



Liability of Notaries for Signature Forgery in Circular Resolutions of Shareholders

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Abstract

A Circular Resolution, as a decision-making mechanism for shareholders outside a General Meeting of Shareholders (GMS), is legally recognized under Article 91 of Law Number 40 of 2007 concerning Limited Liability Companies. This mechanism requires unanimous written consent and the signatures of all shareholders. Legal issues arise when a Circular Resolution, which serves as the basis for a notarial deed, contains forged signatures. This normative legal research aims to analyze the legal validity of Circular Resolutions and the extent of a notary's liability based on relevant laws and regulations. The results indicate that a Circular Resolution is valid as long as it adheres to the principle of unanimous consent and is executed in writing. However, there is a lack of technical regulations regarding signature verification, creating potential for abuse. A notary's responsibility is limited to the formal aspects of the deed; therefore, the notary is not liable for forgeries committed without their involvement or negligence. Nevertheless, a notary may still face administrative, civil, or criminal liability if proven negligent or in breach of the principle of prudence.

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1. Introduction

The contemporary business landscape is characterized by rapid and dynamic developments. These conditions demand that business entities, particularly limited liability companies, be capable of making decisions swiftly, efficiently, and accurately. To achieve such efficiency, a decision-making mechanism known as a "Circular Resolution" is utilized. This mechanism, which allows for decisions to be made outside of a General Meeting of Shareholders (GMS), is recognized under Article 91 of Law Number 40 of 2007, which states: "Shareholders may also adopt binding decisions outside of a GMS on the condition that all shareholders with voting rights provide written approval by signing the proposal concerned."

This mechanism facilitates corporate activities by bypassing the need for formal meetings. However, in practice, Circular Resolutions frequently give rise to legal issues, particularly when signature forgery occurs within the minutes of the resolution that serves as the basis for a notarial deed.

As public officials, notaries play a vital role in providing legal certainty, order, and protection to the public through the creation of authentic deeds.^[1] A notarial deed possesses absolute evidentiary weight in civil law, thereby demanding high levels of honesty, integrity, and professionalism from the notary. Nevertheless, in the practice of drafting deeds based on Circular Resolutions, notaries often receive documents already signed by shareholders without performing direct verification of the signatures' authenticity. Such circumstances create opportunities for signature forgery by certain parties, which ultimately leads to legal consequences for the notary as the deed's drafter.

The issues become increasingly complex when it is later discovered that the deed, drafted based on the Circular Resolution minutes, contains forged signatures of one or more shareholders. In such cases, notaries are often embroiled in legal disputes,

¹ Habib Adjie, Indonesian Notary Law: A Thematic Interpretation of Law Number 30 of 2004 concerning the Position of Notaries, Refika Aditama, Bandung, 2008, p. 45.

both civil and criminal, as they are deemed negligent in their duty to ensure the veracity of the underlying documents. This problem raises fundamental questions regarding the extent of a notary's liability for signature forgery in such minutes and the form of legal protection that should be afforded to notaries who have acted in accordance with the law and in good faith.

Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Position of Notaries (UUJN) explicitly mandates that notaries must act honestly, independently, and impartially, while maintaining the confidentiality of the deeds they produce.^[2] A notary is responsible for the formal truth of the deed, not the material truth regarding the substance or statements provided by the parties. Consequently, if signature forgery occurs without the notary's knowledge or involvement, such liability should not legally be imposed upon them. However, in law enforcement practice, uncertainty often arises regarding the boundaries of this liability, resulting in a sense of injustice and professional anxiety for notaries.^[3]

When a notary is suspected of involvement in circular forgery whether actively, through complicity, or due to negligence in exercising the principle of prudence—the consequences are severe. Such involvement may include drafting deeds based on false circular documents, documents not signed by all authorized parties, or documents known to be forged but still used as a legal basis. Such actions not only diminish the authenticity of the deed but also damage public trust in the notary profession as public officials tasked with guaranteeing legal certainty. A notary's involvement in forgery can trigger complex legal consequences, including criminal, civil, and administrative liability, as well as violations of the professional code of ethics. Criminally, a notary may be held liable for the alleged forgery of an authentic deed or complicity in such an act. Civically, the notary may face lawsuits based on unlawful acts (*onrechtmatige daad*) if the deed causes loss to third parties. Furthermore, under the UUJN, administrative sanctions may be imposed if the notary is proven to have failed in performing their duties with honesty and prudence.^[4]

Conversely, if the forgery of a circular resolution occurs without the notary's involvement, whether intentional or through negligence, the notary cannot, in principle, be held legally liable.^[5] In exercising their office, a notary is only responsible for the formal truth of the deed, ensuring it is drafted according to statutory procedures and based on statements and documents submitted by the parties. If the notary has fulfilled the duty of prudence, verified the identity of the appearers, and recorded the information as presented by the parties without knowledge of the forgery, then the material errors committed by the parties fall outside the

notary's responsibility.^[6]

However, when a notarial deed based on a forged circular continues to produce legal effects and causes loss to others, the notary is often dragged into legal disputes.^[7] This situation creates a legal dilemma regarding the limits of liability, particularly in distinguishing between negligence and good faith in the exercise of authority. Therefore, even if the notary is not involved in the forgery, the deed may suffer a degradation of evidentiary value if its underlying basis is proven invalid, while the primary liability for the forgery remains with the parties who committed the act. Thus, the lack of involvement does not automatically eliminate the legal risks arising from the use of forged documents as a basis for an authentic deed.^[8]

This phenomenon underscores the importance of legal protection for notaries who become victims or related parties disadvantaged by unlawful acts committed by others.^[9] Such protection is necessary so that notaries are not consistently blamed in every document forgery case, especially when it is proven they were not involved and acted according to regulations. This legal protection encompasses two forms: preventive protection, through clear regulations on the limits of liability, and repressive protection, ensuring justice in legal processes involving notaries.^[10] This is essential to maintain the independence, dignity, and professionalism of the notary as a public official.

Furthermore, legal protection for notaries has social and judicial dimensions in maintaining public trust in the profession. Without legal certainty regarding protection, notaries will face pressure and fear in performing their duties, which may ultimately hinder legal services to the public. Therefore, it is necessary to strengthen regulations, implementation guidelines, and proportional oversight mechanisms to achieve a balance between a notary's professional responsibility and their right to fair legal protection.^[11]

Based on the aforementioned context, this research titled "Notary Liability Regarding the Forgery of Signatures in a Circular Resolution of Shareholders" is highly relevant. This study aims to analyze the forms of notary liability in cases of signature forgery in Circular Resolutions and to examine the legal protection mechanisms that can be provided to notaries to prevent them from bearing undue legal consequences. The results of this study are expected to contribute to the development of notarial law and serve as a recommendation for policymakers in strengthening the legal protection system for the notary profession in Indonesia.

Based on the background above, two main issues will be examined: first, how the legal framework regulates Circular Resolutions as a form of decision-making outside of a GMS under Indonesian law; and second, the form of a notary's

² Habib Adjie, *Civil and Administrative Sanctions against Notaries as Public Officials*, Refika Aditama, Bandung, 2009, p. 63.

³ Salim HS & Erlies Septiana Nurbani, *Application of Legal Theory in Thesis and Dissertation Research*, RajaGrafindo Persada, Jakarta, 2017, p. 112.

⁴ Helsi Yasin, "Legal Protection for Notaries in the Drafting of Meeting Resolution Deeds Based on Forged Circular Resolutions of Limited Liability Companies," *Unes Journal of Swara Justisia*, Vol. 9, No. 1, 2025, p. 12.

⁵ Intan Rahmadanti, Herman Fikri, and Fatria Khairo, "Legal Protection for Notaries Based on the Principle of Liability Based on Fault," *Lex Stricta, Journal of Legal Science*, Vol. 1, No. 2, 2022, p. 103.

⁶ Dea Derika, "The Function of Notaries in Verifying the Identity of Appearers Regarding the Authenticity of Deeds Linked to the Principle of Prudence," *Syiar Hukum: Jurnal Ilmu Hukum*, Vol. 18, No. 2, 2020, p. 173.

⁷ Helsi Yasin, *Loc. Cit.*

⁸ Syafriadi Frendi, *Notary Liability in the Drafting of Deed Minutes Created Due to False Information Provided by the Parties* (Dissertation, Andalas University, 2023), p. 13.

⁹ [9] Wira Wanza Wonggo, Amelia Nur Widyanti, and Wayan Karya, "Legal Protection for Parties in Data Forgery Cases for the Creation of Authentic Deeds by Notaries and Their Employees," *Journal of Innovation Research and Knowledge*, Vol. 4, No. 10, 2025, p. 10.

¹⁰ Habib Adjie, "Legal Protection for Notaries as Public Officials in the Exercise of Their Office," *Jurnal Hukum dan Kenotariatan*, Vol. 2, No. 1, 2018, p. 34.

¹¹ Rr. Susanti Adi Nugroho, *Legal Professional Ethics: Notaries and Advocates in the Perspective of Indonesian Positive Law*, Prenada Media, Jakarta, 2019, p. 102.

liability toward related parties regarding signature forgery within the minutes of a Circular Resolution.

2. Research Method

The type of research employed in this study is normative legal research. Normative legal research is a process of identifying legal norms, rules, and doctrines to address the legal issues under discussion.^[12]

The methodology utilizes several approaches:

- **Statute Approach:** This approach involves examining all laws and regulations relevant to the legal issues being researched.^[13]
- **Conceptual Approach:** This approach examines the evolving views and doctrines within legal science.^[14] By studying these perspectives, the researcher can identify ideas that give rise to legal definitions, concepts, and principles relevant to the issues at hand.
- **Case Study:** This approach is used to explain, understand, and analyze in-depth specific cases occurring in real-life contexts.^[15]

In normative legal research, legal materials are gathered using documentary study techniques. This involves reviewing library materials, tracing, reading, and studying various literatures, including statutory regulations, books, and expert opinions related to the research problem.

Once the legal materials have been collected and identified, they are analyzed using the following methods:

- **Extensive Interpretation:** This method broadens the definition or terms found within a statute.
- **Anticipatory (Futuristic) Interpretation:** This method addresses a legal issue by basing the analysis on regulations that have not yet come into force.
- **Teleological Interpretation:** This method seeks to identify the underlying purpose or objective of a statutory regulation.

3. Discussion

3.1. Legal Framework of Circular Resolutions as a Decision-Making Mechanism Outside the General Meeting of Shareholders Under Indonesian Regulations

3.1.1. Normative Conception of Circular Resolutions within the Indonesian Limited Liability Company System

In the Indonesian legal framework governing limited liability companies, a Circular Resolution is an explicitly recognized form of shareholder decision-making under Law Number 40 of 2007 concerning Limited Liability Companies (Company Law), specifically Article 91. This provision introduces a mechanism for making decisions "outside of a General Meeting of Shareholders" (GMS), which conceptually extends the conventional GMS mechanism, traditionally understood as a physical forum requiring the presence of shareholders. The existence of this norm demonstrates that the legislature anticipated the need for efficiency, flexibility, and the dynamics of modern business practices without

abandoning fundamental principles of corporate governance.^[16]

The procedure for adopting a Circular Resolution does not necessitate a face-to-face gathering in a physical location. While Article 77, Paragraph (1) of the Company Law allows for GMS participation via teleconferencing, video conferencing, or other electronic media that enable real-time audiovisual interaction, Article 91 provides an even more flexible alternative. It stipulates that shareholders may adopt binding decisions outside a GMS provided that all shareholders with voting rights grant written approval by signing the relevant proposal. In the Indonesian corporate law system, a Circular Resolution requires unanimous consent from all shareholders with voting rights. Without such unanimity, the resolution lacks the legal standing to replace a formal GMS.^[17]

In the corporate legal system, the GMS is the supreme organ possessing residual powers and authorities not specifically granted to the Board of Directors or the Board of Commissioners.^[18] Consequently, every shareholder decision must be framed within the functional context of the GMS. A Circular Resolution is not a "replacement" for the GMS in terms of authority; rather, it is normatively positioned as an alternative method of exercising GMS authority. Legally, a decision produced through a circular resolution carries the same weight and standing as a decision reached in a physical GMS.^[19]

Article 91 of the Company Law serves as a critical juncture, shifting the decision-making paradigm from the principle of majority rule (prevalent in a physical GMS) to the principle of unanimity. Unlike a conventional GMS, which relies on attendance and voting quorums, a Circular Resolution leaves no room for majority voting because it lacks a deliberative forum. Therefore, its legitimacy is derived solely from the absolute consensus of all shareholders. Dogmatically, this suggests that the legislature deems decisions made without a physical forum justifiable only if no single shareholder is marginalized or deprived of their participation rights.

Further analysis reveals that the construction of Article 91 is closely linked to the fundamental principles of contract law under Article 1320 of the Indonesian Civil Code, specifically the element of "consent" (*consensus*). A Circular Resolution is essentially a written agreement between shareholders that is "elevated" by statute into a corporate organ decision. It exists at the intersection of contract law and corporate law; it is more than a mere private contract, yet it differs from a traditional GMS. This hybrid nature constitutes both the uniqueness and the complexity of the circular resolution within the Indonesian legal system.

Moreover, the requirement for "written" consent in Article 91 carries significant implications. The Company Law does not strictly mandate that a Circular Resolution be executed in the form of a notarial deed to be valid. Normatively, the resolution is valid upon being signed by all shareholders. However, in practice, these resolutions are almost always

¹² Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2008, p. 93.

¹³ Amiruddin & Zainal Asikin, *Introduction to Legal Research Methods*, 9th Ed., PT RajaGrafindo Persada, Jakarta, 2020, p. 164.

¹⁴ *Ibid.*, p. 166.

¹⁵ Komang Ayu Henny Achjar, *et al.*, *Qualitative Research Methods: A Practical Guide for Qualitative Data Analysis and Case Studies*, PT Sompedia Publishing Indonesia, Jakarta, 2023, p. 43.

¹⁶ M. Yahya Harahap, *The Law of Limited Liability Companies*, Sinar Grafika, Jakarta, 2009, p. 22.

¹⁷ Ridwan Khairandy, *The Law of Limited Liability Companies*, FH UII Press, Yogyakarta, 2018, p. 159.

¹⁸ Muhammad Yusron Yuwono, "The Development of the Authority of the General Meeting of Shareholders (GMS) of Limited Liability Companies in Indonesia," *Notarius*, Vol. 8, No. 2, 2015, p. 207.

¹⁹ *Ibid.*, p. 235.

incorporated into a notarial deed for evidentiary and administrative purposes such as amendments to the Articles of Association that require reporting to or approval from the Minister of Law and Human Rights.

The lack of detailed technical regulations regarding the "written document" creates an interpretive gap. The Company Law does not specify whether signatures must be on a single document, whether they may be executed separately, or how verification should occur. From the perspective of corporate organ theory, this reveals that the GMS is not bound by space and time, but rather by the function of shareholder decision-making. Essential legitimacy lies not in the physical meeting, but in the collective will of the shareholders.

Nevertheless, this regulatory framework is subject to criticism for failing to provide guidelines to ensure that consent is given consciously, voluntarily, and based on adequate information. In a physical GMS, there is an exchange of information, Q&A, and debate. In a Circular Resolution, this deliberation is absent, potentially weakening the quality of the decision. Furthermore, while a notary is not strictly required by the Company Law, in practice, they are often called upon to formalize these resolutions into authentic deeds. This raises a normative question: is the notary merely recording an agreement, or must they verify the authenticity of the signatures and the true intent of the parties?

Normatively, a notary is responsible for the formal truth, not the material truth. However, in the context of a Circular Resolution, verifying the formal truth of signatures becomes paramount due to the absence of a live meeting.^[20] This indicates that Article 91 has not been fully integrated with the notarial regulatory regime. While it offers strong legitimacy, it provides weak procedural guidance, creating a "gap" between norm and practice that may lead to legal disputes.

From the perspective of legal certainty, this minimalism is less than ideal. Conversely, from the perspective of utility (*doelmatigheid*), this flexibility benefits the business world. Ultimately, a Circular Resolution must still adhere to the principles of fiduciary duty, transparency, and good faith. Shareholders must be provided with complete and accurate information by the Board of Directors before signing. Without adequate disclosure, written consent may be subject to "defects of will" (*wilsgebreken*) such as error (*dwaling*), duress (*dwang*), or fraud (*bedrog*) as recognized in civil law. Finally, the evidentiary characteristics of a Circular Resolution are unique. In the event of a dispute, the burden of proof regarding the validity of signatures becomes central. Unlike a GMS recorded in minutes usually attended by a notary, a Circular Resolution relies entirely on the underlying written documents. While the development of electronic transaction laws in Indonesia opens the possibility for electronic signatures in circular resolutions, the Company Law lacks explicit reference to this, necessitating a cautious and systematic interpretation of the Law on Electronic Information and Transactions.^[21]

3.1.2. Implementation, Legal Consequences, and Problematics of Circular Resolutions in Corporate Practice

While Circular Resolutions have obtained normative legitimacy through Article 91 of the Company Law, the primary challenges arise during their implementation in corporate practice. In the field, Circular Resolutions have become a frequently utilized instrument because they are perceived as faster, more efficient, and eliminate the need for a physical GMS. However, this convenience is directly proportional to the increased potential for irregularities, disputes, and legal evidentiary issues.^[22]

The absence of technical guidelines from the government or relevant ministries exacerbates this situation. There are no implementing regulations that clarify the procedures for drafting, circulating, signing, and archiving Circular Resolutions. Consequently, practices have evolved based on custom and the subjective interpretations of individual notaries or legal consultants.

From the perspective of legal certainty, this condition creates inconsistency in practice. From a business perspective, such flexibility is considered advantageous; however, from a law enforcement standpoint, it remains a recurring source of litigation. A further problematic aspect arises when Circular Resolutions are used for high-stakes decisions with broad impacts, such as mergers or corporate dissolutions. Adopting decisions of this magnitude without a deliberative forum may, sociologically, be viewed as a failure to reflect the principle of prudence.

Thus, it can be argued that while a Circular Resolution is normatively valid, it carries significant legal risks in practice. These risks primarily involve the burden of proof, the protection of free will, and the verification of shareholder identities. This situation indicates an urgent need for further regulation, particularly regarding the use of certified electronic signatures, mandatory identity verification, and standardized notarial procedures for handling Circular Resolutions.

Critically, Article 91 of the Company Law provides excessive freedom without being balanced by procedural safeguards. As a result, the Circular Resolution—intended as a tool for efficiency—frequently becomes a catalyst for dispute. Ultimately, its implementation reveals a gap between ideal legal norms and the reality of corporate practice. It remains an essential instrument, yet it requires regulatory reinforcement to prevent future legal complications. The discrepancy between norm and practice places the Circular Resolution in a paradoxical position: as an instrument of corporate efficiency on one hand, and a vulnerable point of dispute on the other.^[23]

Modernizing corporate law is insufficient if it only provides normative legitimacy. A balance must be struck between procedural flexibility and legal security. Efficiency must not sacrifice certainty, and convenience must not create room for abuse.

²⁰ I Made Pradnyana Utama, "The Validity of Notarial Deeds Related to Minutes of General Meetings of Shareholders of Limited Liability Companies Conducted Online," *Jurnal Hukum Lex Generalis*, Vol. 6, No. 4, 2025, p. 18.

²¹ Abdul Halim Barkatullah, *The Law of Electronic Transactions*, Nusa Media, Bandung, 2019, p. 86.

²² *Ibid.*

²³ Agus Wibowo, *Legal and Technological Dispute Resolution*, Yayasan Prima Agus Teknik, Medan, 2023, p. 25.

The legal consequences of this condition stem from the gap between the ideal norm and field implementation. Under Law Number 40 of 2007, a Circular Resolution is valid only if approved by all shareholders with voting rights. Any deviation from this requirement impacts the validity of the resulting decision, rendering it potentially void *ab initio* (legally null and void) or at least voidable if formal or material defects exist, such as the failure to achieve unanimous consent or the presence of a defect of will.

Such conditions create space for legal liability in both civil and criminal domains. Civally, aggrieved parties may file a lawsuit for damages resulting from an invalid decision, including potential claims against the responsible parties. Meanwhile, if elements of manipulation exist—such as signature forgery or the fabrication of consent these acts can be qualified as criminal offenses, triggering criminal liability for the perpetrators.

Furthermore, this inconsistency undermines legal certainty and the quality of corporate governance. Uncertainty regarding the validity of a decision creates doubt for shareholders and third parties, such as investors and creditors, potentially disrupting the stability and continuity of the company's business activities. In the long term, this highlights the urgency of strengthening oversight mechanisms.

The required approach is not an excessive restriction on the use of Circular Resolutions, but rather the formulation of "minimum mandatory safeguards." The law does not need to eliminate the flexibility granted by Article 91, but it must clarify the corridors of its use to close gaps for irregularities. Policymakers should consider a model that establishes minimum standards without stifling flexibility, such as: the mandatory inclusion of the decision's effective date, the requirement for a written explanation for every proposal, and the obligation for adequate identity verification before the document is incorporated into a notarial deed.

3.2. Notary Liability Toward Related Parties Regarding Signature Forgery in Circular Resolutions

In practice, if the minutes of a Circular Resolution used as the basis for a notarial deed are found to contain forged signatures, the legal issue extends beyond the validity of the shareholders' decision. It shifts toward the liability of the notary as a public official who incorporated those documents into an authentic deed. At this juncture, a notary may simultaneously face three legal regimes of liability: civil, criminal, and administrative/ethical.

This liability does not arise automatically solely due to the existence of a forged signature. The law requires an element of fault (*schuld*) on the part of the notary, either in the form of intent (*opzet*) or negligence (*culpa*). Therefore, an analysis of notary liability must begin with a fundamental question: did the notary know, have reason to suspect, or should they have been able to prevent the forgery through the exercise of reasonable duty of care?

3.2.1. Civil Liability of the Notary

In the civil realm, a notary can be held liable under the concept of an Unlawful Act (*Onrechtmatige Daad*), as stipulated in Article 1365 of the Indonesian Civil Code. An

aggrieved party for instance, a shareholder whose signature was forged may sue the notary if it can be proven that the notary was negligent in performing their duties, thereby causing loss.

The critical element to be proven is the notary's failure to apply the Principle of Prudence. For example, if the notary performed no verification of the signatures' authenticity, failed to seek confirmation from the shareholders, or accepted documents without adequate scrutiny, the notary may be deemed to have contributed to the resulting loss. Conversely, if the notary has performed reasonable verification steps in accordance with professional standards, civil liability should not be imposed. In such a case, the forgery remains the sole legal responsibility of the perpetrator.

However, proving an Unlawful Act is complex. The plaintiff must cumulatively prove:

1. The existence of an unlawful act;
2. Fault or negligence;
3. Actual loss/damages;
4. A causal link (*causal verband*) between the notary's negligence and the loss incurred.

In Circular Resolution cases, causality is often the point of contention. Not every loss resulting from forgery can be automatically charged to the notary. It must be demonstrated that the loss was a direct result of the notary's negligence. If the forgery was sophisticated and undetectable through reasonable professional means, the causal link between the notary's actions and the loss is weakened.

Furthermore, a distinction must be made between *partij* deeds (party deeds) and *relaas* deeds (official deeds). In a *partij* deed, the notary records the statements of the parties; thus, the material truth of the contents remains the responsibility of the appearers (*comparanten*). In a Circular Resolution incorporated into a Deed of Statement of Meeting Resolution (*Akta Pernyataan Keputusan Rapat*), the notary essentially records what is stated by the appearer based on submitted documents. This reinforces the argument that the primary responsibility for material truth lies with the shareholders. Nevertheless, if it is proven that the notary knew or should have suspected an irregularity yet proceeded with the deed, the element of fault is met, potentially categorizing the notary as an accomplice to the act.

3.2.2. Criminal Liability of the Notary

The concept of criminal liability has evolved significantly since historical eras when even inanimate objects or animals could be held liable.^[24] Historically, punishment was not limited to the perpetrator but extended to family or associates. Modern criminal liability, however, is defined as the transition of objective reproach inherent in a criminal act to a subjective evaluation of the individual who meets the requirements to be punished for said act.^[25]

Criminal liability is an individual's obligation to bear the penal consequences of an act that violates the law.^[26] Punishment is inextricably linked to liability; a person can only be sentenced if they possess the capacity to be held responsible for their actions. According to the Indonesian Criminal Code, Article 391, Paragraph (2) states: "Any person who uses a document whose contents are untrue or

²⁴ [2] Ayu Rizkie, Muhammad Arifin, and Ramlan Ramlan, "Notary Responsibilities for the Making of Clients' Deeds Containing False Elements," *Social Sciences (JEHSS)*, Vol. 2, No. 3, 2020, p. 590.

²⁵ *Ibid.*,

²⁶ Fadlian Aryo, "Criminal Liability within a Theoretical Framework," *Jurnal Hukum Positum*, Vol. 5, No. 2, 2020, pp. 10-19.

forged, as if they were true or not forged, if the use of such document may cause loss, shall be punished with the same penalty as in paragraph (1)."

Criminal liability must align with the fundamental principle of "no punishment without fault" (*geen straf zonder schuld; actus non facit reum nisi mens sit rea*).^[27] This principle implies that an act (*actus reus*) alone is insufficient for a conviction; it must be accompanied by a guilty mind (*mens rea*). Therefore, criminal liability requires a convergence of the external act and the perpetrator's internal fault. Theoretically, one of the essential elements of fault is the "capacity for liability" (*toerekeningsvatbaarheid*). To establish a notary's criminal liability in forgery cases, this capacity and the presence of *mens rea* must be clearly proven.

3.2.3. Criminal, Administrative, and Ethical Responsibility

In a criminal context, a notary may be held liable if proven to be complicit, aiding, or intentionally using a forged document, as regulated under the provisions on document forgery in the Criminal Code. It must be emphasized, however, that a notary cannot be criminalized solely because a deed is based on a forged document if the notary was unaware of the forgery. Criminal liability only arises if it is proven that the notary:

1. Had knowledge of the forgery but proceeded to draft the deed;
2. Actively assisted in the forgery process;
3. Intentionally ignored signs that clearly indicated the presence of forgery.

In judicial practice, proving the element of intent is highly challenging. Consequently, not every case of signature forgery in a circular resolution automatically drags the notary into the criminal realm. Only notaries acting in bad faith or with gross negligence are potentially subject to criminal liability.

3.2.4. Administrative and Ethical Liability

The most common regime of liability in such cases is administrative and ethical, conducted through the Notary Supervisory Board (MPN). The MPN evaluates whether the notary has violated the provisions of the Law on the Position of Notaries (UUJN) and the Notary Code of Ethics. In the context of a circular resolution, a notary may be deemed to have violated their official duties if they:

1. Fail to apply the principle of prudence;
2. Fail to perform adequate identity verification;
3. Act recklessly in accepting documents used as the basis for a deed.

Administrative sanctions may range from verbal warnings and written censures to temporary suspension or permanent dismissal, depending on the degree of fault assessed by the MPN.

3.2.5. The Standard of Notary Negligence

The most crucial issue in determining liability is the standard of negligence. Since the UUJN provides no explicit provisions on how a notary must verify signatures in a circular resolution, the assessment is based on a reasonable professional standard.

If a notary accepts a circular resolution document without any verification steps, such passivity can be categorized as negligence. However, if the notary sought confirmation, compared signatures, or requested the presence of certain parties, they have fulfilled the appropriate standard of care. This standard is objective, measured by how a competent, prudent, and experienced notary would act in the same situation. The parameters are not merely the notary's subjective belief, but established professional practices, the code of ethics, and the evolving principle of prudence in notarial practice.^[28]

Judicial determination of negligence ultimately depends on the evidence presented at trial. A judge will assess whether the notary's actions remained within the bounds of professional reasonableness or deviated from general professional standards. Thus, the application of a negligence standard serves as a vital instrument to balance the protection of the notary with the demands of official accountability.

f. Evidentiary Weight of Notarial Deeds in Court

When a case reaches court, a notarial deed retains absolute evidentiary weight (*volledig bewijskracht*) until proven otherwise. However, if it is proven that the deed's foundation was a forged document, its material evidentiary strength may collapse. In this situation, the judge evaluates the extent of the notary's involvement or negligence.

This demonstrates that while a notary is normatively responsible only for formal truth, in practice, they must account for the integrity of their process. The judicial assessment includes whether the notary carried out identification and verification procedures according to professional standards such as identifying the appearers, carefully checking IDs, ensuring signature consistency, and reading/explaining the deed as mandated by law. In other words, it is the prudence of the process, not just the final outcome, that is tested.

3.2.6. Legal Protection for Notaries Acting in Good Faith

The law provides protection to notaries who act in good faith and perform their duties according to professional standards. A notary should not be used as a "scapegoat" for forgeries committed entirely by the parties without the notary's knowledge.^[29] This protection is vital to maintain the independence and courage of notaries in exercising their office without excessive fear of criminal or civil risks.

This protection is rooted in the principle that a notary is responsible for the formal truth of the deed, not the material truth of the appearers' statements. Law Number 2 of 2014 reaffirms that notaries must act honestly, meticulously, and impartially.

²⁷ Mallarangeng, Andi Bau, and Ismail Ali, "Proving the Element of Intent Linked to Mens Rea in Corruption Crimes," *Legal Journal of Law*, Vol. 2, No. 2, 2023, pp. 11-24.

²⁸ Risna Rahadian, *Reconstruction of Regulations for Electronic Storage of Deed Minutes as Notary Protocols Based on the Value of Legal Certainty* (Dissertation, Universitas Islam Sultan Agung, 2023), p. 34.

²⁹ Muh. Adhitya Wiratama, *Corporate Criminal Offenses in Indonesia*, PT Adab Indonesia, Jakarta, pp. 27-29.

As long as these obligations are met, the notary cannot be held liable for deception or forgery beyond their knowledge. In the evolution of circular resolutions, this position is highly relevant. Notaries generally receive pre-signed documents to be incorporated into a Deed of Statement of Meeting Resolution. If a forgery is not visibly detectable and the notary has performed standard identity verification, criminal liability remains solely with the perpetrator. This aligns with the principle of personal liability and *geen straf zonder schuld* (no punishment without fault).

However, this is not absolute immunity. Notaries remain liable if proven to have ignored red flags or fundamental formal obligations. The boundary between protection and liability lies in the presence of fault (*schuld*) in the performance of their duties. A balance must be maintained: the notary must be protected from unfounded claims, yet simultaneously held to high professional standards to ensure the stability of corporate practices and legal certainty.

4. Conclusion

1. First, the legal framework for Circular Resolutions is explicitly governed by Article 91 of Law Number 40 of 2007 concerning Limited Liability Companies. Normatively, such resolutions are valid and hold the same legal weight as a physical GMS, provided they receive unanimous written consent from all shareholders with voting rights. However, current regulations remain minimalist and lack technical guidelines regarding signature verification mechanisms and document circulation, creating a regulatory gap that allows for potential misuse in practice.
2. Second, Notary liability regarding signature forgery in Circular Resolutions is rooted in the principle of liability based on fault. A Notary is normatively responsible for the formal truth of the deed, not the material truth of the parties' statements.
 - Civally, a Notary may be sued for an Unlawful Act if proven negligent in applying the principle of prudence.
 - Criminally, liability arises only if there is proven intent (*mens rea*) or active complicity.
 - Administratively, sanctions may be imposed for violations of professional ethics.

Notaries acting in good faith who have fulfilled standard professional verification procedures are legally protected and cannot be held liable for forgeries committed solely by the parties without their knowledge.

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