identified as "minutes of the general meeting of shareholders". Based on the minutes, those who are authorized by the GMS must appear before a notary to state what was discussed, happened, and decided by the GMS in a notarial deed. This type of deed is called "deed of statement of meeting resolutions (PKR). This type of notarial deed is not a "*relaas acte*," but a "*partij acte*," which is a deed drawn up before a notary (Rudy Prasetya, 2014: 62).

According to the explanation above, the deed of statement of meeting resolutions (PKR) falls under the category of deeds of parties/*partij deeds*, while deeds of minutes of meetings (BAR) falls under the category of official Deeds/*relaas deeds*. The legal evidential values of the two sets of deeds differ.

The authority of a notary to issue an authentic deed is based on the Law on the Position of a Notary. One of a Notary's authorities is outlined in Article 15 paragraph (1) Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 on The Position of Notary (hereinafter referred to as the Notary Office Law) which states; "the notary has the authority to make authentic deeds regarding all actions, agreements, and stipulations that are required by laws and regulations and/or that are desired by interested parties, to guarantee the date of the deed is certain, to keep a record of it, and to provide grosse, copies, and quotes as needed, as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law."

It can be inferred that a notary holds authority over all actions related to the deed, unless another official has been designated by statutory regulations to handle such assignments.

An authentic deed or a notarial deed holds strong evidential power, which is written proof that provides assurance, order, and legal protection as long as it is prepared in accordance with the form and procedure prescribed by law. An authentic deed is defined in Article 1868 of the Indonesian Civil Code (hereinafter referred to as the Civil Code) as one which has been drawn up in a legal format, by or before public officials who are authorized to do so at the location where this takes place.

This is in line with the opinion of a legal expert, R. Soergondo, who states that an authentic deed is drawn up and formalized in a legal form by or before a public authority who is authorized to do so, at the location where the deed is formed. (Soergondo, 1991: 8).

According to article 1870 Civil Code, an authentic deed shall provide conclusive evidence regarding the contents stipulated therein for the parties, their heirs or parties having rights therein. An authentic deed has three important aspects: formal strength, material strength, and outward strength. Together, these aspects provide conclusive proof of rights and obligations, ensuring legal certainty and preventing disputes.

When performing their duties, a notary must adhere to Indonesian laws and regulations and should not overlook them. The notary needs to proceed with caution when creating a deed to ensure it adheres to the appropriate rules and regulations. If not done correctly, the deed may be reduced to a private deed and be deemed invalid by law.

Problems can develop if there is dishonesty in the implementation of the GMS and the information given by the attendant. In practice, a private decree is established between interested parties, ensuring that it only affects those who consent to it. Often times, private minutes contain incorrect information that favors interested parties while harming parties who are

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not part of that interest, particularly notary.

An example is found in the case of Decision Number 82/Pdt.G/2013/PN.BTM jo. Decision Number 45/Pdt/2014/PTR jo. Decision Number 1738 K/Pdt/2015. The parties to the dispute include the following: PUNGKY BAMBANG PRIYAMBODO as the plaintiff/comparator/respondent for cassation who owns 250 shares or the equivalent of 25% of the shares that have been placed at PT. ECO ENVIRONMENTAL ENERGY INDONESIA as Defendant I / Appellant I / Petitioner for Cassation and SUDARSO as Defendant II / Appeal II.

The plaintiff contended that in the Extraordinary General Meeting of Shareholders (EGMS) held on 21 May 2011, which was later stated in the Deed of Statement of Meeting Resolutions (PKR) Number 56 dated 31 May 2011 (hereinafter referred to Deed Number 56), drawn up before a notary the defendant had committed an unlawful act, particularly against the Company Law, causing harm to the plaintiff. The complaint is based on the following facts: a) the meeting agenda does not correspond to the meeting agenda in the meeting invitation; b) the extraordinary GMS is held in violation of the law.

The Pekanbaru High Court panel of judges ruled that the defendants' attendance at the Extraordinary General Meeting of Shareholders on 21 May 2011, which was later stated in the Deed Number 56 dated 31 May 2011, was an unlawful act, rendering it invalid, non-binding, and null and void. In accordance with the decision rendered by the Pekanbaru High Court, which granted the appellant's exception in part, a request for cassation was subsequently filed by the Appellant under Decision Number 1738 K/Pdt/2015. However, the Supreme Court has reached a concurrence with the Pekanbaru High Court's position, thereby leading to the denial of the cassation request.

II. RESEARCH PROBLEM

The researcher has found that having a notary create a deed of statement of meeting resolution (PKR) does not ensure the legitimacy of an extraordinary GMS for a Limited Liability Company. In reality, the issuance of a deed of statement of meeting resolution authorizing the convening of an extraordinary GMS could result in legal implications for the limited liability company's shareholders in the form of losses. A notary in his capacity to issue a deed of statement of meeting resolution, which is a deed of the parties/*partij deed*, holds a low burden of evidence because the notary simply relies on the private minutes of the limited liability companies. Based on the description above, the researcher would like to investigate the legal force of the deed of statement of meeting resolutions made without the presence of a notary at the general meeting of shareholders in a limited liability company, as well as the legal certainty of the deed of statement of meeting resolutions, which contains an element of unlawful act. Hence, the problem question to be examined is what is the legal force of a deed of statement of meeting resolutions prepared before a notary based on the private minutes of the GMS that do not correspond to the meeting's agenda?

III. RESEARCH METHODS

Methods of research are tools to find out a problem to be studied, whether in social sciences, law, or any other subject. As a result, the purpose of a research will be determined by the object and type of study (Zainuddin, 2011: 21). The method of research employed in this study is a normative legal research method in which the law is conceptualized as what is stated in laws and regulations (law in books) or law is conceptualized as standards or norms that are deemed adequate benchmarks for human behaviour (Amirrudin, Asikin Zinal, 2012: 118). The normative legal research focuses on literature studies, which include legal materials such as legislation, legal theory, judicial decisions, doctrine, legal principles, legal theory, journals, and articles. The normative legal research examines written law from various perspectives, including theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, and article by article, formality and binding force of law, as well as the legal language used, but does not examine applied or implementation aspects. As normative legal research does not examine applied or implementation aspects, it is often referred to as dogmatic or theoretical law research (Abdulkadir, 2004: 101). The research method was used to examine the decision Number 82/Pdt.G/2013/PN.BTM jo. Decision Number 45/Pdt/2014/PTR jo. Decision Number 1738 K/Pdt/2015 in which the Pekanbaru High Court's ruling partially upheld the appeal, including the nullification of the Deed number 56 from May 31 and the Supreme Court concurred with the Pekanbaru High Court's decision.

IV. RESULT AND DISCUSSION

A. Case Position

The plaintiff is a shareholder in PT. Eco Environmental Energy Indonesia (hereinafter referred to "PT. ECO") based on the

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Deed of Establishment of PT. ECO Number 200 dated 20 March 2008, which drawn up before Hatma Wigati Kartono, SH, notary in Batam, which later obtained legal entity approval from the Ministry of Law and Human Rights of the Republic of Indonesia in accordance with the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: AHU-35495. AH.01.01. year 2008 dated 25 June 2008 ("Deed of Establishment"). The plaintiff is the owner of 250 (two hundred fifty) shares with a total share value of Rp.312.500.000,- (three hundred twelve million five hundred thousand rupiah) or in other words is the owner of 25% (twenty five percent) shares that have been placed and paid up at PT. ECO. The following are the main issues in this case, arranged by relevance in this study; Concerning the Meeting Agenda, it is not in accordance with the meeting agenda in the meeting invitation. The EGMS on May 21 2011 held by the defendants was basically in conflict with the provisions of the relevant regulations and laws, as shown by the disparity of the EGMS agenda from the agenda specified in the EGMS Invitation Letter, especially as follows:

The agenda of the EGMS Invitation Letter dated 02 May 2011 submitted by the Main Commissioner (in this case Defendant II) of PT. ECO, Sudarso, are as follows:

- (i). Changes in the management composition of the company;
- (ii). Purchase of shares;
- (iii). Company Development Report;
- (iv). Other things.

However, in the EGMS on May 21, 2011, the following decisions were made:

- (i). Increase in authorized capital from the initial capital of Rp. 5,000,000,000.- (five billion rupiahs) to be increased to Rp. 31.250.000.000.- (thirty-one billion two hundred and fifty million rupiah);
- (ii). Changes in share of ownership;
- (iii). Changes in the management composition of the Company (Directors and Commissioners).

Whereas, in the EGMS Invitation Letter dated 02 May 2011, additional meeting agenda items should not have been decided at the EGMS dated 21 May 2011, because the EGMS on 21 May 2011 was not attended by all shareholders and/or their representatives.

The legal fact is that the absence of all Shareholders can be identified in Deed Number 56, which indicated that the EGMS dated May 21 2011 was only attended by 750 (seven hundred and fifty) shares, which equaled 75% (seventy five percent) of all shares which have been submitted in the firm.

Regarding the absence of all shareholders, the plaintiff disputed the actions of defendant II who had refused the presence of the plaintiff's representative who had been given a Power of Attorney. During the EGMS held on May 21, 2011, Al Faisal, the attorney for the plaintiff who held 250 out of 1000 shares in PT. ECO, was rejected and removed by Defendant II when he attempted to attend the meeting.

B. The Juridical Meaning of the Deed of Statement of Meeting Resolutions (PKR) at the General Meeting of Shareholders

The rule of law consists of the events and effects to which the rule of law relates. Such events are referred to as legal events and the consequences arising from these events are legal consequences (Pipin Syarifin, Zarkasy Chumaidy, 1998: 72). Legal events can be classified or divided into two types, namely:

1. Legal events due to the actions of legal subjects (human actions) are actions committed by humans or legal entities that might result in legal consequences, such as purchasing, selling, and others.
2. Legal events that are not the actions of legal subjects (events that are not human actions) are all events that do not occur as a result of legal subjects' actions, but if they do occur, they can have legal implications, such as natural death.

Legal events that are activities performed by legal subjects are usually also called legal actions. As a result of this action, a legal event known as a legal action occurs. Legal action may take the following forms:

1. Unilateral legal action: An action made by only one party that creates, alters, or terminates a right, such as making a will, declining an inheritance, or recognizing a child.
2. Multilateral legal actions: are legal actions that require the cooperation of two or more parties in order to have legal consequences (Herlien Budiono, 2014: 13). For instance, agreement.

An agreement is an example of multilateral actions, nevertheless, there are several legal actions made by multiple people that cannot be defined as agreements, such as decisions reached at meetings. It can be inferred that holding a GMS is a multilateral legal action but is not included in the category of agreement but merely a commitment or an obligation. Commitment is a translation of the original Dutch phrase, *verbinten*. While the commitment is a legal relationship

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between two people or two or more parties, one party has the right to demand anything from the other party and the other party is bound to comply (Subekti, 2001: 1)

The organs of a limited liability company consist of the general meeting of shareholders, the board of directors, and the board of commissioners. Shareholders through the general meeting of shareholders, are company equipment which is the highest authority in the company and carries out the highest authority over the company. Regarding the holding of GMS, there are 2 (two) categories of GMS based on Article 78 of the Company Law, namely;

a. Annual GMS; b. Other GMS. Based on the article above, in practice, other GMS are known as extraordinary GMS. The term "extraordinary GMS" (hence referred to as EGMS) is not recognised in Company Law; instead, the term "other GMS" is used. An extraordinary GMS is only held at any time when necessary, in other words, another GMS is held if there is an extraordinary legal action within a company that changes the composition of the previous articles of association. According to Article 21 paragraph (4) of the Company Law, the amendments to the articles of association as referred to in paragraphs (2) and (3) must be contained or stated in a notarial deed in the Indonesian language. This means, the GMS amendment to the articles of association can be made either with a notary deed in the form of a *relaas* or a notary deed in the form of *partij*, namely the deed of statement of meeting resolutions (PKR).

C. Formulation of the results of the General Meeting of Shareholders in the Deed of Statement of Meeting Resolutions (PKR) Made Before A Notary

It is necessary to create minutes for every GMS, a GMS that fails to produce minutes is regarded as invalid and never existed. As a result, matters that are decided and determined at the GMS cannot be implemented.

It is mandatory for the minutes of the GMS to be included in a notarial deed written in Indonesian language, as per Article 21 paragraph (4) of the Company Law. This applies to any GMS that modifies the articles of association, whether it requires approval from the Minister or just notification to the Minister. The information must be stated in an Indonesian notary deed. The notary's deed contains or genuinely depicts an activity taken or a situation viewed or seen by a notary. A notary's authentic deed can be accounted for and protect the public when carrying out legal action.

The authentic deed's strength lies in its ability to serve as conclusive proof for all parties involved (Rahmida, 2020: 15).

The decisions made during a private GMS meetings, which are documented in minutes of the meeting, need to be included in a notarial deed, which is a deed drawn up before (*ten overstaan*) a notary or known as a party deed (*partij akten*). A party deed is a deed that contains a "description" of what happened as a result of another party's actions before a notary, meaning what was explained to the notary when performing his duty, and what the other party intentionally came before the notary for, as well as providing a statement before the Notary so that the statement or action is confirmed by the notary in an authentic deed so that the statement or action is confirmed by the Notary in an authentic deed. The deed of statement of meeting resolutions (PKR) takes the form of a notarial deed, but it is created based on privately made minutes of meeting.

D. Legal Force of the Deed of Statement Of Meeting Resolutions (PKR) When The Minutes Are Made Privately By The General Meeting of Shareholders (GMS)

A deed serves as evidence because it was created with the intention of providing future proof. There are three types of documentary evidence: authentic deeds, underhanded deeds, and letters. A notary deed is considered authentic evidence. A notary deed has the power of proof, as stated in Article 1867 of the Civil Code: "written evidence occurs in authentic or private documentation". Written evidence is a readable sign that conveys an idea, which can come in the form of a legal document or any other type of written material (Ali Afandi, 1997: 199).

The strength of evidence, in relation to the authority that exists in the authentic deed of the statement of meeting resolutions (PKR), includes:

1. Formal Strength

With this formal strength, it is clear that the deed of statement of meeting resolutions was made in accordance with the Notary Office Law. Notary and attendants guarantee the accuracy of the deed's date, signatures, and identities.

2. Outward Strength

An authentic deed that is made in accordance with specific conditions and subsequently fulfilled will have legal force from its inception. The deed of statement of meeting resolutions must comply with the conditions specified in the Company Law and the Notary Office Law.

3. Material Strength

The material strength of the deed of statement of meeting resolutions is based on its ability to provide conclusive evidence against

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all parties involved in the agreement. The legitimacy of the Deed is confirmed by the minutes of the GMS, which were created in accordance with the Company Law regulations and kept confidentially.

The deed of statement of meeting resolutions is a type of notary deed that possesses the same authenticity as other authentic deeds. It must contain the three essential elements of formal, material, and outward evidentiary strength to be considered as a deed that holds conclusive evidence and the deed is valid as long as the parties to the deed acknowledge the truth of the deed. If these matters are not fulfilled, the deed can lose its authenticity and become a private deed which can later be canceled or null and void by law. Even though the deed of statement of meeting resolutions has outward proof like an authentic deed, however, the possibility of losing the authenticity of a private deed is greater than an authentic deed. (G.H.S Lumban Tobing, 1980: 48).

In the case study of PT. ECO, PUNGKY BAMBANG PRIYAMBODO as the plaintiff at the Batam District Court with decision number 82/PDT.G/2013/PN.BTM argued that the decision from the EGMS on May 21, 2011 contained legal flaws. The panel of judges, however, believed that the defendants' activities in the EGMS dated May 21, 2011, as stated later in the Deed Number 56, were valid and in conformity with the articles of associations of PT ECO and the Company Law. According to the researcher, the Batam District Court's panel of judges was not thorough and meticulous in matching the meeting agenda provided in the meeting invitation on 2 May 2011 with the EGMS results on 21 May 2011. The panel of judges made a mistake in determining the problem because their main focus was related to the increase in the company's authorized capital from an initial capital of Rp.5,000,000,000.00 to Rp.31,250,000,000.00. The act of deciding on meeting material that was not included in the meeting agenda in the invitation letter dated May 2, 2011, violates Article 75 paragraph (4) of the Company Law, which requires resolution on the additional agenda shall be approved unanimously. However, based on the private minutes of the GMS, only 75% of the shares were presented and agreed, upon due to the power of attorney from the plaintiff, Al-Faisal, as the owner of 25% shares in PT. ECO has been evicted by Defendant II so that it violates the subjective rights of the plaintiff based on Article 85 of the Company Law paragraph (1) and has also violated Article 75 paragraph (4) of the Company Law. Thus, the decision making at the EGMS on 21 May 2011 was legally flawed. This is consistent with the decision of the Pekanbaru High Court Number 45/PDT/2014/PTR, which stated that the panel of judges at the High Court did not agree with the legal considerations of the Judge at the First-level Court because the First-level Judge had made a mistake in identifying the problem (main issue). As a result, the Pekanbaru High Court ruled that the defendants' actions at the EGMS on May 21, 2011, as stated in the Deed Number 56 dated May 31, 2011, drawn up before Hatma Wigati Kartono, SH, Notary in Batam, were unlawful. Thus, the EGMS dated May 21, 2011, which was then stated in the Deed Number 56 dated May 31, 2011, drawn up before Hatma Wigati Kartono, SH, Notary in Batam, as well as any shareholder meeting including amendments to the articles of association of PT. ECO, after May 21, 2011, regardless of the form it taken, is invalid, non-binding, and null and void.

On this basis, Defendant I/Appellant I, PT. ECO, together with Defendant II/Appellant II, Sudarso, filed a cassation request to the Supreme Court. However, with Decision Number 1738 K/Pdt/2015, the Supreme Court agreed with the Pekanbaru High Court which stated that it was proven that during the implementation of the EGMS, there had been changes and/or additions to the program or the program was not in accordance with what was written in the invitation. Based on the provisions of Article 75 paragraph (4) of the Company Law, resolution on the additional agenda shall be approved unanimously. Thus, the EGMS is invalid because it is not based on legal rights and its implementation is against the law, so based on the decision the cassation application is rejected.

The inadequacies in the formal parts of the EGMS implementation, which were later included in the private minutes of the GMS meeting, had caused the deed of statement of meeting resolutions to lack material evidential power as an authentic deed. The legal flaw in the deed of statement of meeting resolutions issued by Notary Hatma Wigati Kartono lies in the minutes of the EGMS on 21 May 2011 which was based on the implementation of the EGMS that was not in compliance with the law, resulting in an unlawful act.

V. CONCLUSION

The legal force of the deed of statement of meeting resolutions to become conclusive evidence was influenced by the holding of the EGMS dated May 21, 2011. Considering that the EGMS was not in accordance with the provisions of the laws and regulations, the legal actions taken after the EGMS were null and void. Due to flaws in the formal aspects of the EGMS, the deed of statement of meeting resolutions lacked material evidential power as an authentic deed. According to the above case study, the Deed Number 56 dated 31 May 2011, made before Hatma Wigati Kartono, SH, Notary in Batam, was declared

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null and void due to legal defects in the deed of statement of meeting resolutions issued by Hatma Wigati Kartono, Notary caused by the EGMS minutes on 21 May 2011 that were not in accordance with the law.

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