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Analysis The Deed of Sale and Purchase Shares Pretends and Its Consequences on The Strength of The Deed

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Abstract

In carrying out the sale and purchase of shares, Notary should ensure that the procedure for the transfer of shares is carried out in accordance with the law, because it can result the validity of the deed made by Notary. As happened in the case in Court Decision No. 1681 K/Pdt/2017, the Judges decided that the Deed of Sale and Purchase made by Notary was a fake deed. In this case, Notary also does not ask for proof of payment of the purchase of shares, so it is said that Notary does not apply the precautionary principle. What can make a Deed of Sale and Purchase as a fake Share Purchase Deed and what are the consequences for the legal force of the deed are two problem formulations to be analyzed based on juridical research methods and qualitative analysis. From the results of the study, it was found that several factors caused a Deed of Sale and Purchase of Shares to be declared as a fake deed which then affected the legal force of the deed.

Keywords: Deed of Sale and Purchase of Fake Shares; Share Purchase; Notary.

A. Introduction

In conducting business relations, the Limited Liability Company (PT) urgently needs the role of a Notary to help him carry out legal actions, one of which is if the PT wants to transfer shares. In the implementation of the transfer of shares, the Notary has a very important role because based on Article 56 of Law No. 40 of 2007 concerning Limited Liability Companies ("hereinafter referred to as UUPT"), the transfer must be done by deed of transfer of rights. To get a guarantee of protection against the deed he made, the Notary should determine whether the stock transfer procedure carried out is by the provisions of the legislation. This becomes important because the procedure for transferring shares that are not by the provisions of the laws and regulations can result in the validity of the deed made by the Notary.

Buying and selling shares is in principle the same as buying and selling in general. Under Article 1457 of the Civil Code (hereinafter civil code), buying and selling is an agreement by which one party binds himself to hand over an item, and the other party to pay the promised price.¹ From this understanding, it can be seen that buying and selling is consensual, which means that buying and selling has been born as a valid agreement (binding or has legal force) in the moment of agreement on goods and prices, even if the sale and purchase is about immovable goods. This consensual nature can be seen in Article 1320 of the Civil Code which regulates the legal terms of the agreement. But in the agreement to buy and sell shares, in addition to the word.² There must also be a written submission that is approved and recognized by the parties. The submission in writing is in the form of a transfer of rights in the form of

¹ Pasal 1457, *Kitab Undang-Undang Hukum Perdata*, n.d.

² Steven Liem; Mohamad Fajri; Widodo Suryandono, "Tanggungjawab Notaris Terhadap Akta Jual Beli Saham Tanpa Bukti Pelunasan Dan Bukti Setor (Studi Kasus Putusan Pengadilan Negeri Jakarta Selatan Nomor: 259/Pdt.G/2017/PN.Jkt.Sel)," *Indonesia Notaris* 2, no. 1 (2020): 790.



authentic deeds and deeds under the hand as stipulated in the Uupt.³ In addition, because the object of buying and selling is shares in a limited liability company, its implementation must also be based on the provisions of the Uupt regarding the transfer or transfer of rights to shares.

The problem that can occur buying and selling shares is if all the procedures and requirements for buying and selling shares have been met, but in the future, the seller states that he never received money for the shares sold and the buyer never showed proof of payment for the purchase of the shares. This can happen even though a Deed of Buying and Selling Shares has been made in front of a Notary. In this case, the Notary is often blamed for ignoring the precautionary principle by not ensuring in advance the proof of payment for the purchase of the shares. But on the other hand, the Notary has read the contents of the deed and the parties have agreed with what is stated in the deed.

Notaries in carrying out their positions have no obligation to investigate the material truth of the documents submitted or the material truth of the legal acts committed by the defendants. Notaries generally record only what is explained by the parties facing the Notary and have no obligation to find out the material truth. Therefore, a Notary deed or authentic deed does not guarantee that the parties "tell the truth" but what is guaranteed by the authentic deed is that the parties "have the right as to what is contained in their deed of agreement".⁴ So that the Notary may make mistakes regarding the contents of the deed because of incorrect information (intentionally or unintentionally) obtained by the parties. However, such errors cannot be accounted for to notaries because the contents of the deed have been confirmed to the parties by the Notary.⁵

The parties can determine freely whether or not to approve the contents of the deed that have been read by the Notary to further affix or not to affix their signature to the deed. The notary has only responsible for the formalities of an authentic deed and has no responsibility for the material of the authentic deed content.⁶ To avoid misunderstandings, the Notary must read the deed in advance to the parties, so that the parties have truly understood and the contents are by their will. However, in carrying out legal action Notary must always act carefully so that before making a deed, the Notary must examine all relevant facts in his consideration based on applicable legislation. Examining all the completeness and validity of evidence or documents shown to the Notary, and hearing the information or statements of the defendants must be done by the Notary as a basis for consideration to be stated in the deed.⁷ So that the Notary must act carefully and thoroughly in checking the documents and information of the parties so as not to cause legal problems with the deed he made in the future.

An example occurs in the case of a share sale and purchase transaction whose Deed of Buying and Selling Shares is made by a Notary / PPAT in Central Jakarta, namely Notary M and then the deed is declared void and has no legal force based on the Supreme Court of the Republic of Indonesia Decision No. 1681 K / Pdt / 2017. The case began when PT GEB cooperated with the State Electricity Company ("**hereinafter called PLN**"). PT GEB is a Foreign Investment company engaged in the business of providing electricity, with one of its

³ Septiani Eka Mawarni, "Jual Beli Saham Perseroan Terbatas" (Universitas Hasanuddin, 2012).

⁴ Sjaifurrachman; Habib Adjie, *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta* (Bandung: Mandar Maju, 2011).

⁵ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1977).

⁶ I Wayan Paramata Jaya; dkk, "Pertanggungjawaban Notaris Berkenaan Dengan Kebenaran Subtansi Akta Otentik," *Rechtide* 12, no. 2 (2017): 28.

⁷ M. Luthfan Hadi Darus, *Hukum Notariat Dan Tanggung Jawab Jabatan Notaris* (Yogyakarta: UII Press, 2017).

shareholders being PT GEI. In 2007, PT GEB began working with PLN to carry out the steam power plant construction project ("**hereinafter referred to as PLTU**"). In helping to get the cost of running the project, PT GEB collaborated with a Chinese company, NAMELY SEPC as its investor. However, this project did not run smoothly because at the end of 2008 there was an economic crisis that caused SEPC to delay the financing process so that PT GEB could not supply electricity to PLN on time.

Citing the delay in project construction, the Director of PLN told PT GEB that if the PLTU project does not want to be stopped, then PT GEB must meet several requirements, namely:

- a. PT GEB must end its financing cooperation with SEPC and must be replaced with SEPC company as a new contractor for funding the construction of PLTU projects;
- b. Shareholding in PT GEI was temporarily transferred to PT.WPE and PT.NCE;
- c. After CHEC becomes a contractor in collaboration with PT GEB, all shares in PT GEI will be returned to the original shareholder composition.

The temporary transfer of existing shareholdings in PT GEI with the promise that after the construction work of the PLTU project starts smoothly, then all the shares will be returned as before to the initial shareholder arrangement in PT GEI. Before the sale and purchase of shares, the shareholders of PT GEI based on the PKR Deed of PT GEI No. 14 dated August 12, 2009, are as follows:

- a. PT DFI amounting to 13,500 shares or Rp. 13,500,000;
- b. Mr. DE amounted to 12,800 shares or Rp. 12,800,000;
- c. Mr. IWA amounted to 13,700 shares or Rp. 13,700,000.

Then the transaction of buying and selling shares in accordance with the wishes of the Director of PLN was carried out based on the Deed of News of the Meeting of PT GEI No. 29 dated June 21, 2011 and the Deed of Sale and Purchase of Shares of PT GEI No. 30 dated June 21, 2011 which was made before Notary M, which stated that PT DFI sold 7,200 shares to PT WPE, so that PT WPE becomes the holder of 20,000 shares in PT GEI. The transaction of buying and selling shares for PT NCE was carried out based on the Deed of Agreement to Buy and Sell Shares of PT GEI No. 35 dated June 23, 2011 and the Deed of News of the Meeting of PT GEI No. 6 dated July 12, 2011 made before Noatis M. The contents of the deed stated that PT DFI sold 6,300 shares to PT NCE and Mr. IW sold 13,700 shares to PT NCE, so that PT NCE becomes a shareholder of 20,000 shares in PT GEI. The transfer of shareholding is then stated in the Deed of News of the MEETING OF PT GEI No. 5 dated July 12, 2011 which states that the shareholders of PT GEI are as follows:

- a. PT WPE as much as 20,000 shares or Rp. 20,000,000; and
- b. PT NCE as much as 20,000 shares or Rp. 20,000,000.

The Plaintiffs, in this case, included the Notary as a defendant because the Notary never asked in what form or in what way the seller received money from the sale and purchase transaction of shares. So the Plaintiff in his lawsuit against the Notary stated that the Notary had ignored the precautionary principle of not checking in advance or further checking to ensure proof of receipt of money from the parties before pouring it into the deed. In its consideration, the panel of judges stated that the deeds related to the sale and purchase of shares, namely Notary Deed No. 30 dated June 21, 2011, Notary Deed No. 35 dated June 23, 2011, and Notary Deed No. 6 dated July 21, 2011, is a pretend deeds.

Based on the description above, this study will discuss what can make a Deed of Buying and Selling Shares expressed as a Pretend Stock Sale deed and how it affects the legal strength of the deed.

B. Literature review

Primary legal material is legal material that is authoritative, meaning it has authority.⁸ Laws and regulations related to the problems submitted, namely: Law No. 30 of 2004 concerning Notary Positions as amended by Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions; and Law No. 40 of 2007 concerning Limited Liability Companies. Meanwhile, based on the court's decision, the Supreme Court of the Republic of Indonesia No. 1681 K / Pdt / 2017.

Secondary legal materials used in this study are in the form of books, scientific journals, articles, and research results related to the transfer of rights to shares and the application of the notary precautionary principle.

C. Research Methods

This research will be prepared using normative juridical research methods to answer the problems that have been formulated above. This research will be studied according to legal science so that this type of research is normative juridical law research.

D. Results and Discussion

Notaries have a very important role for the implementation of stock buying and selling, especially in making their deeds. In order to get a guarantee of protection against the deed he made, the Notary should ensure that the procedure for buying and selling shares carried out is in accordance with the provisions of the legislation. Although this is not a Notary obligation based on UUJN, but this can be important because the procedure of buying and selling shares that are not in accordance with the provisions of the laws and regulations can result in the validity of the Deed of Sale and Purchase of Shares made by the Notary. Shares are immovable and intangible objects so that shares are property rights.

About its transfer, under Article 584 of the Civil Code, property rights to a sovereign property cannot be obtained by any other means, except by way of laying, because, in the meantime, inheritance is either by law or a will, because of the appointment or submission based on a civil event to transfer property rights carried out by a person who has the right to do free to the material.⁹ So based on this provision, it can be said that a person who has material rights can transfer it by way of buying and selling, exchanging, grants as long as the agreement meets the legal requirements of the agreement.¹⁰ Buying and selling carried out by "pretending" in front of a Notary so as to produce a "pretend" Sale and Purchase Deed should be considered contrary to the provisions of the legislation and may result in the deed being null and void. The sale and purchase actually never happened, so the agreement did not meet one of the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code.

1. Analysis of The Deed of Sale and Purhare Shares Pretend

Based on the case in the Supreme Court of the Republic of Indonesia Decision No. 1681 K / Pdt / 2017, which is the subject of problems or disputes between the parties and requires further proof is the truth that whether the sale and purchase of shares carried out between pt GEI shareholders and PT WPE and WCE is a legitimate sale or not. To find out whether the sale and purchase of shares is legally valid, the procedure must be carried out in accordance with the provisions of the Uupt. Based on Article 55 of the Uupt, the first thing that must be

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2010).

⁹ Pasal 584, *Kitab Undang-Undang Hukum Perdata*, n.d.

¹⁰ Sentosa Sembiring, *Hukum Perusahaan Tentang Perseroan Terbatas* (Bandung: CV. Nuansa Aulia, 2013).

considered to buy and sell shares is regarding the provisions of the transfer of shares stipulated in the articles of association of the company concerned. Procedures for transferring rights to shares are regulated in the Company's articles of association in accordance with the provisions of laws and regulations.

From this provision, it can be known, that shares owned by someone in a PT may be transferred to other parties by following the provisions contained in the Articles of Association of Limited Liability Companies (ADPT). This means that in ADPT has been regulated what steps must be followed if shareholders want to transfer their shares.¹¹ In the articles of association of the Company can be regulated regarding the existence of necessities that must be fulfilled in the case of the transfer of rights to shares, which among others:¹²

- a. There is a necessity to offer in advance to shareholders with certain classifications or other shareholders;
If a shareholder wishes to sell his shares, it must first be offered to shareholders in the same classification or other shareholders.
- b. There is a need to obtain prior approval from the Company's Organs;
The Company's organs based on Article 1 number 2 of the UUPT are gms, directors, and the Board of Commissioners. Thus, the Articles of Association can determine which Organs of the Company must give approval for the transfer of rights to shares. Article 57 paragraph (1) of the Uupt does not specify which organs can give consent. So that the GMS, Board of Directors, or Board of Commissioners can have this authority.
- c. There is a necessity to obtain prior approval from the authorized agency in accordance with the provisions of laws and regulations. Syarat ini tidak selamanya melekat pada setiap pemindahan hak atas saham. this requirement is inherent if the provisions of certain laws and regulations regulate it.

The above requirements do not apply in the case of transfer of rights to shares, due to the transfer of rights due to law, namely the transfer of rights due to inheritance or transfer of rights as a result of merger, merger, or separation. In the case that occurred in the Supreme Court of the Republic of Indonesia Decision No. 1681 K / Pdt / 2017, the sale and purchase that occurred between shareholders of PT GEI was said to be a pretend sale and purchase of shares by the panel of judges. In the Black's Law Dictionary, there is actually no legal definition that defines what is meant by "pretending".

The Acts that are pretending to be called ostensible action or *pretend action or schijn handling*. This pretends act is an act that is not lawful or not allowed by law. According to Koesmargono and Mochamad Djaja, acts that are pretended very possible to be poured in the form of a Notary deed, which is done to avoid legal provisions or avoid legal consequences that may arise due to the actions of other parties.¹³

In this case, the panel of judges said that the sale and purchase of shares was a sham because it turned out that the stock buying and selling procedures carried out were not in accordance with the procedure for transferring shares as specified in the UUPT. As is known under Article 55 of the Uupt, the transfer of rights to shares is regulated in the company's

¹¹ Sembiring, *Hukum Perusahaan Tentang Perseroan Terbatas*.

¹² Pasal 57 ayat (1), *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, n.d.

¹³ Citra Ayu Wardani, "Pembuatan Akta Perjanjian Kredit Yang Terindikasi Dokumen Palsu Dan Bersifat Perjanjian Pura-Pura (Simulasi) (Studi Kasus: Akta Akad Notaris X Pada Bank MM (Bersifat Syariah) Berkedudukan Di Bogor)" (Universitas Indonesia, 2014).

articles of association. After being seen in the articles of association of PT GEI, namely Deed No. 59 dated June 25, 2002 concerning the Establishment of PT GEI, in Article 9 number 3 stipulates that "*Transfer of rights to shares is only allowed with the approval of the General Meeting of Shareholders*". So THAT PT GEI must carry out the GMS first before it can transfer its shares. The implementation of the GMS must be carried out based on the procedures stipulated in the Uupt. What must be considered to hold a GMS is especially regarding the quorum of attendance and the quorum of decision making as stipulated in Article 86 of the Tax Law. For the first GMS, Article 88 of the Uupt states as follows:

- 1) GMS may be held if in the GMS more than 1/2 (one-second) part of the total number of shares with voting rights present or represented, unless the law and/or articles of association determine the larger quorum;
- 2) In case the quorum as intended in paragraph (1) is not reached, a second GMS summons may be held.

The rest is the arrangement regarding the second GMS when the number of quorums of attendance is insufficient. But in this case, the shareholders of PT GEI cannot prove that the sale and purchase of shares carried out has been done through the approval of the GMS, but is carried out with the approval under the hands of the Board of Commissioners. Similarly, PT WPE and PT WCE, as legal entities of limited liability companies, should the purchase of shares made first get approval from the GMS, but in its implementation, the sale and purchase of shares is only done with the approval under the hands of the Board of Commissioners.

This can be known, after seeing the contents of the Deed of News of the Meeting of PT GEI No. 29 dated June 21, 2011, and the Deed of News of the Meeting of PT GEI No. 5 dated July 12, 2011, it was not a decision of the Extraordinary GMS (EGMS) of PT GEI, but only the news of the event on the implementation of the sale and purchase of shares. In addition, in these acts, there is no wording of buying and selling shares based on the decision of the EGMS of PT GEI, but the sale and purchase of shares have been made with the approval under the hands of the Board of Commissioners. This is certainly not the result of the GMS, but only in the form of a letter of approval. So that the sale and purchase of shares without going through the GMS is contrary to the articles of association of PT GEI itself, which means that it becomes contrary to the UUPT.

Then, evidence that the transfer of shares was done pretendingly can also be seen from the fact that PT WPE and PT NCE never paid Rp. 20,000,000 to PT GEI. In fact, in the deed it is stated that the amount of money has been paid entirely by the second party before the deed is signed. But in reality there is no receipt, no proof of bank transfer and it is impossible for Rp. 20,000,000 (twenty billion rupiah) to be paid in cash. So that there is a discrepancy between reality and the statements contained in the deed. In its legal considerations, the panel of judges is guided by the Jurisprudence of the Supreme Court of the Republic of Indonesia Decision No. 619 / PK / Pdt / 2010 dated December 30, 2010 which states that:

"Renting pretends to be a sale and purchase under the hand (not before PPAT / Notary only authorizes the signature), no tax payment, no name back approval, no receipt, the selling price with the rent is not comparable, the house itself is rented, the buyer does evil ethics...."

So from this jurisprudence, what is said to be a pretend rent rental is:

1. Done under the hands;
2. No tax payment;
3. No receipts;
4. The selling price with the rent is not comparable;

5. Rent your own; and
6. Done with evil ethics.

When associated with the case, the buyer does not include the receipt, when they should prove the correctness of the payment that has been made considering the payment transaction made related to the sale and purchase of shares in this case at a very large price which totals Rp. 40,000,000,000,- (forty billion rupiahs), it should be proven how to pay, whether it is done in cash as evidenced using receipts. or by payment using securities.

In jurisprudence of the Supreme Court of the Republic of Indonesia Number 159 / Pdt.G / 2018 / PN.Bpp also stated that the actions carried out by the Buyer are not the act of buying and selling because in addition to not fulfilling payment obligations, it is contrary to the rule of law both in legislation and supreme court jurisprudence. This is an act against the law and clearly harms the seller, which based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 827K / Sip / 1971 dated April 14, 2017 states that buying and selling only contains unilateral statements if there is no receipt of money.

In addition, because the parties are legal entities or closed limited liability companies, related to the sale and purchase of shares, the parties will be subject to income tax, which based on the Letter of the Director General of Taxes Number S-357 / PJ.312 / 2005 concerning The Request for Affirmation of the Circular Letter of the Director General of Taxes Number SE-18 / PJ.31 / 1993, at 4 point b is affirmed as follows:

"for profit from the sale of shares that are not listed / not traded on the exchange, payable income tax and must be reported through the Annual Tax Return."

From the provisions above, it can be known that income tax is owed to PT GEI as the seller who receives profits from the sale of shares. However, judging from the evidence in the form of FINANCIAL STATEMENTS of PT GEI, there is no visible receipt of a certain amount of money for the purchase of shares by PT WPE and PT NCE. Similarly, from the evidence in the form of annual tax returns of PT GEI, it is not proven that PT GEI is subject to income tax on the sale of shares. In addition, the initial will of the transfer of PT GEI shares has indeed been intended as a temporary transfer. This is to meet the requirements of the Director of PLN so that PT GEB's cooperation contract with PLN does not end. The Director of PLN also promised that if the conditions have been met, namely the shares of PT GEI have been transferred to PT WPE and PT NCE, and the contract is back in full swing, the shares will be returned to their original ownership. Therefore, there is no evidence that the payment has been made, the non-payment of taxes owed, and made for a certain purpose, this is the basis that the sale and purchase is a pretend by remembering the notion of pretend rents from the Jurisprudence of the Supreme Court of the Republic of Indonesia Decision No. 619 / PK / Pdt / 2010 dated December 30, 2010.

2. Legal Strength of Sale and Purchase Deed (AJB) of Pretend Shares

Based on Article 56 paragraph (1) of the Uupt, the transfer of rights to shares is carried out by deed of transfer of rights. The deed in this case is in the form of a deed made before a notary or a deed under the hand. So that based on this provision, it can be seen that there is a role of the Notary for the creation of a deed of transfer of rights to shares. As is known, a Notary is an official authorized to make authentic deeds. Notaries have the duty to provide legal

certainty services in the form of making authentic deeds that will eventually provide security and security to the community.¹⁴

Notary Deed as an authentic deed is made according to the form and procedures stipulated in Article 38 to Article 65 UUJN. Under Article 1868 of the Civil Code, an authentic deed is a deed whose form is determined by law, made by or before the public servants who are authorized for it and in the place where the deed was made. So that a deed becomes authentic if it meets the conditions specified in the law, therefore the Notary in carrying out his duties must carry it out with full discipline, professionalism, and moral integrity should not be doubted.¹⁵ Until what is stated in the beginning and end of the act that is the responsibility of the Notary is an expression that reflects the actual circumstances at the time of making the deed.¹⁶

Notaries in making authentic deeds in buying and selling shares will pour the identities of the parties involved in buying and selling shares, pouring the number of shares sold at the agreed price, and how to hand over the shares sold and the payment system.¹⁷ In this case, the Notary should ensure that the procedure for buying and selling shares carried out and the documents supporting the transaction are in accordance with the provisions of the laws and regulations.

As stipulated in Article 55 of the Uupt, the transfer of shares is regulated in the ADPT of each company, so that each company can have different rules or procedures in switching rights to shares. In general, in transferring the rights to shares, shareholders are obliged to hold a General Meeting of Shareholders (GMS) first so that the share transfer carried out is known and approved by all shareholders. As stated in the articles of association of PT GEI, the transfer of shares must be carried out with the approval of the GMS first. So before making a Deed of Sale and Purchase of Shares, it's a good idea notary to make sure in advance whether the transfer of shares carried out has been approved by all shareholders of the Limited Liability Company who was concerned.

In the Supreme Court Decision No.1681 K / Pdt / 2017 the assembly of deed related to the sale and purchase of shares, namely Notary Deed No. 30 dated June 21, 2011, Notary Deed No. 35 dated June 23, 2011 and Notary Deed No. 6 dated July 21, 2011 was declared a pretend and legally invalid deed. These deeds because they are made before the Notary are authentic deeds. An authentic deed may lose its authenticity if it does not meet the conditions in Article 1868 of the Civil Code and the conditions of the meteril and formil in its manufacture..¹⁸ Article 1869 of the Civil Code states as follows: "A deed that cannot be treated as an authentic deed, either because of its indecision or the inability of the general official concerned or because of a defect in its form, has the power of handwriting when signed by the parties."

Thus, the authentic deed may lose its authenticity due to the non-fulfillment of the formal requirements in Article 1869 and UUJN. In the general explanation of UUJN it is stated that the authentic deed basically contains formal truths in accordance with the napa that the parties notified to the Notary. Therefore, it can cause certain legal consequences if subjective

¹⁴ Yoyon Mulyana Darusman, "Kedudukan Notaris Sebagai Pejabat Pembuat Akta Otentik Dan Sebagai Pejabat Pembuat Akta Tanah," *Jurnal Hukum* 7, no. 1 (2016): 44.

¹⁵ Herianto Sinaga, "Tanggungjawab Werda Notaris Terhadap Akta Yang Dibuatnya," *Premis Law Journal* 6 (2015): 1.

¹⁶ Tan Thong Kie, *Studi Notariat : Serba Serbi Praktek Notaris* (Jakarta: Ichtar Van Hoeve, 2000).

¹⁷ Sri Wulandari, "Peranan Notaris Dalam Pelaksanaan Pengalihan Saham" (Universitas Airlangga, 2013).

¹⁸ Vivien Pomantow, "Akibat Hukum Terhadap Akta Otentik Yang Cacat Formil Berdasarkan Pasal 1869 KUHPdata," *Lex Privatum* 6, no. 7 (2018): 93.

conditions and objective conditions are not met. So if the Notary commits a legal error that violates UUJN and has cause and effect with Article 1869 of the Civil Code, it will have an impact on the deed he made.¹⁹

The juridical reasons that result in the termination and cancellation of notary deed are generally the same as the juridical reasons for the cancellation of the agreement, namely not meeting the legal requirements of the agreement in Article 1320 of the Civil Code.²⁰ Article 1320 of the Civil Code affirms that for the validity of an agreement must meet 4 conditions, namely: 1) agree on those who bind themselves; 2) able to make a covenant; 3) about a particular thing and 4) a lawful cause. The first and second conditions are subjective conditions because it is about the subject that entered into an agreement so that if these conditions are not met then the agreement can be canceled. While the third and fourth conditions are objective conditions because it is about the object of the legal action so that if it is not fulfilled, then the agreement is for the sake of the law.

The pretend sale and purchase of shares carried out by the parties in this case is done by not meeting the conditions that must be met in making the agreement. Based on Article 1337 of the Civil Code, what is meant by *halal kausa* is that the substance of the agreement must not conflict with laws and regulations, decency and public order. In the case of buying and selling these shares, buying and selling pretends to contain *kausa* but is not a *halal kausa* because the sale and purchase does not meet the provisions of the laws and regulations as stipulated in the *UuPT* to carry out the transfer of shares. Under Article 1335 of the Civil Code, an agreement without cause or that has been made for some reason that is not lawful has no power. So that the violation of the objective conditions of an agreement. In addition, an agreement is prohibited by law if it contains 3 aspects, namely: 1) its substance is prohibited; 2) the implementation of the agreement is contrary to the law; and 3) the purpose and motivation of making the agreement is prohibited by law.²¹

Based on this, the sale and purchase of shares without the procedure of the *GMS* in advance has violated the provisions of the Law and the company's articles of association, thus violating the *halal* provisions in the agreement. So that against the violation of this condition, the agreement outlined in the deed becomes null and void or considered never existed. This is also in line with the Jurisprudence of the Indonesian Republic Supreme Court Number 2510 K / Pdt / 1991 dated April 8, 1993, which states that a Notary who makes an authentic deed "pretends" and the material is not in accordance with the fact that it is made so it is invalid and has no legal force as the deed is made.²²

E. Conclusion

The sale and purchase transaction of shares can be said to be invalid if it is carried out not in accordance with the provisions of the *UUPT*. The procedure for transferring rights to shares specified in Article 55 of the *UuPT* is carried out in accordance with the articles of association of

¹⁹ Ling Fransiska; dkk, "Degradasi Kekuatan Pembuktian Dan Pembatalan Akta Autentik (Studi Putusan Mahkamah Agung Republik Indonesia No. 2377K/PDT/2017 341," *Indonesian Notary* 3, no. 2 (2021): 341.

²⁰ Pieter E. Latumeten, *Cacat Yuridis Akta Notaris Dalam Peristiwa Hukum Konkrit Dan Implikasi Hukumnya* (Jakarta: Tuma Press, 2011).

²¹ Wardani, "Pembuatan Akta Perjanjian Kredit Yang Terindikasi Dokumen Palsu Dan Bersifat Perjanjian Pura-Pura (Simulasi) (Studi Kasus: Akta Akad Notaris X Pada Bank MM (Bersifat Syariah) Berkedudukan Di Bogor)."

²² Indira Putrisari Fathika; dkk, "Akibat Hukum Dari Dibatalkannya Akta Jual Beli 'Pura-Pura' Oleh Pengadilan Berdasarkan Putusan Mahkamah Agung Republik Indonesia Nomor 859 PK/PDT/2019," *Indonesian Notary* 3, no. 3 (2021): 122.

each company. In general, the transfer of rights to shares can be done if you get approval from the GMS first. So that if the transfer of rights to shares is not based on the approval of the GMS, it can be said that the sale and purchase of shares is not valid. As happened in the case in the Supreme Court of the Republic of Indonesia Decision No. 1681 K / Pdt / 2017, the sale and purchase that occurred between shareholders of PT GEI is said to be a pretend sale and purchase of shares by the panel of judges due to the following factors:

1. The initial will of the transfer of shares is only carried out temporarily;
2. Not carried out in accordance with the procedures in the company's articles of association, namely not held with the approval of the GMS in advance so that it is contrary to Article 55 of the Tax Law;
3. There has never been a transaction received by PT GEI which is evidenced by financial statements;
4. It is not proven that PT GEI is subject to income tax on the sale of shares as evidenced by PT GEI's Annual Tax Return;

Therefore, the panel of judges also said that the Deed of Buying and Selling Shares made was a pretend deed because the share purchase transaction carried out included a pretend legal act. The act of buying and selling shares carried out pretendingly has an impact on the strength of the Deed of Sale and Purchase of Shares made by the Notary. Such acts violate the objective condition of an agreement, namely *halal kausa*. In the case of buying and selling these shares, in addition to not fulfilling the process of selling shares in accordance with the company's articles of association, the initial will of the parties to transfer their shares is for temporary transfer, thus making the non-fulfillment of *halal kausa*. An agreement if it does not meet the objective requirements then the act is declared null and void.

Therefore, the panel of judges also stated that the deeds related to the sale and purchase of shares, namely Notary Deed No. 30 dated June 21, 2011, Notary Deed No. 35 dated June 23, 2011 and Notary Deed No. 6 dated July 21, 2011 is a pretense so that in its ruling the panel of judges declared null and void of the laws and declared that the Notary act was also an act against the law. With the cancellation of the deed, the sale and purchase is considered to have never happened so that there is never a change of shares and shareholding returns to the original.

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