

Pemenuhan Unsur Perbuatan Melawan Hukum Notaris Mengenai Pembuatan Akta Pernyataan Keputusan Rapat Umum Pemegang Saham yang Tidak Dihadiri Notaris (Studi Putusan Mahkamah Agung Nomor 690 PK/PDT/2021) = Fulfillment of the Elements of Unlawful Actions by Notaries Regarding Making a Deed of Statement of Decisions at a General Meeting of Shareholders Which Was Not Attended by a Notary (Study of Supreme Court Decision Number 690 PK/PDT/2021)

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Abstrak

Pembatalan Akta Pernyataan Keputusan Rapat ("Akta PKR") oleh pengadilan terjadi dikarenakan akta yang dibuat tidak dikehendaki oleh pemilik saham sah yang menyatakan tidak pernah melakukan Rapat Umum Pemegang Saham Luar Biasa ("RUPSLB"), sebagaimana termuat dalam Putusan Mahkamah Agung Nomor 690 PK/Pdt/2021. Permasalahan dalam penelitian ini yaitu adanya penghibahan saham secara sepihak tanpa sepengetahuan pemilik saham, dalam hal ini dikaji secara mendalam dari sisi notaris sebagai pembuat Akta PKR. Apakah notaris memenuhi unsur-unsur perbuatan melawan hukum dalam proses pembuatan Akta PKR tersebut, serta bagaimana kekuatan pembuktian Akta Notariil PKR yang dibuat berdasarkan risalah rapat yang tidak dihadiri notaris tersebut. Untuk menjawab permasalahan tersebut, dipergunakan metode penelitian doktrinal, dengan pengumpulan data secara kepustakaan untuk memperoleh data sekunder, dan metode analisis data secara kualitatif. Hasil penelitian menunjukkan bahwa kekuatan pembuktian akta notariil PKR yang dibuat berdasarkan risalah RUPSLB yang tidak dihadiri notaris adalah sempurna selama tidak mengalami cacat formil dalam ketentuan Pasal 1320 KUHPdata, serta untuk pemenuhan unsur perbuatan melawan hukum notaris berdasarkan Putusan Mahkamah Agung Nomor 690 PK/Pdt/2021, didapatkan hasil bahwa Notaris MN telah memenuhi seluruh unsur perbuatan melawan hukum yang mengakibatkan timbulnya permohonan ganti rugi sebagaimana Pasal 1365 KUHPdata. Penggantian kerugian dalam hal ini tidak dalam bentuk uang, melainkan pertanggungjawaban notaris untuk mengembalikan saham kepada keadaan semula.

.....The cancellation of the Deed of Statement of Meeting Resolutions ("PKR Deed") by the court occurred because the deed that was made was not desired by the legal shareholders who stated that they had never held an Extraordinary General Meeting of Shareholders ("EGMS"), as stated in the Supreme Court Decision Number 690 PK /Pdt/2021. The problem in this research is that there is a unilateral donation of shares without the knowledge of the share owner, in this case it is studied in depth from the perspective of the notary as the maker of the PKR Deed. Does the notary fulfill the elements of an unlawful act in the process of making the PKR Deed, and what is the strength of the proof of the PKR Notarial Deed which was made based on the minutes of the meeting which the notary was not present at? To answer this problem, doctrinal research methods were used, with library data collection to obtain secondary data, and qualitative data analysis methods. The results of the research show that the evidentiary strength of the PKR notarial deed made based on the minutes of the EGMS which was not attended by a notary is perfect as long as it does not experience any formal defects in the provisions of Article 1320 of the Civil Code, as well as to fulfill the elements of a notary's unlawful act based on Supreme Court Decision Number 690 PK/Pdt/2021 , the results

obtained were that the MN Notary had fulfilled all the elements of an unlawful act which resulted in a request for compensation as stated in Article 1365 of the Civil Code. Compensation for losses in this case is not in the form of money, but rather the responsibility of the notary to return the shares to their original condition.