



Notary Liability for the sale and purchase of PT GEI shares made unlawfully (Study of Decision Number 188 PK/Pdt/2020)

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Article Process

Abstract

The making of the deed of sale and purchase agreement of the company's shares must follow the legal rules regulated by corporate law. However, in the making of the deed of sale and purchase of shares of PT GEI, there was a fake sale and purchase in which the procedure was carried out without the approval of the general meeting of shareholders and without payment for the sale and purchase. This research aims to analyze the legal responsibilities of notaries. This research is a normative legal research, with statutory, conceptual and case approaches. The data source used is secondary data. Qualitative normative data analysis method. Research results show that: The notary's responsibility for the fake sale and purchase of company shares is the responsibility of the civil aspect and the administrative aspect.

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Abstrak

Pembuatan akta perjanjian jual beli saham perseroan harus mengikuti kaidah-kaidah hukum yang diatur dalam Hukum Perseroan Terbatas. Namun dalam pembuatan akta jual beli saham PT GEI dijumpai jual beli proforma yang prosedurnya dilalui tanpa persetujuan RUPS dan tanpa pembayaran jual beli. Penelitian ini bertujuan untuk menganalisis tanggungjawab hukum notaris atas akta jual beli semu saham tersebut. Penelitian ini merupakan penelitian hukum normatif, dengan pendekatan perundang-undangan, konseptual dan kasus. Sumber data yang digunakan adalah data sekunder. Metode analisis data normatif kualitatif. Hasil Penelitian menunjukkan bahwa: tanggungjawab notaris terhadap jual beli proforma saham adalah tanggungjawab dari aspek keperdataan dan aspek administratif.

Kata kunci: Tanggungjawab Notaris, Perbuatan Melawan Hukum

I. Introduction

Currently, the Limited Liability Company is an economic institution as well as a form of economic activity vehicle that is often chosen by business actors, when compared to the forms of business entities that exist in Indonesia. However, this form of business entity has its own complexities. It is no exaggeration to say that the presence of PT as a means of conducting economic activities has become a non-negotiable necessity.¹

In our country, doing business by forming a PT is not without risk. As with any business, there are times when the business rises and falls. A PT does not always run well because its

¹ Binoto Nadapdap, *Hukum Perseroan Terbatas Berdasarkan Undang-Undang Nomor 40 Tahun 2007*, (Jakarta: Aksara, 2014), p. 1

sustainability depends on various factors, both internal and external. Internal factors usually come from conditions of mismanagement and fraud committed by the internal circles of the PT itself, such as the General Meeting of Shareholders (GMS), Commissioners, Directors, employees, or other parties who indirectly control the company. Meanwhile, external factors can come from conditions beyond the reach or control of the PT, such as government policies or macroeconomic conditions, both on a national scale and the flow of the world economy.²

PT ownership is divided into shares. In other words, shares are proof of ownership of a company. This is in accordance with the provisions contained in Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) as amended by Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law) which reads: "Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or an individual legal entity that meets the criteria of micro and small enterprises as stipulated in laws and regulations concerning micro and small enterprises."

The establishment of a PT must be made and contained in a notarial deed as an authentic deed and announced through the state gazette. By going through this process, the existence of the PT is legal. This means that the PT is officially established, can carry out activities legally, and has the rights and obligations of a legal entity. In practice, it is not a secret that many notaries are summoned to court to provide information about the deed of a PT or the letters they make experiencing disputes and problems. With this kind of thing, it can be suspected that the notary took actions that are not in accordance with the Laws and Regulations and / or the Notary Code of Ethics or there is a deliberate or unintentional mistake by the parties or one of the parties to try to commit fraud so as to cause harm to the other party by providing information and documents that are not true. This shows that there has been a failure of the notary to apply the principle of prudence required by law.

The obligation of a notary as a public official to act professionally is regulated in Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Notary Position (UUJN) (hereinafter referred to as UUJN-P), one of which is in Article 16 paragraph (1) letter a, namely: "In carrying out his/her position, a notary must: a. act trustworthy, honest, careful, independent, impartial, and safeguard the interests of the parties involved in legal acts." As sanctions, it is regulated in Article 16 paragraphs (11) and (12) of UUJN-P, namely:

- (11) Notaries who violate the provisions as referred to in paragraph (1) letters a through l may be subject to sanctions in the form of:
 - a. written warning;
 - b. temporary dismissal
 - c. honorable dismissal; or
 - d. dishonorable dismissal.
- (12) In addition to being subject to sanctions as referred to in paragraph (11), a violation of the provisions of Article 16 paragraph (1) letter j may be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and interest from the Notary.

² Orinton Purba, *Petunjuk Praktis Bagi RUPS Komisaris Dan Perseroan Terbatas Agar Terhindar Dari Jerat Hukum*, (Jakarta: Raih Asa Sukses, 2011),p.6

In the field of civil law, sanctions are punitive measures to force people to fulfill agreements or obey the provisions of the law. In its application, there are differences in sanctions imposed on notaries in the same case, namely the making of proforma sale and purchase deeds. As for the Bekasi Special Class I A District Court Decision Number 334/Pdt.G/2014/PN.BKS dated January 25, 2016, Bandung High Court Decision Number 467/PDT/2016/PT BDG. dated December 22, 2016, Cassation Level Decision Number 1681 K/Pdt/2017 dated August 16, 2017 with sanctions declaring null and void the deeds and decision letters regarding the sale and purchase of shares in PT GEI and punishing the notary jointly and severally to pay material damages in cash and at once in the amount of Rp. 100,000,000,000.00 each. 100,000,000,000, - (one hundred billion rupiah) plus 6% interest per year to PT DFI (Plaintiff I), Mr. JEB (Plaintiff II), and Mrs. IWA (Plaintiff III), and Judgment of Reconsideration Number 188 PK/Pdt/2020 dated July 1, 2020 with the sanction of declaring null and void the deeds regarding the sale and purchase of shares in PT GEI. GEI, but released the notary from the penalty of paying material damages of Rp. 100,000,000,000, - (one hundred billion rupiah) plus 6% interest per year. The verdict of a civil case involving a notary, between the decision of the District Court to the Cassation and the Judicial Review, there is a difference regarding the material compensation sanction imposed on the notary.

The disparity in the judge's decision occurs in the same legal area, the same case, and the same legal basis, so that academically theoretically it can be studied regarding the notary's responsibility for the sale and purchase of PT GEI shares made unlawfully. Therefore, the author is interested in conducting research and writing an article entitled "Notary liability for the sale and purchase of PT GEI shares made unlawfully (Study of Decision Number 188 PK/Pdt/2020)".

II. Research Problem

What is the notary's responsibility for the sale and purchase of PT GEI shares made unlawfully?

III. Research Method

The research method used is the normative juridical approach method using secondary data obtained from literature studies, namely laws and regulations, legal theories, and opinions of leading legal scholars. The research uses descriptive analytical research specifications, namely describing the applicable laws and regulations with legal theories associated with their implementation practices concerning the problems studied. The data analysis method used is a qualitative normative method.

IV. Discussion

1. Notary's responsibility for the sale and purchase of PT GEI shares that was made unlawfully

According to the Big Indonesian Dictionary, responsibility is a state of being obliged to bear everything (if something happens, you can be sued, blamed, sued, and so on).³ The definition of responsibility according to Purwahid Patrik is that a person must bear to answer for all his actions or all that is his obligation and under his supervision along with all the

³ Kamus Besar Bahasa Indonesia (KBBI) Online, quoted on the page <https://kbbi.web.id/tanggung%20jawab>, accessed on April 31, 2023

consequences.⁴ In general, legal responsibility is defined as an obligation to do something or behave in a certain way that does not deviate from existing regulations.

One profession that is closely related to legal responsibility is the notary profession. Notary is a legal profession and thus the notary profession is a noble profession (*nobile-officium*). According to Article 1 paragraph (1) of UUJN-P, "A notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws." Problems related to the legal responsibility of notaries often arise due to the notary as the maker of the deed or by the parties facing it. A deed made by a notary can be a legal basis for the status of property, rights and obligations of a person. Mistakes in a notarial deed can cause a person's rights to be deprived or a person to be burdened with an obligation.⁵

According to the author, it is necessary to examine how the responsibilities of a notary should be carried out when making a deed, so that the deed made is correct according to the law and is not disputed by the parties. One of the problems related to the responsibilities of notaries occurred in the case of the Decision of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN.BKS dated January 25, 2016. The Plaintiffs filed a lawsuit to cancel the deed of share sale and purchase agreement in PT GEI made by Notary MRG, S.H. (Defendant VI). The Plaintiffs in their claim stated that Notary MRG, S.H. (Defendant VI) together with PT WPE (Defendant I), PT NCE (Defendant II), Mr. DI (Defendant III), Mr. THL (Defendant IV) had committed an unlawful act (PMH).

Notaries as public officials have legal responsibilities that are closely related to the authority and obligations granted by law. The authority of a notary is an attribution authority, this is because the authority is granted by the UUJN-P as stipulated in Article 15, which is as follows:

- (1) Notaries are authorized to make authentic deeds regarding the proforma of deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and quotation of the deed, the proforma is as long as the making of the deed is not also assigned or excluded to other officials or other persons stipulated by law.
- (2) In addition to the authority as referred to in paragraph (1), Notary is also authorized:
 - a. certify the signature and determine the date certainty of the underhand letter by registering it in a special book;
 - b. record the underhand letter by registering it in a special book;
 - c. make a copy of the original underhand letter in the form of a copy containing the description as written and described in the letter concerned;
 - d. attesting the suitability of the photocopy with the original letter;
 - e. provide legal counseling in connection with the making of a Deed;
 - f. make Deeds relating to land; or
 - g. make a Deed of auction minutes.
- (3) In addition to the authorities as referred to in paragraph (1) and paragraph (2), Notaries have other authorities as stipulated in laws and regulations.

In relation to the making of the deed by Notary MRG, S.H. (Defendant VI) in this case, the notary has properly carried out his duties based on his authority to make an authentic deed

⁴ Purwahid Patrik, *Perkembangan Tanggung Gugat Resiko Dalam Melawan Hukum*, Inaugural Speech of Permanent Professor at the Faculty of Law, Diponegoro University, Semarang, 1990, p. 8

⁵ Abdul Ghofur Anshori, *Perspektif Hukum dan Etika*, Lembaga Kenotariatan Indonesia, UII Press, Yogyakarta, 2009, p. 7

regarding the agreement desired by the parties concerned, namely the Plaintiffs as sellers and Defendant I, Defendant II as buyers, which is stated in an authentic deed. However, in addition to the authority of notaries in the UUJN-P, notaries also have obligations as stipulated in Article 16 paragraph (1) of the UUJN-P, namely as follows:

- (1) In carrying out their duties, notaries must:
 - a. act trustworthy, honest, careful, independent, impartial, and safeguard the interests of the parties involved in legal acts;
 - b. make the Deed in the form of a Deed Minute and keep it as part of the Notary Protocol;
 - c. attach letters and documents as well as fingerprints of the confrontants to the Minute of Deed;
 - d. issuing Grosse Deed, Deed Copy, or Deed Quotation based on the Minuta Deed;
 - e. provide services in accordance with the provisions of this Law, unless there is a reason to refuse it;
 - f. to keep confidential everything concerning the Deed he/she makes and all information obtained for the purpose of making the Deed in accordance with the oath/pledge of office, unless the law provides otherwise;
 - h. to bind the Deeds made by him in 1 (one) month into books containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds may be bound into more than one book, and to record the number of Minuta Deeds, the month, and the year of their making on the cover of each book;
 - i. making a list of Deeds of protest against non-payment or non-receipt of securities;
 - j. make a list of Deeds relating to wills in the order in which they are made every month;
 - k. send the list of Deeds as referred to in letter i or the nil list relating to wills to the central register of wills at the ministry that organizes government affairs in the field of law within 5 (five) days of the first week of the following month;
 - l. record in the repertorium the date of delivery of the register of wills at the end of each month;
 - m. have a stamp or seal containing the symbol of the Republic of Indonesia and in the space encircling it the name, position, and domicile of the person concerned shall be written;
 - n. read out the Deed in the presence of the testator in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a testament Deed under hand, and signed at that time by the testator, witnesses, and Notary; and
 - o. receive the apprenticeship of the Notary candidate.

As for the position of the sale and purchase of PT GEI shares in the Decision of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN.BKS dated January 25, 2016 to the Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020, that the deeds made notarially before Notary MRG, S.. H. (Defendant VI) between PT DFI (Plaintiff I), Mr. DEB (Plaintiff II) and PT WPE (Defendant I) and between PT DFI (Plaintiff I), Mrs. IWA (Plaintiff III) and PT NCE (Defendant II) have been declared null and void because they have been proven to be pro-forma sale and purchase. Pro-forma sale and purchase is included in the simulation agreement. Simulation Agreement according to Sjaifurrachman and Habib Adjie, is an agreement where the parties make an agreement that to outsiders creates a different impression from the agreement that the parties secretly deny. Simulation agreement in Dutch is called "*schijnhandeling*"⁶ which means that the pretense of an agreement without cause or which has

⁶ M.U Sembiring, "Simulatie (*Schijnhandeling* - Perbuatan Proforma)", Paper presented at the 45th Anniversary of the Faculty of Law & 30th Notary Education Program, Medan, 1999, 1

been made for a false or forbidden reason has no force.⁷ There are 2 kinds of simulation agreements, namely:⁸

1. Absolute Simulation Agreement is an agreement where the parties make an agreement that gives a different impression to outsiders than the agreement that the parties secretly deny. For example, the sale and purchase of land rights between A and B, and then B and C, a foreign citizen, make an agreement containing B's acknowledgment that the money to buy the land plot from A belongs to C, is an absolute simulation agreement containing an unlawful causa, to avoid the prohibition of land ownership with property rights by foreigners based on Article 26 paragraph (2) of the Basic Agrarian Law, with the result that it is null and void.
2. Relative Simulation Agreement is an agreement where the parties want the legal consequences but use another legal form. For example, the sale and purchase of a land plot in installments over a certain period of time so that the sale is below the non-taxable price value. This kind of relative simulation agreement remains valid because the legal object does not require a specific legal subject.

Based on the definition of a simulation agreement above, according to the author, it can be concluded that there was an absolute simulation agreement because the Plaintiffs and Defendant I, Defendant II made a sale and purchase agreement with a false cause before Notary MRG, S.H (Defendant VI) by showing and giving the impression to third parties that a certain legal action had occurred, namely the sale and purchase of PT GEI shares, even though they had secretly promised each other that there was actually no change from the proforma situation. The transfer of ownership of the shares was only until the time limit for the completion of the project or at a mutually determined time, then after the agreed time passed, the object of sale and purchase returned to the real owner, namely the Plaintiffs.

One of the interesting and important things to be studied in this case is that there are differences in sanctions imposed on notaries, namely based on the lawsuit, answer, and proof in the trial as stated in the Decision of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN.BKS dated January 25, 2016, Decision of the Bandung High Court Number 467/PDT/2016/PT BDG. dated December 22, 2016. The Cassation Level Decision Number 1681 K/Pdt/2017 dated August 16, 2017 has punished the notary jointly and severally to pay material damages in cash and at once in the amount of Rp. 100,000,000,000, - (one hundred billion rupiah) plus 6% interest per year to the plaintiffs, while the Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020 released the notary from the penalty of paying material damages of Rp. 100,000,000,000, - (one hundred billion rupiah) plus 6% interest per year.

Based on the case position as well as all the evidence of letters and facts of the trial at the District Court level, the author finds that the panel of judges from the District Court to the Cassation considered the alleged involvement of Notary MRG, S.H. (Defendant VI) who knew from the beginning that the proforma sale and purchase was to be carried out in the deed. So that Notary MRG, S.H. (Defendant VI) who handled the process of buying and selling shares until the issuance of the Decree of the Minister of Law and Human Rights of the Republic of Indonesia concerning Approval of Amendments to the Articles of Association of PT GEI must be responsible for his actions which are suspected of intentionally or negligently making a deed of sale and purchase that deviates from the existing legal provisions, namely the pro-forma deed of sale and purchase.

⁷ Yan Pramadya Puspa, "*Kamus Hukum Lengkap*", (Semarang: Aneka Ilmu, 1977), p. 759

⁸ Sjaifurrachman, Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, (Bandung: CV. Mandar Maju, 2011, 171-172

However, based on the Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020, the panel of judges considered that there was a mistake of the judge or a clear error in the *Judex Juris*' decision to reject the cassation of Defendant VI / Applicant for Reconsideration and the *Judex Facti*'s decision to grant the Plaintiffs' claims. The judges of the Judicial Review in their legal considerations overruled the evidence and facts that were valid in the trial at the District Court level until the Cassation regarding the actions of the notary that fulfilled the elements of PMH.

Notary as a public official has legal responsibility for the authentic deed he has made or made before him as stipulated in Article 65 of UUJN-P: "Notaries, Substitute Notaries, and Temporary Notary Officials are responsible for every deed they make even though the Notary Protocol has been submitted or transferred to the keeper of the Notary Protocol". The form of responsibility of Notary MRG, S.H. (Defendant VI) will be described in detail by the author, namely:

1. Civil Liability

Hans Kelsen argued that the concept of legal liability is essentially related, but not identical, to the concept of legal obligation. An individual is legally obliged to behave in a certain way, if the opposite behavior is a condition for the imposition of coercive measures. This coercive measure, however, is not necessarily directed against the obliged individual - the "offender" - but can be directed against other individuals who are related to the first individual in a way established by the legal order. The sanctioned individual is said to be "liable" or legally responsible for the offense.⁹

Civil liability is liability based on liability based on fault which requires proof of fault. In this case, civil liability is not necessarily responsible for the mistakes made by himself, he can also bear the mistakes made by other people under his supervision. Civil liability is closely related to PMH. Indonesian positive law has regulated PMH which is contained in Article 1365 of the Civil Code, which reads as follows: "Every act that is unlawful and causes harm to another person, obliges the person who causes the harm through his fault to compensate for the loss".¹⁰

According to the author, the Panel of Judges in the decision should have provided an explanation in the legal considerations of the judge specifically against the notary in which part of the deed or in the making of the deed contained legal defects or PMH from Notary MRG, S.H. (Defendant VI), so that it can be a guideline for the public or for notaries who carry out their positions in order to avoid canceling deeds, imposing civil sanctions, criminal sanctions, and administrative sanctions. The civil liability of Notary MRG, S.H (Defendant VI) when associated with the elements of PMH, namely regarding the existence of unlawful acts, the existence of fault on the part of the perpetrator, the existence of losses, and the existence of a causal relationship between the act and the loss, can be analyzed as follows:

(1). The element of unlawful conduct:

The actions of Notary MRG, S.H. (Defendant VI) in the Decision of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN.BKS until the Cassation Decision Number 1681 K/Pdt/2017 dated August 16, 2017 have been proven to have legally acted against the law, namely his actions were contrary to his legal obligations as a notary. The obligations of a notary as stipulated in Article 16 paragraph (1) letter a of UUJN-P states that "In carrying out his/her

⁹ Angelina, L. (2019). Tanggung Jawab Notaris Dalam Akta Jual Beli Dan Pengalihan Hak Atas Saham Yang Dibuat Dengan Tanggal Mundur (Back-Dated). *Indonesian Notary*, 1(001).

¹⁰ Cakra, D. H. (2019). Keabsahan Pelaksanaan Pemindahan Hak Atas Saham Dalam Perseroan Terbatas (Tertutup) Berdasarkan Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas. *Indonesian Notary*, 1(001).

position, a Notary shall: act trustworthy, honest, careful, independent, impartial, and safeguard the interests of the parties involved in legal acts" and Article 16 paragraph (1) letter m of UUJN-P, namely "read out the Deed in the presence of the confronted person, attended by at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of an underhand testamentary Deed, and signed at that time by the confronted person, witnesses, and Notary". However, Notary MRG, S.H. (Defendant VI) was not careful in making the Deed of Sale and Purchase of Shares of PT GEI, namely:

- 1.1. Making a deed of sale and purchase of shares without the approval of the General Meeting of Shareholders and only with the underhand approval of the Board of Commissioners. This is contrary to Deed No. 59 dated June 25, 2002 regarding the Establishment of PT GEI Limited Liability Company, in Article 9 number 3 which imperatively states "The transfer of rights to shares is only permitted with the approval of the General Meeting of Shareholders". The notary at the time of making the sale and purchase deed of PT GEI should have been able to apply the principle of prudence in carrying out the duties of a notary, the principle of applying valid data / documents / identity, and applying the rules of law in the Company Law and the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-01.AH.01. .01 TAHUN 2011 concerning Procedures for Submission of Applications for Legal Entity Ratification and Approval of Amendments to the Articles of Association, as well as Submission of Notifications of Amendments to the Articles of Association, and Changes in Limited Liability Company Data jo. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Conditions and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities.
- 1.2. The notary does not check the payment receipt. If there is no proof of payment in the form of proof of transfer or cash, then the Sale and Purchase Deed should be postponed or even rejected if there is no valid proof of payment or proof of transfer, even though the parties have stated in front of the notary.
- 1.3. The Notary was dishonest in stating the actual names of the witnesses of the Deed and did not read out the Deed of Sale and Purchase of Shares of PT GEI in front of the parties and witnesses. This action is contrary to the authority of Notary MRG, S.H. (Defendant VI) not to conduct legal counseling in connection with the making of the deed as his authority under Article 15 paragraph (2) letter e of UUJN-P.

(2) The element of fault on the part of the perpetrator:

According to the author, in this case Notary MRG, S.H. (Defendant VI) has committed an error that should be suspected of consciously or intentionally making a deed of sale and purchase with a false cause contrary to the law. The provisions of Article 1335 of the Civil Code, states "An agreement without a cause or which has been made for a false or forbidden reason, has no force". Agreement with false causa means that in an agreement there is a causa but not the actual causa. Notaries before entering the world of practice have been equipped with practical and theoretical skills. However, in this case Notary MRG, S.H. (Defendant VI) actually committed a series of mistakes, namely by making a deed of sale and purchase of shares without the approval of the General Meeting of Shareholders and only with the underhand approval of the Board of Commissioners, not checking payment receipts or no proof of payment in the form of proof of transfer or cash, not being honest in stating the name of the actual Deed Witness and not reading the Deed of Sale and Purchase of Shares of PT GEI in front of the faces and witnesses, so that the element of fault on the part of the perpetrator is fulfilled.

(3) The element of loss:

The element of loss is divided into 2 (two), namely material and immaterial losses. Article 1365 of the Civil Code clearly states that every form of PMH that causes a loss is obliged to compensate, but the form of compensation for PMH is not expressly determined by law. In PMH, the form of compensation is different from compensation based on default. In compensation for PMH, there is the possibility of compensation in a form other than a sum of money. In the Decision of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN.BKS to Cassation, with the pro-forma sale and purchase of PT GEI shares, resulting in the plaintiffs losing various business projects from investors, lost profits, and difficulties in obtaining loans from banks within a certain time which materially granted compensation of Rp. 100,000,000,000, - (one hundred billion rupiah) plus 6% interest per year, so that the element of loss is fulfilled.

(4). The element of a causal link between the act and the harm:

The causal relationship between the unlawful act and the loss caused is a very important requirement or element to assess whether the act is PMH, so that the perpetrator can be held liable. One of the considerations to assess the existence of a causal relationship between the act and the loss is based on the extent of the possibility of the loss that can be expected from the act that is the cause.

Attributed to the actions of Notary MRG, S.H. (Defendant VI) which were considered as PMH by the Panel of Judges of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN.BKS until Cassation was to make a deed of sale and purchase of shares without the approval of the General Meeting of Shareholders and only with the underhand approval of the Board of Commissioners, did not check the payment receipts, and was dishonest in stating the actual names of the witnesses of the deed and did not read the Deed of Sale and Purchase of Shares of PT GEI in front of the faces and witnesses.

The stages taken in the making of the deed of sale and purchase of PT GEI shares are not in accordance with the laws and regulations and the Articles of Association of PT GEI, so that the deeds and decision letters regarding the sale and purchase of PT GEI shares should be canceled and have no legal force. The actions of the notary in the series of making the deed, have a direct impact on causing material losses to the plaintiffs, so it should be the legal responsibility of the notary to compensate each plaintiff in the amount decided by the judge, namely Rp 100,000,000,000, - (One Hundred Billion Rupiah) plus 6% interest per year.

2. Criminal Liability

The discussion on criminal responsibility must be based on the norm of "no punishment if there is no fault" (*geen strafbar feit zonder schuld*). Regarding the basis for the imposition of punishment, there is also a very important principle, namely the principle of legality, where no act may be prohibited and punishable if it is not first specified in the law. The UUJN/ UUJN-P and the Notary Code of Ethics do not regulate the existence of criminal sanctions against notaries, so in the event of a criminal offense against a notary, criminal sanctions contained in the Criminal Code can be imposed, provided that the criminalization of the notary can be carried out with restrictions, namely:

- a. There is a notarial legal action on the outward, formal, and material aspects of the deed that is deliberately, consciously, and knowingly, and planned that the deed to be made before the notary or by the notary together (agreed) with the confronters is used as the basis for committing a criminal offense.

- b. There is a legal action of the notary in making a deed in the presence of or by a notary that when measured based on the UUJN is not in accordance with the UUJN.
- c. The actions of the notary are also not in accordance with the agency authorized to assess the actions of a notary, in this case the Notary Supervisory Council.¹¹

Usually, the articles that are often used to prosecute notaries in the performance of notarial duties are articles that regulate the crime of forgery of documents, namely Article 263, Article 264, and Article 266 of the Criminal Code. To avoid being charged with the criminal offense of Article 266 paragraph (1) jo. Article 56 of the Criminal Code, it is better if from the very beginning the confrontants express their intention to sell and buy, for example, the notary reminds the confrontants of their intention to sell and buy:

- a. a. if the notary wishes to include in the deed a price other than the actual price, the notary should never inform the notary or an employee of the notary's office, meaning that the notary should be prohibited from informing the notary that the actual price is different from the price to be included in the deed.
- b. if the contributor has already informed the notary of the price difference, the notary should refuse to make the deed for the contributor.
- c. inform the notary that if in the future it is discovered that the price stated in the deed is not correct, there is a possibility that the person concerned will later be charged with Article 266 paragraph (1) of the Criminal Code.¹²

Attributed to the results of research on Decision Number 334/Pdt.G/2014/PN.BKS to Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020, the liability questioned against Notary MRG, S.H. (Defendant VI) is in the form of civil liability, not criminal liability. Notary MRG, S.H. (Defendant VI) was alleged to have committed PMH by making a pro-forma deed of sale and purchase of PT GEI shares which directly caused material losses of Rp. 100,000,000,000, - (one hundred billion rupiah) plus 6% interest per year to the Defendants and the panel of judges stated in its decision that the authentic deeds regarding the sale and purchase of PT GEI shares were null and void.

3. Administrative Responsibility

In addition to civil and criminal liability, notaries are also responsible from an administrative aspect. According to Ridwan Halim, responsibility in law is a further consequence of the implementation of a role, whether that role is a right and obligation or power. In general, legal responsibility is defined as an obligation to do something or behave in a certain way that does not deviate from existing regulations. That because the duty of Notary MRG, S.H. (Defendant VI) in making the deed of share sale and purchase agreement at PT GEI is aimed at providing legal certainty, order and legal protection for the parties who use his services, it is appropriate that the authentic deeds made by Notary MRG, S.H. (Defendant VI) are based or based on the applicable legal provisions.

Based on this, then in the making of the deed of share sale and purchase agreement of PT GEI must also follow the legal rules regulated in the Law of Limited Liability Companies, namely through the Company Law and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-01.AH.01.01 TAHUN 2011 concerning Procedures for Submission of Applications for Legal Entity Ratification and Approval of Amendments to the Articles of Association, as well as Submission of Notifications of Amendments to the Articles of

¹¹ Adjie, *Op.Cit.*, 208-209

¹² *Ibid.*, 221

Association, and Changes in Data of Limited Liability Companies jo., Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Companies, thus a notary in making an agreement for sale and purchase of shares of a PT, is obliged to first examine the Articles of Association and amendments to the Articles of Association of the PT, before making a deed of transfer of rights to shares. If the Articles of Association do not require the sale and purchase of shares to be approved by the GMS, then shareholders can still sell their shares without the need to go through the GMS.

The actions of Notary MRG, S.H. (Defendant VI) who made the deed of sale and purchase of shares of PT GEI, namely without the approval of the GMS, but with the underhand approval of the Board of Commissioners, did not check the payment receipt or there was no proof of payment in the form of proof of transfer or cash, was not honest in stating the name of the actual Deed Witness and did not read the Deed of Sale and Purchase of Shares of PT. GEI in front of the plaintiffs, as well as the defendants' acknowledgment that the issuance of Deed No. 30 dated June 21, 2011, Deed No. 35 dated June 23, 2011, and Deed No. 6 dated July 12, 2011 were pro-forma deeds, then Notary MRG, S.H. (Defendant VI) can be declared to have been wrong in carrying out his position to act trustworthily, honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal actions.

The actions taken by this notary have violated the provisions regarding the notary's obligation to act carefully. Such actions of the notary are not in accordance with the provisions of Article 16 paragraph (1) letter a of the UUJN and the provisions in Article 3 point 4 of the Notary Code of Ethics because they have violated the moral values in the notary profession regarding the obligation of notaries to behave honestly, independently, impartially, trustworthy, carefully, with a sense of responsibility, based on laws and regulations and the contents of the notary oath of office. For these actions, notaries can be subject to administrative sanctions as stipulated in Article 5 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions Against Notaries in stages in the form of written warnings to notaries by the Regional Supervisory Council to temporary dismissal by the Notary Central Supervisory Council, as well as sanctions of reprimand, warning, or temporary dismissal from membership of the association by the Regional / Regional Honor Council based on the Notary Code of Ethics which are adjusted to the quantity and quality of violations committed by notaries.

Based on the understanding and analysis above, it can be concluded that the legal responsibility of the notary for the pro-forma sale and purchase of PT GEI shares whose deeds and decision letters were declared null and void due to PMH based on the Bekasi Special Class I A District Court Decision Number 334/Pdt.G/2014/PN. BKS dated January 25, 2016 until the Cassation Level Decision Number 1681 K/Pdt/2017 dated August 16, 2017, but the notary was found not guilty based on the Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020 with the legal consideration that there was a mistake of the judge or a real mistake in the Judex Juris decision which rejected the cassation of Defendant VI / the current Applicant for Reconsideration and the Judex Facti decision which granted the Plaintiffs' lawsuit, as well as overruling the evidence and facts that were valid in the trial of the Bekasi Special Class I A District Court until the Cassation regarding notary acts that fulfill the elements of PMH, according to the author is Notary MRG, S. H., must still be held civilly and administratively responsible by being subject to the following sanctions:

1. Civil liability is subject to civil sanctions in the form of compensation, because the notarial deeds are declared null and void as a result of the existence of PMH by the notary, as the elements of PMH in Article 1365 of the Civil Code are fulfilled.
2. Administrative liability is subject to administrative sanctions in the form of written warnings by the Regional Supervisory Council to temporary dismissal by the Central Supervisory Council of Notaries, because notaries violate Article 16 paragraph (1) letter a of UUJN-P which states that notaries must act trustworthy, honest, careful, independent, impartial, and safeguard the interests of parties involved in legal acts. As well as sanctions of reprimand, warning, or temporary dismissal from membership of the association by the Regional / Regional Honor Council based on the Notary Code of Ethics which is adjusted to the quantity and quality of violations committed by the notary, because the notary violates the provisions of Article 3 point 4 of the Notary Code of Ethics which states that a notary is obliged to behave honestly, independently, impartially, trustworthy, carefully, responsibly, based on laws and regulations and the contents of the notary's oath of office. Also violating the provisions of Article 4 paragraph (2) of the UUJN which regulates the content of the notary oath of office which at one point the notary swears to carry out his office with trustworthiness, honesty, thoroughness, independence, and impartiality.

Therefore, the author suggests to notaries that in every deed of any sale and purchase agreement, including the sale and purchase of shares in PT, to always pay attention to, remember, and implement the legal provisions in the Civil Code, the Company Law, and the Articles of Association of PT in order to avoid canceling the deed and civil sanctions and administrative sanctions.

V. Conclusion

Based on the research results obtained by the author in this article, the following conclusions can be obtained: The legal responsibility of Notary MRG, S.H. (Defendant VI) for the quasi-sale and purchase of PT GEI shares whose authentic deeds were declared null and void due to PMH based on the Decision of the Bekasi Special Class I A District Court Number 334/Pdt.G/2014/PN. BKS dated January 25, 2016 until the Cassation Level Decision Number 1681 K/Pdt/2017 dated August 16, 2017, but the notary was found not guilty based on the Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020 with legal considerations that override the valid evidence and facts in the trial regarding the notary's actions that meet the elements of PMH, according to the author, Notary MRG, S.H. (Defendant VI) can be subject to liability from civil aspects and administrative aspects, namely: (1) Civil liability is subject to civil sanctions in the form of compensation because the notarial deeds are declared null and void as a result of the existence of PMH by the notary, as the elements of PMH in Article 1365 of the Civil Code are fulfilled; (2) Administrative liability is subject to administrative sanctions in the form of written warnings by the Regional Supervisory Council to temporary dismissal by the Central Supervisory Council of Notaries based on Article 5 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions Against Notaries because notaries violate Article 16 paragraph (1) letter a of the UUJN-P. As well as sanctions of reprimand, warning, or temporary dismissal from membership of the association by the Regional / Regional Honor Council based on the Notary Code of Ethics which is adjusted to the quantity and quality of violations committed by notaries, because notaries violate the provisions of Article 3 number 4 of the Notary Code of Ethics.

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