

Tanggung Jawab Notaris Terhadap Pembuatan Akta Pernyataan Keputusan Pemegang Saham Di Luar Rapat Umum Pemegang Saham Dalam Perspektif Hukum Kenotariatan (Analisis Kasus Pada Putusan Nomor 46/Pdt.G/2023/PN.Cbi) = Notary's Responsibility for Making a Deed of Statement Shareholders' Decisions Outside the General Meeting of Shareholders in the Perspective of Notarial Law (Case Analysis in Decision Number 46/Pdt.G/2023/PN. CBI)

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Abstrak

Pemberhentian direksi atas kehendak para pemegang saham yang keputusannya dituangkan dalam akta Pernyataan Keputusan Pemegang Saham (akta PKPS) seharusnya dibuat sesuai dengan aturan tentang prosedur dan persyaratan pemberhentian direksi sebagaimana tercantum dalam anggaran dasar perseroan dan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (UUPT). Namun pada praktiknya, masih ditemukan akta PKPS terkait pemberhentian direksi yang tidak mengikuti aturan tentang prosedur dan persyaratan pemberhentian direksi, sehingga isinya tidak sesuai dengan kehendak para pemegang saham dan berakibat pembatalan atas akta tersebut seperti yang ditemukan dalam putusan Pengadilan Nomor 46/Pdt.G/2023/PN.Cbi. Penelitian ini dilakukan dengan menganalisis prosedur dalam pembuatan akta pernyataan para pemegang saham diluar rapat umum pemegang saham dan tanggung jawab notaris terhadap akta yang dibuat tidak sesuai dengan prosedur tersebut. Bentuk penelitian ini menggunakan doktrinal dan tipe penelitian eksplanatoris. Berdasarkan hasil penelitan yang dilakukan, diperoleh hasil bahwa prosedur yang harus dipenuhi dalam pembuatan akta PKPS melalui sirkuler mengenai pemberhentian direksi yaitu berkaitan dengan kebenaran formil yang dimiliki notaris sesuai dengan kewenangan dan kewajibannya, dimana direksi yang diberhentikan melalui sirkuler setiap prosedurnya harus dibuktikan dengan bukti-bukti tertulis secara lengkap. Dalam hal ini seharusnya, tetap meminta bukti keterangan tertulis pembelaan diri direksi dan bukti tertulis tersebut dilampirkan dalam akta. Notaris yang tidak memperhatikan dan memenuhi prosedur dalam pembuatan akta PKPS melalui sirkuler dapat dikatakan telah lalai dan telah melanggar norma kewajiban untuk saksama sebagaimana ketentuan Pasal 16 ayat (1) huruf a Undang-Undang Jabatan Notaris (UUJN). Atas hal tersebut, notaris dapat dikenakan tanggung jawab secara (1) Perdata berupa ganti rugi karena akta tersebut dibatalkan, dan (2) Administratif berupa pemberhentian sementara oleh Majelis Pengawas sesuai ketentuan Pasal 16 ayat (11) UUJN

.....The dismissal of the board of directors at the will of the shareholders whose decision is stated in the deed of Shareholders' Resolution Statement (PKPS deed) should be made in accordance with the rules on procedures and requirements for the dismissal of directors as stated in the company's articles of association and Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). However, in practice, PKPS deeds related to the dismissal of directors are still found that do not follow the rules on procedures and requirements for dismissal of directors, so that the content is not in accordance with the will of the shareholders and results in the cancellation of the deed as found in Court Decision Number 46/Pdt.G/2023/PN. Cbi. This research was conducted by analyzing the procedure in making deeds of statements of shareholders outside the general meeting of shareholders and the responsibility of notaries for

deeds made that are not in accordance with the procedure. This form of research uses doctrinal and explanatory research types. Based on the results of the research carried out, it was obtained that the procedures that must be fulfilled in making PKPS deeds through circulars regarding the dismissal of directors are related to the formal truth owned by the notary in accordance with his authority and obligations, where directors who are dismissed through circulars must be proven by complete written evidence. In this case, it should still ask for proof of written testimony of the self-defense of the board of directors and the written evidence is attached to the deed. Notaries who do not pay attention and comply with the procedures in making PKPS deeds through circulars can be said to have been negligent and have violated the norms of the obligation to be careful as stipulated in Article 16 paragraph (1) letter a of the Law on the Notary Position (UUJN). For this, the notary can be held liable in the form of (1) civil in the form of compensation because the deed is canceled, and (2) administratively in the form of temporary dismissal by the Supervisory Council in accordance with the provisions of Article 16 paragraph (11) of the Constitution.