

Problems of Using a Power of Attorney to Sell in the Transfer of Limited Liability Company Assets (Case Study Decision Number: 472/Pid.B/2023/Pn Tjk)

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Abstract

The role of a Notary as a public official is very important and must be able to provide counseling and take the right steps in making authentic deeds by ensuring the formal truth of a legal act, especially a legal act in this case is the transfer of company assets based on a power of attorney to sell and without the approval of the General Meeting of Shareholders. Where the transfer of company assets should refer to the company's articles of association and Law No. 40 of 2007 concerning Limited Liability Companies. The problem raised is the validity of the power of attorney to sell in the transfer of company assets and without the approval of the General Meeting of Shareholders. The research method used is normative legal research, using secondary data consisting of primary, secondary and tertiary legal materials. This study uses a descriptive-analytical data analysis method with a qualitative approach. The results of this study are that if the subjective requirements in making a deed are not met, where the provisions in Article 1320 of the Civil Code must meet the requirements of competence in granting the power of attorney to sell, then the transfer of the asset can be cancelled. A Notary, in carrying out his duties, must be careful, thorough and adhere to the UUJN-UUPJN and KEN.

Keywords: *Deed of Power of Attorney to Sell, Transfer of Assets, Limited Liability Company,*

INTRODUCTION

PartThe presence of a Limited Liability Company as a legal entity in everyday life, humans cannot be separated from economic activities¹. Therefore, the presence of a Limited Liability Company as a legal entity in economic activities involving more than one individual or one organ². One element that has an important role in efforts to mobilize and direct development is the existence of business entities³. Especially in the era of globalization and liberalization changing the world economic order, Article 1 number (1) of Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law) explains the definition of a Limited Liability Company which reads:

¹Aisha Mutiara Safitri, "Legal Analysis of Individual Limited Liability Companies Based on Article 109 of Law Number 11 of 2020 concerning Job Creation Against Law Number 40 of 2007 concerning Limited Liability Companies," *Citizenship Journal* 6, no. 2 (2022): 3353–74.

²Ika Apri Handayani, Suartini Suartini, and Fokky Fuad, "The Concept of Materiality in Corporate Actions of SOE Subsidiaries Based on the Limited Liability Company Law," *Binamulia Hukum* 12, no. 2 (2024): 393–402, <https://doi.org/10.37893/jbh.v12i2.618>.

³Haniah Hanafie, Agus Nugraha, and Masrul Huda, "The Existence of BUMDes in Efforts to Increase Village Original Income (PAD) and Strengthen the Village Economy in Susukan District, Cirebon Regency, West Java Province," *Transparency: Scientific Journal of Administrative Science* 5, no. 1 (2022): 52–61, <https://doi.org/10.31334/transparansi.v5i1.1793>.

"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in this law and its implementing regulations."

Thus, the important elements that can be found in the Article are that Limited Liability Companies are as follows:

1. Legal entity which is a capital association
2. Established based on agreement
3. Conducting business activities
4. All capital is divided into shares
5. Fulfill the requirements of the Law and its implementing regulations.

HMN Purwosoetjpto put forward several conditions for a body to be categorized as a legal entity⁴. The requirements for a body to be said to have legal entity status include the following requirements:

- a. The existence of assets (rights) with a specific purpose separate from the personal wealth of the partners or founders the body. Strictly speaking, there is a separation of the Company's assets from the personal assets of the partners;
- b. The interests that are the goal are common interests;
- c. There are several people as administrators of the agency.

The three elements above are material (substantive) elements for a legal entity. Then, other requirements are formal requirements, namely the existence of recognition from the state that recognizes an entity as a legal entity.

Legal entities are considered the same as humans, namely artificial or imitation humans⁵, but legally can function as an ordinary human being (natural person or *natuurlijk persoon*), can be sued, can make decisions and can have rights and obligations, debts and have assets as befits an ordinary human being. A legal entity can be defined as an association/organization that is treated by law like a human being who has rights and obligations, can have assets, can sue and be sued in court⁶. In carrying out the transfer of assets in a Company, of course a deed is required which is made authentically before a Notary, preceded by a General Meeting of Shareholders (GMS). The deed made by a notary has an important role in creating legal certainty in every legal relationship⁷, because the notarial deed is authentic, and is the strongest and most complete evidence in every case related to the notarial deed. Article 1868 of the Civil Code states that an authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed is made⁸.

⁴Mr. Kurniawan, "Liability of Shareholders of Limited Liability Companies According to Positive Law," Law Forum - Faculty of Law, Gadjah Mada University 26, no. 1 (2014): 72, <https://doi.org/10.22146/jmh.16055>.

⁵Erna Lismayanti et al., "Legality of Actions of Directors of Limited Liability Companies," Jurnal Res Justitia 3, no. 2 (2023): 193–212.

⁶AA Gede DH Santosa, "The Waterboards," Journal of Legal Communication (JKH) Ganesha Education University 5, no. 2 (2019): 152–66.

⁷Muhammad Iqbal Fauzan, Isis Ikhwansyah, and Nanda A. Lubis, "The Validity of Minutes of General Meeting of Shareholders Prepared by a Notary in Relation to Inheritance of Limited Liability Company Shares," ACTA DIURNAL Journal of Notary Law, Faculty of Law, Unpad 3 (2020): 305–20, <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/229>.

⁸Candella Angela Anatea Taliwongso, Dientje Rumimpunu, and Muhammad Hero Soepeno, "The Position of Authentic Deeds as Evidence in Civil Trials Reviewed from Article 1870 of the Civil Code (Case Study of Decision Number 347/Pdt.G/2012/PN.Mdn)," Lex Administratum 10, no. 2 (2022): 1–15, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/40531>.

Notarial deeds have perfect evidentiary power in civil lawsuits and criminal lawsuits, however, if they violate certain provisions, the evidentiary value of the deed will be degraded to having evidentiary power as a private deed and can even be null and void by law⁹.

In the practice of buying and selling regarding the transfer of assets in a Company, legal problems often arise if the transfer process does not comply with the rules set out in Law Number 40 of 2007 concerning Companies¹⁰. And often there are parties who want to take advantage of their personal interests.

However, often in the practice of making notarial deeds we find negligence in making authentic deeds made by notaries, sometimes there are even indications that notaries intentionally and/or participate in committing the crime of falsifying a letter or document for their own interests or other interests which results in losses for several parties¹¹. Lack of accuracy or carelessness of a notary is usually due to a party or person appearing who provides false letters, documents or information, as well as a notary who intentionally and/or participates in committing the crime of falsifying an authentic deed or document for his own benefit or with the intention of benefiting himself¹². Which results in the deed he made experiencing a degradation of evidentiary power or being null and void by law. In this case the person appearing made the deed with the intent and purpose of benefiting or harming another party¹³.

From the introductory description above, the problems in this study are: Transfer of Limited Liability Company Assets according to Law Number 40 of 2007 concerning Limited Liability Companies and the Impact of the Use of a Deed of Power of Attorney to Sell on Company Assets.

METHOD

In accordance with the problems that have been formulated, this type of research is normative legal research, namely research based on laws and court decisions. a scientific research procedure to find the truth of the logic of legal science from its normative side, its scientific logic in normative legal research is built on scientific discipline and the working methods of normative legal science.

RESULTS AND DISCUSSION

Position Case

To make it clearer, the author here explains the parties in the chronology of the PT. Prabu Makmur Company case:

1. Thio Ferry Sulistyo = TFS (President Director)
2. Efendi Cashmere = KS (Director)
3. Sylvia = S (Commissioner)

This case began with the Reporter TFS who is the Director of PT. Prabu Makmur, in October 2018 was called by a Notary asking for the deed of establishment of PT. Prabu Makmur to transfer land rights in the name of PT. Prabu Makmur, TFS who knew that the land with SHGB, Number. 379 / SI, was located in Sukarame I Village, Sukarame District, Bandar Lampung City and SHGB,

⁹Amirahni Zahra Tripipo, "Notary's Responsibilities for Deeds That the Notary Does Not Read in the Front of the Parties (Study of Supreme Court Decision No. 351 PK / PDT / 2018)" 8, no. 4 (2025): 879–95.

¹⁰Endah Pertiwi, "Notary's Liability Due to the Making of Nominee Deeds Containing Unlawful Acts by the Parties," *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 1, no. 1 (2019): 41–55, <https://doi.org/10.52005/rechten.v1i1.5>.

¹¹Beautiful Mother Earth.

¹²AS Consoleo, S Sulasno, and R Rokilah, "Notary's Responsibility for the Validity of the Applicant's Identity in Making a Deed of Debt Acknowledgement and Power of Attorney to Sell," *Jurnal Hak* 1, no. 1 (2023): 97–106, <https://e-jurnal.lppmunsera.org/index.php/hak/article/view/7443>.

¹³Nesha Sakina and Budi Santoso, "Notary's Accountability in Making Authentic Deeds Containing False Information" 17 (2024): 2415–29.

Number. 380/SI, was located in Sukrame I Village, Sukrame District, Bandar Lampung City. As far as TFS knows, it is still collateral at Bank CIMB Niaga.

The transfer of the property rights of the limited liability company PT. Prabu Makmur began with the act of falsifying the signature on the minutes of the Deed of Power of Attorney to Sell carried out by KF who at that time was the director of PT. Prabu Makmur¹⁴, who forged the signature of TFS is the main director of PT. Prabu Makmur, KF forged the signature in the minutes of the power of attorney to sell number 5 dated December 5, 2003 and the Power of Attorney to Sell Number 1 dated January 5, 2004, this case began on Friday, December 5, 2003, and on Monday, January 5, 2004, at the office of Notary IMRAN MA'ARUF (ALM) on Jalan RA Kartini No. 32 Bandar Lampung, **KF** As the director of PT. Prabu Makmur, he knows that several of the Company's assets are currently under guarantee at Bank CIMB Niaga, Bandar Lampung branch office¹⁵, since November 1991 as collateral for credit, among others, is a Land Certificate for a Plot of Land with Building Use Rights Number: 379/SI located in Sukrame I Village, Sukrame District, Bandar Lampung City, Lampung Province with an area of 6,600 M² with a measurement letter number 55/1990 dated January 10, 1990 and a Land Certificate for a Plot of Land with Building Use Rights Number 380/SI located in Sukrame I Village, Sukrame District, Bandar Lampung City, Lampung Province with an area of 21,000 M² described in the situation picture number 844/1991 dated March 9, 1991, then after knowing that TFS was not in Bandar Lampung because he was out of town for a long time, the intention arose. The defendant to take all the Land Certificates that were guaranteed by the victim THIO FERRY SOELISTHIO for the purpose of making a profit by selling them to other people¹⁶.

Next, KF contacted Y and told him with the intention of asking for help to redeem the land certificate that was used as collateral at Bank CIMB Niaga Bandar Lampung Branch Office in the amount of Rp. 1,500,000,000., (one billion five hundred million rupiah), after paying off the debt at Bank CIMB. Next, on September 16, 2008, together with YOHANES, he went to Bank CIMB NIAGA Bandar Lampung Branch on Jl. Laksamana Malahayati Teluk Betung Bandar Lampung in order to redeem the letters that were used as collateral at Bank CIMB NIAGA Bandar Lampung Branch.

After the Certificate is no longer a guarantee, the transfer of land rights is carried out, namely a Building Use Rights Land Plot Number 379/SI located in Sukrame I Village, Sukrame District, Bandar Lampung City, Lampung Province with an area of 6,600 M² from PT. Prabu Makmur to Mr. KHO YOU SURYANA with AJB Number 288/CT.Skr/X/2008, dated 15 October 2008 and the Parent of a Plot of Land with Building Use Rights Number: 380/SI located in Sukrame I Village, Sukrame District, Bandar Lampung City, Lampung Province with an area of 21,000 M² is sold to you **TONY** which is divided into 2 (two) Fields for AJB No.05/ CT.Skr/2009 with an area of 9,088,000.- (Nine thousand eighty eight square meters) and AJB No. 06/CT.Skr /2009 with an area of 9,456,000 (Nine thousand four hundred fifty six thousand square meters). The basis for the witness to be able to transfer the rights to the land is the Deed of Power of Attorney to Sell No.1 dated January 5, 2004 made by Notary IMRAN MA'ARUF, SH

Procedures for transfer of Company assets according to UUPA, Number 40 of 2007

Transfer of assets of a limited liability company is a legal act¹⁷, where in the transfer of rights must be regulated in Law Number 40 of 2007 and the Company's articles of association, therefore it is very important in the process of transferring the company's assets to pay attention to the provisions

¹⁴Farhad Lubben and I Dewa Ayu Dwi Mayasari, "Legal Certainty of Establishment of Sole Proprietorship Without Notarial Deed Based on Job Creation Law," *Acta Comitas: Notary Law Journal* 7, no. 01 (2022): 133–45.

¹⁵Eli Purwanti, Robin Jonathan, and Ida Rahmawati, "MERGER AT PT. BANK CIMB NIAGA, Tbk," 2016.

¹⁶Reni Widiastuti, "The Impact of Customer Loyalty Influenced by Product Quality, Service, and Customer Trust," *Journal of Business, Islamic Economics, and Taxation* 1, no. 1 (2024): 31–52, <https://doi.org/10.61132/jbep.v1i1.38>.

¹⁷Icha Rahmawati, Hotimah Hotimah, and Sumriyah Sumriyah, "Abuse of Authority of Limited Liability Company Directors Over the Transfer of Company Assets," *Journal of Law and Social Politics* 1, no. 2 (2023): 238–47, <https://doi.org/10.59581/jhsp-widyakarya.v1i2.313>.

in force in Law Number 40 of 2007, concerning companies. Article 102 paragraph 1 letter a concerning limited liability companies.

Limited Liability Company as a legal entity, in order to realize its aims and objectives, is represented by the Company's organs in carrying out legal acts.¹⁸, that is:

1. General Meeting of Shareholders (GMS);
2. Board of Directors
3. Commissioner

According to Article 1 Number 2 of UUPT Number 40 of 2007, the General Meeting of Shareholders is:

"The company organ that holds the highest power in the company and holds all authority that is not delegated to the Board of Directors or Commissioners"

Furthermore, it was replaced by Article 1 Number 4 of the UUPT, the General Meeting of Shareholders is:

"The Company's organs that have authority that is not granted to the Board of Directors or the Board of Commissioners within the limits determined in this Law and/or the articles of association."

As reaffirmed in Article 75 Paragraph (1) of the UUPT, that:

"The GMS has all the authority not given to the Board of Directors or Commissioners, within the limits determined in this Law and/or the articles of association."

The GMS may only be held at the company's domicile or where the company carries out its business activities¹⁹, unless otherwise specified in the Articles of Association but must remain in the territory of the Republic of Indonesia. Based on Article 76 of the PT Law Number 40 of 2007, the GMS consists of the Annual GMS and other GMS. The annual GMS must be held no later than 6 (six) months after the fiscal year by submitting the company's annual report as referred to in Article 78 of the PT Law²⁰.

In addition to fulfilling the provisions for holding a GMS as explained above, the GMS must also fulfill the quorum provisions as stipulated in Article 86 paragraph 1 of Law Number 40 of 2007 concerning limited liability companies. By fulfilling the provisions above, every GMS held must have minutes made and be signed by the chairman of the meeting and at least 1 (one) shareholder appointed from and by the GMS participants²¹. UUPT provides an opportunity for shareholders to make their own summons for a GMS if it turns out that the Board of Directors or Commissioners do not hold a GMS at the specified time or in the case that the Board of Directors or Commissioners do not hold another GMS after 30 (thirty) days from the request, where the Head of the District Court will determine the form²², the contents and time period of the summons for the GMS and appointing the chairman of the meeting without being bound by the provisions of the UUPT or the Articles of Association and this determination is the first and final determination of the agency²³.

¹⁸Yanda Saputra and Mahmudah Siti, "Regulation of General Meeting of Shareholders of Public Companies after the Outbreak of the Covid-19 Pandemic in Indonesia," *Law, Development & Justice Review* 4, no. 1 (2021): 139–57.

¹⁹Merdi Aditya Putra and Siti Hajati Husein, "The Role of Notaries and the Validity of Electronically Carried Out GMS Deeds," *The Juris* 6, no. 1 (2022): 157–68, <https://doi.org/10.56301/juris.v6i1.426>.

²⁰Saputra and Siti, "Regulation of General Meeting of Shareholders of Public Companies after the Outbreak of the Covid-19 Pandemic in Indonesia."

²¹Jeva Fitri Fadilla and Daly Erni, "Legal Certainty Regarding the Authority of Notaries in Validating the Deed of Minutes of the GMS Held Electronically," *JISIP (Journal of Social Sciences and Education)* 7, no. 1 (2023): 49–63, <https://doi.org/10.58258/jisip.v7i1.3996>.

²²Syafira Nurullia and Rosewitha Irawaty, "The Validity of Power of Attorney and Procedure of EGMS During Vacant Period of Board of Directors' Position Regarding Ratification of Actions of Former Board of Directors: Analysis of Decision Number 575/PDT/2023/PT SBY" 5, no. 1 (2024): 1–17.

²³Parnigotan Joy Hans Manalu, Liju Zet Viany, and Karel Yossi Umboh, "Requirements for Establishing a Limited Liability Company and General Meeting of Shareholders (GMS) Based on Law No. 40 of 2007 Concerning

In addition, the GMS is one of the limitations on the authority of the board of directors in terms of transferring or pledging the Company's assets²⁴. In order to transfer or make a debt guarantee for part or all of the Company's assets, the board of directors must request the approval of the GMS. Although the board of directors has the authority to manage assets, for significant asset transfers, the board of directors' authority is usually limited and requires the approval of the General Meeting of Shareholders (GMS)²⁵. Several types of asset transfers that require the approval of the GMS include:

- Transfer of a company's major assets (e.g., buildings, land, factories, or high-value intellectual property rights).
- Sale of company shares or other major investments.
- Transfers or sales of assets that could substantially change the company's structure (for example, transfers of assets that impact business continuity or involve third parties that have significant influence over the company). Transfers that could significantly change the course of the company's strategy or policies, such as in the case of a merger or acquisition.

GMS approval will be required in certain circumstances, particularly in relation to transfers affecting strategic assets or changes to the company structure.²⁶ Some examples of transfer of assets that require the approval of the GMS are:

- Sale or transfer of more than 50% of the Company's assets: For example, if a company owns land and buildings of very high value, its sale could significantly impact the company's financial and operational position.

Therefore, even though the board of directors has authority, the transfer of assets involving material value or major changes in the company structure requires control from shareholders through the GMS to ensure that the decisions taken meet the interests of the company and the shareholders²⁷. And whether or not it is in accordance with Article 102PT Law No. 40 of 2007 concerning Limited Liability Companies.

The result of using a power of attorney deed to sell as the basis for transferring Limited Liability Company assets. The assets of the Limited Liability Company referred to here are how many plots of land are owned by the Company?²⁸ The transfer of land rights, whether transferred or assigned, can occur if the material requirements for buying and selling land are met, namely the land owner or land rights holder as the seller has the right and authority to sell the rights to his land²⁹, while the buyer must fulfill the requirements as a subject of land rights which is the object of the land sale and purchase³⁰.

If the seller/buyer is a legal entity, then its identity is: name, legal form (limited liability

Limited Liability Companies,” *Lex Privatum* IX, no. 2 (2021): 66–67, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33151>.

²⁴et al., “Cross-Border Business Competition: Legitimacy and Obstacles to the Implementation of Extraterritorial Principles in Enforcing Competition Law in Indonesia,” *Jurnal Bina Mulia Hukum* 3, no. 1 (2018), <https://doi.org/10.23920/jbmh.v3n1.10>.

²⁵Accountability of Management and State-Owned Banks, “In the Provision of Credit by State-Owned Banks” 7 (2022): 71–97.

²⁶Nanda Khairun Nissa and Endang Tri Widiyarti, “ANALYSIS OF MERGER THAT OCCURRED IN BUSINESS ENTITIES IN THE FORM OF CV (Case Study of Distributor Companies CV Semarang Indah and CV Merauke Indah),” *Diponegoro Journal of Management* 12, no. 1 (2023): 1–14, <http://ejournal-s1.undip.ac.id/index.php/dbr>.

²⁷GMS-LB NV Javascbe, Bioscoop En, and Bouw Maatschappij, “Unlawful Acts in Holding an Extraordinary General Meeting of Shareholders (GMS-LB) by Heirs Who Have No Authority Over the Company's Shares (Case Analysis)” 5, no. 3 (2025): 1974–85.

²⁸Paula Paula, “Liability of Limited Liability Companies in Liquidation,” *Acta Diurnal Journal of Notary Law and PPAT-An* 4, no. 2 (2021): 332–49, <https://doi.org/10.23920/acta.v4i2.595>.

²⁹Arivan Amir, “In the Framework of First Land Registration,” *Repertorium of the Scientific Journal of Notary Law* 8, no. 1 (2019): 53.

³⁰Asta Tri Setiawan, Sri Kistiyah, and Rofiq Laksamana, “Problems of the Legality of Land Sale and Purchase Under Land Rights in Transmigration Areas,” *Tunas Agraria* 4, no. 1 (2021): 22–39, <https://doi.org/10.31292/jta.v4i1.133>.

company, foundation, state-owned company, state-owned company, etc.), position, and its administrators. All of this can be found in the deed of establishment/articles of association/statutory regulations for its formation³¹.

If the seller/buyer in this case acts through a power of attorney, then a special power of attorney to sell must exist³². A general power of attorney, which is usually only for management actions, does not apply to selling. The power of attorney must be firm to sell the land being sold.

The power to sell is a form of special power³³, which is made following the making of a land rights sale and purchase agreement before a notary. Therefore, an authentic deed must be defined as an agreement in Article 1320 of the Civil Code. The making of the power of attorney to sell itself is motivated by various things, including the land rights holder/grantor of the power of attorney being unable to attend before the authorized official because he is sick³⁴, the land rights holder/grantor of power of attorney cannot be present before the authorized official because he is temporarily absent³⁵.

In other words, a Deed of Power of Attorney to Sell must meet the definition of the requirements for the validity of an agreement in Article 1320 of the Civil Code, one of which is competence. The Legal Dictionary defines a Notarial Deed as "a deed made before, and in the presence of an authorized official." This is clearly different from a deed under hand, where this deed is declared legally valid as long as the parties who sign the deed acknowledge its existence. An agreement can be a written or oral agreement that is legally valid, as long as it meets certain elements, such as the existence of an agreement, the competence of the parties, a clear object, and a lawful cause³⁶.

In the context of this agreement, if there is forgery of signatures or documents related to the agreement³⁷, then the action can be caught in the provisions of the crime of forgery as regulated in Article 264 paragraph 1 of the Criminal Code. regulates the crime of forgery of documents

In this case, the power of attorney to sell which is the basis for the transfer of assets of the company PT. Prabu Makmur, is legally flawed. This will affect the evidentiary power of the deed as evidence. As we know, an authentic deed has 3 evidentiary powers, namely:

- 1. The power of external proof;**
- 2. Formal evidentiary force:**
- 3. The power of material evidence.**

The power of material evidence is the information or statement contained in an authentic deed based on the wishes of the parties/applicants must be true and in accordance with or not in violation of applicable laws and regulations and they are the legal parties according to the law to make the

³¹Nana Eka Wijayanti and Sumriyah, "Articles of Association That Do Not Comply with Article 157 Paragraph (4) of Law No. 40 of 2004 Concerning Limited Liability Companies," *Journal of Science Student Research* 1, no. 1 (2023): 877–87, <https://doi.org/10.61722/jssr.v1i1.408>.

³²Indah Puspitaarum and Aju Putrijanti, "The Power of Attorney to Sell in the Purchase of Land Not Transferred to the Name of a Housing Developer," *Notarius* 16, no. 3 (2023): 1710–23, <https://doi.org/10.14710/nts.v16i3.43766>.

³³Vivi Sylvia Purborini, Law, and Wisnuwardhana University, "Legal Review of the Use of Special Power of Attorney in Buying and Selling a House" 4 (2024): 4745–55.

³⁴R Ryosa, "Legal Power of Power to Sell as a Basis for Debt Settlement in Judge's Decision (Case Study of Decision Number: 388 Pk/Pdt/2014)," 2018, [http://repository.ub.ac.id/178373/%0Ahttp://repository.ub.ac.id/178373/1/Renny Ryosa %282%29.pdf](http://repository.ub.ac.id/178373/%0Ahttp://repository.ub.ac.id/178373/1/Renny%20Ryosa%20282%29.pdf).

³⁵Herlina Hasibuan, "Legal Analysis of Rejection of Cancellation of Deed of Sale and Purchase Agreement (Ppjb) of Land Rights Through Lawsuit Procedure to Court (Study of Supreme Court Decision No. 3703.K/Pdt/2016)," *Jurnal Perspektif Hukum* 2, no. 1 (2021): 26–45, <https://doi.org/10.35447/jph.v2i1.273>.

³⁶Dian Samudra and Ujang Hibar, "Comparative Study of the Validity of Agreements Between Article 1320 of the Civil Code and Article 52 of Law Number 13 of 2003 Concerning Manpower," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 1, no. 1 (2021): 26–38, <https://doi.org/10.46306/rj.v1i1.9>.

³⁷Fathurrahman 'Arif Rumata, Muh. Iqbal, and Asman Asman, "Digital Da'wah as a Means of Increasing Understanding of Religious Moderation Among Youth," *Journal of Da'wah Science* 41, no. 2 (2021): 172–83, <https://doi.org/10.21580/jid.v41.2.9421>.

authentic deed, unless proven otherwise³⁸.

A Notarial Deed is an agreement between the parties that binds those who make it, therefore the conditions for a valid agreement must be fulfilled, in Article 1320 of the Civil Code, namely the fulfillment of subjective and objective conditions³⁹.

Subjective Requirements are requirements relating to the subject who enters into or makes an agreement, which consists of the words agreed and competent to act to carry out a legal act⁴⁰. Agreement to carry out a legal act by the parties, free from intervention or pressure from either party and solely the wishes of the parties who made the promise⁴¹. Article 1321 of the Civil Code states that if it can be proven that the contract was agreed upon under duress or threats that caused fear so that the other person had no other choice, then the deed can be cancelled⁴². Apart from that, the existence of an element of fraud is another reason to cancel the agreement⁴³, this is as stated in Article 1328 of the Civil Code, that fraud is a reason for Cancellation of an Agreement⁴⁴.

In this case, the consequences arising from the transfer of assets of the limited liability company PT. Prabu Makmur which is based on the Deed of Power of Attorney to Sell Number 5, dated 5-12-2003 (the fifth of December in the year two thousand three) and the deed of power of attorney to sell number: 1 dated 05-01-2004 (the fifth of January in the year two thousand four), a copy of the deed issued by Notary IMRAN MA'ARUF (ALM), can be canceled due to the element of forgery of the letter as regulated in Article 264 of the Criminal Code.

The act of transferring the Company's assets carried out by KE when he was serving as Director of the Limited Liability Company PT. Prabu Makmur was invalid, because the deed of power of attorney for sale which was the basis for the transfer of the Company's assets, where the signature of Thio Ferry Sulisthio as the President Director of the Limited Liability Company PT. Prabu Makmur⁴⁵, faked, faked by Kasmir Efendi bin Wahbi in The Deed of Power of Attorney to Sell Number 1 dated January 5, 2004 made by Notary IMRAN MA'ARUF, SH, does not fulfill the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely the requirement of competence. Responsibility for the sale of the Company's assets is based on the deed of power of attorney to sell and without the approval of the general meeting of shareholders⁴⁶.

³⁸M Holidi, "The Proving Power of Authentic Deeds in Civil Court Processes at the District Court in Yogyakarta," *JURIDICA: Journal of the Faculty of Law, Gunung Rinjani University* 4, no. 2 (2023): 39–48, <https://doi.org/10.46601/juridicaugr.v4i2.220>.

³⁹Fatma Devi, Busyra Azheri, and Yulfasni Yulfasni, "Restrictions on Freedom of Contract in Unnamed Agreements in the Form of Notarial Deeds," *UNES Law Review* 6, no. 1 (2023): 404–15, <https://doi.org/10.31933/unesrev.v6i1.861>.

⁴⁰Muhammad Rudiansyah, "Legal Analysis of Arbitration Regarding the Inability to Sign a Written Agreement by the Disputing Parties," *Indonesian Law Enforcement Journal* 1, no. 1 (2020): 21–28, <https://doi.org/10.51749/jphi.v1i1.2>.

⁴¹Pintami Nanda, Dominikus Rato, and Ainul Azizah, "Binding Power of the Deed of Van Vergelijk for the Division of Joint Property Based on the Civil Code," *Jurnal Rechtsens* 11, no. 2 (2022): 205–24, <https://doi.org/10.56013/rechtsens.v11i2.1446>.

⁴²Sri Redjeki and Heddy Kandou Slamet, "The Doctrine of Abuse of Circumstances (Misbruik Van Omstandigheden) in Contract Law in Indonesia," *Lex Jurnal* 19, no. 2 (2022): 236–40.

⁴³Amiruddin Amiruddin, Chrisdianto Eko Purnomo, and Rina Khairani Pancaningrum, "The Concept of Fraud in the Criminal Law and Civil Law Realms," *Journal of Law Compilation* 7, no. 2 (2022), <https://doi.org/10.29303/jkh.v7i2.102>.

⁴⁴Faculty of Law, Kuningan University, "Letterlijk: Journal of Civil Law," Faculty of Law, Kuningan University 1, no. 1 (2024): 1–16, <https://journal.fhukum.uniku.ac.id/letterlijk/index>.

⁴⁵Anishya Yulia Anggraini, Busyra Azheri, and Yussy Adelina Mannas, "Notary's Responsibility for the Deed of Power of Attorney to Sell in Transfer of Land Rights," *Journal of Education, Humanities and Social Sciences (JEHSS)* 5, no. 4 (2023): 2859–73, <https://doi.org/10.34007/jehss.v5i4.1746>.

⁴⁶Azizah Siti Lathifah, "Utilization of Digital Technology in Constructivist Learning: Improving the Quality of Education in the Digital Era," *Journal of Education and Culture (JURDIKBUD)* 4, no. 1 (2024): 69–76, <https://doi.org/10.55606/juridikbud.v4i1.2838>.

1. Civil liability

Based on Article 1320 of the Civil Code concerning the requirements for a valid agreement, Kasmir Efendi was proven to have legally forged a signature in an authentic deed, and did not fulfill the requirements for capacity. If one of these conditions is not met, the agreement in question may be considered invalid or null and void by law. If an agreement is invalid because it does not meet the provisions of Article 1320 of the Civil Code, then the agreement is not binding on the parties. However, this does not necessarily free the party who feels aggrieved. The party who does not meet the legal requirements can be asked to compensate or be responsible for the losses incurred due to the invalidity of the agreement. This responsibility is regulated in Article 1365 of the Civil Code, which states that: "Any act that violates the law and causes loss to another person, requires the guilty person to compensate for the loss." Thus, the deed is void, if there is a party who is harmed, the party who does not fulfill the legal requirements can be asked to compensate for the losses arising from the failure to fulfill the competence requirements in making the deed of power of attorney to sell.

2. Criminal liability

Based on the Criminal Code, Article 264, which reads:

1. Anyone who intentionally makes or falsifies a document that could result in legal consequences is threatened with a maximum prison sentence of six years.
2. Anyone who intentionally uses a false document as referred to in paragraph (1) is threatened with a maximum prison sentence of four years.

This article provides criminal sanctions for perpetrators who create or use fake documents which can result in legal consequences⁴⁷. So, if someone forges a letter for a certain purpose, he can be subject to imprisonment in accordance with existing provisions.⁴⁸

When associated with the above decision, KF's action of falsifying TFS's signature, in signing the minutes of the power of attorney to sell, which was used by KF for personal gain, is an action that is detrimental to the Company⁴⁹. Based on the judge's decision, KF was proven legally and guilty of committing a criminal act, namely "Forgery of signatures in authentic deeds" so that based on Article 264 paragraph 1 he was sentenced to 1 year and 10 months in prison.⁵⁰

⁴⁷Millenia Lambogia, Dezen D. Rompas, and Ronald E. Rorie, "Sanctions Against Perpetrators of Criminal Acts of Using Fake Letters According to the Criminal Code (KUHP)," North Sulawesi: Sam Ratulangi University, *Lex Crimen* Vol. X, no. 9 (2021): 25–34.

⁴⁸Toriquil Hidayat et al., "LEGAL VIOLATION OF FORGERY OF CERTIFICATE OF IMPOSSIBILITY (SKTM)," 2024, <https://doi.org/10.55551/jip.v5i2.135>.

⁴⁹Putu Mira Jyothi Pramandiaswari and Kadek Julia Mahadewi, "The Competence of Justification of Private Deeds That Have Been Legalized by a Notary," *Citizenship Journal* 7, no. 1 (2023): 643–49.

⁵⁰Categorization of Signs, Non-, and Identical Signatures In, "CATEGORIZATION OF NON-IDENTIC SIGNATURES IN FORGERY OF POWER OF ATTORNEY TO SELL BY NOTARIES (ANALYSIS OF SUPREME COURT DECISION NUMBER 1209K / PID / 2022)" 8, no. 2 (2023): 195–212.

CONCLUSION

The transfer of assets of a Limited Liability Company must be carried out in accordance with the provisions stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. In the case of PT Prabu Makmur, there was a violation of the company's asset transfer procedure where Kasmir Efendi (KF) as Director forged the signature of President Director Thio Ferry Sulistyo (TFS) on the Deed of Power of Attorney to Sell made before a Notary. This action not only violates the provisions of Article 102 of the UUPT which requires the approval of the GMS for the transfer of company assets, but also violates the requirements for the validity of the agreement in Article 1320 of the Civil Code, especially regarding the requirement of competence. The legal consequence of using a deed of power of attorney to sell containing elements of forgery is the cancellation of the deed, which then has an impact on the invalidity of the transfer of company assets to a third party. Legally, KF's actions have resulted in double consequences, namely civil liability under Article 1365 of the Civil Code to compensate for the losses incurred, as well as criminal liability under Article 264 of the Criminal Code concerning forgery of authentic deeds which resulted in KF being sentenced to 1 year and 10 months in prison. This case emphasizes the importance of compliance with legal procedures in the transfer of corporate assets and the serious consequences that can arise from violations of these provisions.

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