

VALIDITY OF RIGHTS TO TRANSFERRED SHARE BY NOTARY WITHOUT DEED OF TRANSFER OF SHARE RIGHTS ON DISTRICT COURT DECISION NUMBER 207/PDT.G/2020/PN.BKS.

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ABSTRACT

A company is a legal entity consisting of capital alliance of shareholders used as authorized capital divided into shares. Shares are defined as paper that provides proof of the owner's participation in the equity participation of a company. The law stipulates that share ownership can be transferred. One of the conditions for the transfer of rights to shares is a deed of transfer of rights to shares, either by private deed or by notary deed. This study aims to determine the validity of the transfer of rights over shares which is carried out without a deed of transfer of rights over shares. The approach method used in this research is normative juridical. Sources and types of data used in this study are secondary data sources. Secondary data collection method is done by using literature study, namely reviewing regulations, documents, and literature related to the research to be studied. The results of this study show the validity of the rights to the shares carried out without the deed of transfer of rights/deed of sale and purchase in the a quo case which is still in process and there has been no decision of the Minister of Law and Human Rights of the Republic of Indonesia regarding the application for the transfer of rights to the shares, it can be said invalid. Notaries who do this can be subject to written warning sanctions, temporary dismissals, honorable discharges, or dishonorable discharges and the party who suffers a loss can demand reimbursement of costs, compensation and interest from the notary concerned. The results of this study show the validity of the rights to the shares carried out without the deed of transfer of rights/deed of sale and purchase in the a quo case which is still in process and there has been no decision of the Minister of Law and Human Rights of the Republic of Indonesia regarding the application for the transfer of rights to the shares, it can be said invalid. Notaries who do this can be subject to written warning sanctions, temporary dismissals, honorable discharges, or dishonorable discharges and the party who suffers a loss can demand reimbursement of costs, compensation and interest from the notary concerned. The results of this study show the validity of the rights to the shares carried out without the deed of transfer of rights/deed of sale and purchase in the a quo case which is still in process and there has been no decision of the Minister of Law and Human Rights of the Republic of Indonesia regarding the application for the transfer of rights to the shares, it can be said invalid. Notaries who do this can be subject to written warning sanctions, temporary dismissals, honorable discharges, or dishonorable discharges and the party who suffers a loss can demand reimbursement of costs, compensation and interest from the notary concerned.

Keywords: Transfer of shares, Deed of transfer of rights, Notary.

INTRODUCTION

Deed is a letter that is signed, contains legal events, forms the basis of a right or agreement and is made from the beginning intentionally for the purpose of proof.¹ The deed has two important functions, namely the deed as a formal function which means a legal act will be more complete if a deed is made and as a function of evidence which means the deed is a means of proof where the deed is made by the parties bound in an agreement shown for proof in the future day.² In the Civil Code, namely Article 1867, it is stated that proof in writing is carried out in authentic writing or with underhand writing. This explanation provides an understanding that the deed can be used as evidence. Types of deed are divided into two types, namely authentic deed and private deed.

An explanation of an authentic deed is contained in Article 1868 of the Civil Code, namely 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 was made. Based on Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary Public, which will hereinafter be referred to as the Law on the Position of a Notary Public, it is known that a notary is an official authorized to make authentic deeds. An explanation regarding underhanded deeds is contained in Article 1874 of the Civil Code, namely what is considered as underhanded writing are deed signed underhanded, letters, lists, household affairs papers and other writings made without the intermediary of a public official.³

Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in the Notary Office Law. The authority of a notary is regulated in Article 15 paragraphs (1) and (2) of the Notary Office Law.

The authentic deed made by a notary applies the principle of legal presumption, this relates to the general explanation of the Notary's Office Law which reads as the strongest and most complete written evidence, what is stated in the notary deed must be accepted, unless the interested party can prove this. otherwise satisfactorily before the trial court. This principle of legal presumption relates to deed which can be canceled, is an act containing defects, namely the notary is not competent to make deed outwardly, formally, materially, and is not in accordance with the legal regulations regarding the making of notary deed.⁴

The deeds made by a notary cover various fields, especially in the field of business civil law. In the field of business law, the involvement of a notary starts from the inception of a company until its dissolution. As mandated in the Regulation of the

¹Daeng Naja. (2012). *Deed Making Techniques*. Yogyakarta: Yustisia Library, p. 1.

²Sudikno Mertokusumo. (1999). *Knowing the Law of an Introduction*. Yogyakarta: Liberty, pp.121-122.

³Civil Code [Burgerlijke Wetboek], translated by R. Soebekti and R. Tjitrosudibio. Article 1874.

⁴Adjie. (2017). *Civil & Administrative Sanctions Against Notaries as Public Officials*. Bandung: Refika Aditama, p. 80.

Minister of Law and Human Rights Number 17 of 2018 (“**Permenkumham 17/2018**”) Concerning Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships, the notary becomes the party authorized by the founder or partners who will register the CV, Firms, and Civil Partnerships and in this case act as applicants. Furthermore, in the process of establishing CVs, Firms, and Civil Partnerships, the notary has the authority to make deed of establishment, deed of amendment to the articles of association, up to the deed of dissolution. When forming a limited liability company, the notary is also involved from the beginning of its establishment to its dissolution. Some legal actions carried out by a limited liability company are required by law to use a notarial deed. One of them is in the activity of transferring rights to shares. Article 56 paragraph (1) of Law Number 40 of 2007 (“**PT Law**”) concerning Limited Liability Companies states that “The transfer of rights to shares is carried out by means of a deed of transfer of rights.” Furthermore, in the elucidation of the article it is explained that the deed used to transfer rights to shares is either a deed drawn up before a notary or private deed.

The Limited Liability Company Law also requires that some legal actions carried out by a limited liability company must be notified or an application for registration is submitted to the Minister. The procedure for submitting or notifying the Minister is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 (“**Permenkumham 21 of 2021**”) concerning Requirements and Procedures for Registration of Establishment, Change and Dissolution of Limited Liability Company Legal Entities. The Minister of Law and Human Rights stipulates that applications for registration of the establishment, change and dissolution of the Company's legal entity shall be submitted by the applicant to the Minister electronically through the Legal Entity Administration System (SABH). In the Permenkumham it is also explained that the act of applying for registration of establishment, amendment, and the dissolution of the Company's legal entity was filed by the Applicant. The applicant for the capital partnership company in the Minister of Law and Human Rights is a notary who is given power of attorney by the co-founders or the directors of the company who have obtained the status of a legal entity or the liquidator of the dissolved company or the curator of a bankrupt company.⁵

The activity of transferring rights to shares resulting in a change in the composition of shareholders is included in changes to the Company's data which must be notified to the Minister in the Minister of Law and Human Rights. It can be said that the notary has an important role, especially in this case regarding the transfer of rights to shares.

In practice, there are still violations committed by notaries related to the implementation of their duties and responsibilities. This can be observed in the District Court Decision Number 207/Pdt.G/2020/PN.Bks. The dispute started when the shareholders of PT. SIP will transfer the rights to its shares in its entirety to PT. STF. During the negotiation process, PT. STF unilaterally changed the purchase price agreement for share rights to the NBS notary. It is also known, then the notary processed the transfer of shares of PT. SIP online to the office of the Director General of General Legal Administration of the Ministry of Law and Human Rights without prior signing the deed of sale and purchase of shares by PT. STF (as a buyer) and Doctor RA and VNP (as a seller).

The results of the District Court Decision Number 207/Pdt.G/2020/PN.Bks. is to declare that the Plaintiffs' lawsuit cannot be accepted because the Court considers that the Plaintiffs' lawsuit is lacking in parties (*plurium litis consortium*). This is of course very unfortunate because there is no legal certainty for the Plaintiffs or the Defendants. From the description above, it is necessary to examine in depth the legal issues related to the Legitimacy of Transfer of Rights to Shares Deed of Transfer of Rights to Shares. Based on this, the problems that can be formulated are as follows:

1. What is the validity of the rights to shares transferred by a notary without a deed of transfer of rights to shares in the District Court Decision Number 207/Pdt.G/2020/PN.Bks.?
2. What are the responsibilities of a notary in processing the transfer of rights to shares without prior signing the deed of sale and purchase in the District Court Decision Number 207/Pdt.G/2020/PN.Bks.?

RESEARCH METHODS

The research method used in this article is doctrinal law research. Doctrinal legal research is carried out by examining the theories, concepts, legal principles and laws and regulations related to this research. The sources and types of data used in this study are secondary data sources consisting of primary legal materials and secondary legal materials. The primary legal material used is the Limited Liability Company Law and the secondary legal material used is literature and legal journals relating to Shares and Limited Liability Companies. Secondary data collection method what will be carried out is the technique of collecting literature studies, namely examining all secondary data related to the research to be studied. Data analysis in this study was carried out by qualitative analysis. The data obtained will be described and analyzed using positive law and the theory that has been set forth to then draw conclusions deductively as the main guideline and inductively as supporting work procedures. The research specifications used in this study are analytical descriptive in nature, this research aims to analyze further about the applicable laws and regulations then related to legal theory.

⁵Regulation of the Minister of Law and Human Rights Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities, Permenkumham Number 21 of 2021, Article 3 paragraph (2).

DISCUSSION AND RESEARCH RESULTS

The Legitimacy of Transfer of Rights to Shares transferred by a Notary without prior signing of the Deed of Sale and Purchase

The company is a form of business of economic activity that makes it easy for the owners (shareholders) to transfer the company by selling all or part of their shares to individuals or legal entities.⁶ The main capital of the company is shares. Shares are defined as the portion owned by an individual or legal entity within a company which is stated in the numbers and numbers written on the share certificate issued by the Limited Liability Company.⁷ Regulations regarding legal actions carried out by a Limited Liability Company are regulated in the Limited Liability Company Law ("UU PT") Number 40 of 2007 concerning Limited Liability Companies and their amendments as well as in the Articles of Association of the Limited Liability Company. A Limited Liability Company can regulate itself regarding legal actions that will be carried out in its Articles of Association as long as it does not conflict with what is regulated in the Company Law and its amendments.

Article 55 UUPT explains that "In the articles of association of the Company it is determined how to transfer rights to shares in accordance with statutory provisions." The UUPT also states that the transfer of rights to shares is carried out by deed of transfer of rights, either by private deed or by notarial deed.⁸ The deed of transfer of rights or a copy thereof shall be submitted in writing to the Company. The Board of Directors is then required to record the transfer of rights over shares, the date and day of transfer of said rights in the register of shareholders or a special register and notify the change in the composition of shareholders to the Minister to be recorded in the register of the Company no later than 30 (thirty) days from the date of recording of the transfer of rights .

From in the above articles it is known that shareholders can transfer their rights to their shares. The transfer of rights to shares can occur due to legal actions consisting of buying and selling and grants or occurring due to laws consisting of inheritance and wills.⁹ Buying and selling of shares in a Limited Liability Company is generally the same as buying and selling in general which is consensual in nature, which means that the sale and purchase has been born as an agreement that has legal force at the moment an agreement is reached between the seller and the buyer regarding the essential elements, namely goods and prices, even though the sale buy it regarding immovable goods.¹⁰

The deed of transfer of rights is the basis for the legal action of transferring rights to shares. The event of transfer of rights to shares with the mechanism of buying and selling shares, must fulfill the delivery of goods and payment which are essential elements of the legal action of buying and selling.¹¹ The elements that must be fulfilled from the legal act of buying and selling are clear and cash. Clear means buying and selling is done before an authorized official, for example is before a notary. Cash means buying and selling accompanied by a cash payment and it happens immediately, so that there is a perfect transfer of rights. In the event that the transfer of rights over shares is due to a sale and purchase, the deed of transfer of rights here also means the deed of sale and purchase of shares. The deed contains a sale and purchase agreement and transfer of shares agreed between the seller and the buyer.

After the drawing up of the deed of transfer of rights over shares has been completed as evidenced by the signing of the deed by the parties, then the deed or a copy of it is submitted to the Company and becomes the basis for recording in the register of shareholders or a special register as well as notification to the Minister. In this case, it is not the deed or its copy that is used for notification to the Minister, but the deed of transfer of rights over shares becomes the basis for notification of changes in the composition of shareholders to the Minister.

In the District Court Decision Number 207/Pdt.G/2020/PN.Bks., the Plaintiffs are the owners of shares in PT SIP and are interested in selling 100% of their shares to Defendant 1 at an agreed price. Defendant I has made an advance payment and the remainder will be paid at the signing of the deed of sale and purchase. The agreement was followed by the signing of the PT SIP GMS Minutes Deed No. 26 dated March 30, 2020 before Defendant 2 (Notary) which basically contained the approval for the sale of all 6,000 shares owned by the Plaintiffs to Defendant 1. In progress, although the planned sale and purchase transaction of 100% of PT SIP's shares has not been followed by the signing of the deed of sale and purchase of shares and there has been no payment of the remaining settlement of the sale and purchase as agreed upon, it turns out that Defendant II, Notary,

From the facts described above, it is known that the Notary processed the transfer of shares to the Minister without signing the deed of sale and purchase of shares between the seller and the buyer, which means that there is no deed of sale and purchase or transfer of rights to the shares to be transferred. This is of course not in accordance with the provisions on the transfer of rights to shares stipulated in the UUPT, which is carried out by means of a deed of transfer of rights.

The absence of a deed of sale and purchase of shares indicates that there is no basis for transferring the right to process the transfer of shares to the buyer. The signing of the Deed of PT SIP GMS Minutes regarding the approval for the sale of 6,000 shares to Defendant 1 cannot be used as a basis for processing the transfer of rights over shares to the Buyer, to process the transfer a deed of transfer of rights must still be drawn up. Apart from being regulated in Article 55 of the Company Law, these provisions

⁶Weni Mariati, Maryano, Nurwidiatmo. (2018). Notary Responsibilities for the Binding Agreement for the Sale and Purchase of Shares Due to the Transfer of Shares Without a General Meeting of Shareholders. *Journal of Nuansa Notary*, 4(1), p. 24.

⁷Maydner, L., Nefi, A. and Sendarawan, T.. (2021). Illegal Transfer of Rights to Shares Due to Transactions Using Blank Checks (Study of Decisions of the DKI Jakarta High Court Case Register Number 51/PDT/2019/PT. DKI.). *Indonesian Notary*, 3(1), p. 7.

⁸Law Concerning Limited Liability Companies, Law Number 40 of 2007, LN of 2007 No. 106 TLN No. 4756, as amended by Law Number 11 of 2020 Concerning Job Creation, LN of 2020 No. 245, TLN No. 6573, hereinafter referred to as UUPT as amended by UU CK, Article 56.

⁹Lifia Feby Wulandari. (2021). Legal Certainty of Acquisition of Shares (Acquisition) of a Closed Limited Liability Company With the Deed of Sale and Purchase of Shares, *Recital Review*, 3(2), p. 236.

¹⁰Usman Efendi Marpaung. (2022). The Perspective of UUPT Related to the Legal Principles of Light and Cash in the Sale and Purchase of Shares Agreement, *Journal of Smart Law (JSH)*, 1(1), p. 3.

¹¹Maydner, L., Nefi, A. and Sendarawan, T., *Op.cit*, p. 4.

are also regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 ("Permenkumham 21 of 2021") concerning Requirements and Procedures for Registration of Establishment, Amendment and Dissolution of Limited Liability Company Legal Entities. Article 12 of the Minister of Law and Human Rights states, document on changes to company data for changes in the composition of shareholders due to the transfer of shares, one of which is the deed of transfer of rights to shares in accordance with statutory provisions. In the Permenkumham, the deed of transfer of rights to shares is not required to be submitted to the Minister, but must be kept by a notary. This means that in order to carry out the process of transferring rights to shares to the Minister, a deed of transfer of rights must be drawn up first.

Regarding the validity of the rights to shares carried out without a deed of transfer of rights/deed of sale and purchase in the a quo case it can be said to be invalid and the rights to the shares have not been transferred to the Buyer. This is based on several reasons, the first is that the legal act of transferring rights to shares is carried out without a deed of transfer of rights. Second, the deed of transfer of rights or a copy of it was not submitted to the Company. Third, there is no record of the transfer of rights to shares in the register of shareholders or a special register. The minister should have rejected the transfer request. This must be done on the grounds that there is no basis for transferring rights over company shares or the conditions for transferring rights over company shares as stipulated in Article 56 UUPT are not fulfilled.

The responsibility of the notary in the act of processing the transfer of rights to shares without prior signing the deed of sale and purchase

The notary has a role in helping to create legal certainty and protection for the community which is preventive in nature through the issuance of authentic deeds made by her/him or before him related to the legal status, rights and obligations of a person in law, and so on and functions as the most perfect evidence in a court of law. In the event of a dispute over related rights and obligations.¹² In carrying out their duties and authorities, a notary must have high morale and adhere to the code of ethics so as not to abuse the authority vested in him. The position of a notary must be independent and impartial to any of the interested parties.¹³ In addition to the task of issuing a deed, in carrying out its duties a notary must also provide legal counseling to clients regarding the problems they face.¹⁴

In carrying out his position as a public official, a Notary must always apply the precautionary principle which aims to prevent problems from arising in the future.¹⁵ A Notary must be sensitive, responsive, have sharp thinking and be able to provide proper analysis of every phenomenon that arises in order to act appropriately.¹⁶ Errors in carrying out their duties and authorities, can sometimes be caused by a lack of experience, understanding, knowledge, both from legal and other aspects.¹⁷ Legal remedies that can be taken in the event that a Notary is suspected of violating the code of ethics or a violation of the exercise of office stipulated in the Notary Office Law is to report the matter to the Regional Supervisory Council for examination and a hearing.¹⁸ It is possible, if the notary's actions turn out to be detrimental or can be proven to have violated the provisions of Law Number 30 of 2014 jo. Law Number 2 of 2004 ("Notary Office Law") or the Notary Code of Ethics, the notary concerned may be subject to sanctions. Sanctions are imposed by the Regional Supervisory Council and the Central Supervisory Council in accordance with their respective authorities.¹⁹ Sanctions for Notaries in the Notary Office Law include:

- a. written warning;
- b. temporary stop;
- c. honorable discharge; or
- d. dishonorable discharge.

In addition to these sanctions, for certain violations committed by a Notary, parties who suffer losses can also demand reimbursement of costs, compensation and interest from the Notary. Whereas in the Notary Code of Ethics, sanctions that can be imposed on members who violate the Code of Ethics can be in the form of:

- a. rebuke;
- b. warning;
- c. temporary suspension of Association membership;
- d. honorable discharge from Association membership;

In the event that a notary is suspected of violating civil provisions, that is, if the action in question is considered detrimental, the notary can be sued in the District Court based on Article 1365 of the Civil Code concerning unlawful acts.²⁰

¹² Sjaifurrachman. (2011). *Aspects of Notary Liability in Making Deeds*. Bandung: Mandar Maju, p. 7.

¹³ Weni Mariati, Maryano, Nurwidiatmo, *Op., Cit.*, p. 26.

¹⁴ Ranggapandu Cindapputera and Mohamad Fajri Mekka Putra. (2022). Authority of a Notary in Legal Counseling and Mediation Issues. *Journal of Social Sciences and Education (JISIP)*, 6(3), p. 10190.

¹⁵ Steven Liem, Mohammad Fajri, Widodo Suryandono. (2020). Notary Responsibilities for Deeds of Sale and Purchase of Shares Without Evidence of Payment and Evidence of Deposit (Case Study of South Jakarta District Court Decision Number: 259/Pdt. G/2017/PN. Jkt. Sel.). *Indonesian Notary*, 2(1), p. 804.

¹⁶ Nawaaf Abdullah, Munsyarif Abdul Chalim. (2017). Position and Authority of a Notary in Making Authentic Deeds. *Journal of Deeds*, 4(4), p. 660.

¹⁷ Husni Thamrin. (2011). *Drawing up of Land Deeds by Notaries*. Yogyakarta: LaksBang Pressindo, p. 91.

¹⁸ Law Concerning the Position of Notary, Law Number 20 of 2004, LN of 2004 No. 117 TLN No. 4432, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, LN of 2014 No. 3, TLN No. 5491, hereinafter referred to as UUJN, Article 70.

¹⁹ UUJN Article 73 paragraph (1) letter e and Article 77 letter c.

²⁰ Ghansam Anand, "Afflicted by Notary Actions, Take These Steps, Online Law," Online Law, November 23, 2022, available in https://www.hukumonline.com/klinik/a/dirugikan-oleh-aksi-notaris--tempuh-cepat-ini-lt4fe9dafae18de/#_ftn6, accessed on January 30, 2023.

As described above, the transfer of rights to shares is carried out by means of a deed of transfer of rights to shares. The notary must first draw up a deed of transfer of rights over their shares, then process the transfer to the Minister of Law and Human Rights. Any changes in company data must be registered with the Minister of Law and Human Rights of the Republic of Indonesia. These provisions are accommodated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 (“**Permenkumham 21/2021**”) concerning Requirements and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities. In Article 8 paragraph (4) letter a of the Minister of Law and Human Rights, changes in the composition of shareholders due to the transfer of shares are included in changes to company data that must be registered with the Minister. Article 9 of the Minister of Law and Human Rights 21 of 2021 states that changes to company data are determined through the GMS and are contained or stated in a notarial deed in Indonesian. The changes to the company data are then submitted by the Applicant electronically via SABH by filling in the change format accompanied by an electronic statement regarding the complete Company data change documents.²¹ Documents for changes to company data for changes in the composition of shareholders due to the transfer of shares, one of which is the deed of transfer of rights to shares in accordance with statutory provisions. In the Permenkumham 21/2021, the deed of transfer of rights to shares is not required to be submitted to the Minister, but must be kept by a notary.

If it is related to the case in the District Court Decision Number 207/Pdt.G/2020/PN.Bks., the action of a Notary who processes the application for the transfer of rights over shares to the Minister without prior signing of the deed of transfer of rights or without having a deed of transfer of rights over the shares is an act which violates Article 16 paragraph (1) letter a of Law Number 2 of 2014 (“**Law 2 of 2014**”) concerning Amendment to Law Number 30 of 2004 concerning the Position of Notary. The contents of the article oblige a notary in carrying out his/her position to act in a trustful, honest, thorough, independent, impartial manner and protect the interests of the parties involved in legal actions. The actions taken by the Notary in the above case show dishonest acts and do not protect the interests of the parties involved in legal actions. As a Notary, in carrying out his position he should have understood and mastered legal regulations related to the needs of his clients. Even though the Limited Liability Company Law does not stipulate sanctions for failing to draw up a deed of transfer of rights in the event of a transfer of rights over shares, if this is not done it is not in accordance with the requirements stipulated by law.

The non-signing of the deed of sale and purchase of shares in the a quo case can also be related to Article 44 paragraph (1) of the Notary Office Law which reads:

Article 44

- (1) Immediately after the deed was read, the deed was signed by each appearer, witness and notary, except if there were appearers who were unable to sign by stating the reasons.

In paragraph (5) of Article 44 it is then explained that:

Article 44

- (5) Violation of the provisions referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) results in a deed only having the power of proof as an underhand deed and can be a reason for the party who suffers a loss to demand reimbursement costs, compensation and interest to the Notary.

So that if it relates to the transfer of rights to shares, in the event that the Notary has processed the transfer of rights to shares to the Minister of Law and Human Rights of the Republic of Indonesia, but does not draw up a deed of transfer of rights in advance or the deed that has been made is not signed by the Parties it can be categorized as acts that violate the provisions in the Notary Office Act. The Notary concerned may be subject to written warning sanctions, temporary dismissal, honorable discharge, or dishonorable dismissal and the party who suffers a loss may demand reimbursement of costs, compensation and interest from the Notary concerned.

CONCLUSION

1. The transfer of rights to shares is carried out by means of a deed of transfer of rights, either by private deed or notarial deed. Shareholders can transfer their rights to their shares, one of which is by buying and selling rights to shares. Buying and selling shares in a Limited Liability Company is generally the same as buying and selling in general which is consensual. Events of transferring rights to shares with the mechanism of buying and selling shares, must fulfill the delivery of goods and payment which are essential elements of the legal action of buying and selling and fulfilling the principle of light and cash. The absence of a deed of sale and purchase of shares indicates that there is no basis for transferring the right to process the transfer of shares to the buyer. Regarding the legitimacy of the rights to shares carried out without the deed of transfer of rights/deed of sale and purchase in the a quo case which is still in process and there has been no decision of the Minister of Law and Human Rights of the Republic of Indonesia regarding the application for transfer of rights to said shares, it can be said to be invalid and the rights to the shares have not been transferred to the Buyer. The minister should have rejected the transfer request. This must be done on the grounds that there is no basis for transferring rights over company shares and the conditions for transferring rights over company shares as stipulated in Article 56 UUPT are not fulfilled.
2. With regard to the transfer of rights to shares, in the event that the Notary has processed the transfer of rights to shares to the Minister of Law and Human Rights of the Republic of Indonesia, but does not draw up a deed of transfer of rights in advance or the deed that has been drawn up is not signed by the Parties it can be categorized as an act which violates the provisions in the Notary Office Act. The Notary concerned may be subject to written warning sanctions, temporary dismissal, honorable dismissal, or dishonorable discharge and the party who suffers a loss may demand reimbursement of costs, compensation and interest from the Notary concerned.

²¹ Permenkumham Number 21 of 2021 Article 10 and Article 12.

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