

Legal Standing of Spouse Consent in Sale and Purchase Agreement of Shares from Perspective of Separation of Company's Assets to Create Legal Certainty in Investment in Limited Liability

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Abstract

In a limited liability company, which is a limited legal organization with liability limited to paid-up capital, shares are defined as proof of a legal subject's participation in capital ownership. Shares can be bequeathed, pledged, transferred, gifted, and kept in trust. A limited liability business can be invested in, for example, by buying and selling shares. Therefore, by taking into consideration joint assets, inherited assets, or marriage agreements, it is required to include the spouse's permission in the transfer of rights in order to offer legal certainty regarding the presence of assets' separation in a limited liability business.

I. Introduction

The Indonesian government is trying to increase expected investment, which will impact development and create a growth economy that aims to realize the welfare of Indonesian society. The Indonesian authorities have undertaken a number of initiatives, including the formation of regulation legislation, supporting policies for climate investment, convenience licensing, etc. So Also, for the perpetrator business that establishes body law (*recht*) person), namely company limited as a receptacle in operate activity, his business is a choice And answer. This is predicated on a business limited's attributes, which include:

1. A corporation limited is a body of legislation that was established with the intention of making money (profit-oriented);
2. company limited is a body law capital association has characteristic limited, meaning that not quite enough answer holder share only limited on assets deposited (shares) based on an agreement for holder share ;
3. company limited is a body law independent, meaning that as subject law can act to party third by authority from the company's organs limited ;

Existing business with restricted economic activity good strategic role on a local, national, and international level, Hence, limited liability firms are covered by an umbrella law that the Indonesian government has established under Constitution Number 40 of 2007 (henceforth referred to as UUPT). The definition of "company" as defined by UUPT regulation Article 1 number 1 can be reviewed to determine how the partnership's divided capital is expressed in shares. In contrast " limited " in company limited define not quite enough answer holder shares that only limited on nominal value amount the shares he owns.¹ Share is riches personal from holder shares that are of a nature object moving, but can divert or inherited, so that all inherent rights on share That in a way law can switch to recipient share.² The holder share gave proof of ownership for shares owned, as meant in provision Article 51 UUPT. Shares are a part of the ownership of a company or an invested capital in a company, represented by parts of the capital owned by each individual in the form of certificate shares.³ And paid-up shares can shape money or form other forms of cash (land, vehicles, brands, etc.).

In practice, shares can transferred/sold by, which is an action/activity in activity. An interest business company (*corporate action*). Based on provision Article 57 of the UUPT states that transfer right on share determined the existence of :

- a. Must offer share moreover formerly to the holder with classification specific or holder share other ;
- b. Must get agreement moreover formerly from the company's organs ;
- c. Previously, the agreement must have been obtained from the competent authority by providing regulation legislation.⁴

Understood that holder shares in a company limited human/person (*natural*) person) and body law (*recht*) person). It becomes interesting when the holder shares that he is a human /person studied based on Constitution Number 1 of 1974 concerning Marriage (

¹ Abdul Kadir Muhammad, *Indonesian Corporate Law* , (Bandung: Citra Aditya Bakti , 1996), p . 7.

² Mr. Yahya Harahap , *Limited Liability Company Law* , (Jakarta: Ray Grafika , 2016), p . 257.

³ Munir Fuady, *Corporate Law in the Paradigm of Business Law* , Citra Aditya Bakti, Bandung, 2002, p. 35.

⁴ Article 57, Law Number 40 of 2007 concerning Limited Liability Companies.

next) called the Marriage Law) which is connected with treasure together And treasure default, as meant in provision Article 35 of the Marriage Law states: that :

1. Treasure objects obtained during the Marriage become treasure together ;
2. Treasure default from each husband and wife, and treasure objects obtained each as present or legacy are under mastery throughout the party. No determination is made otherwise.⁵

With this position, the husband And wife act in a way that the law is balanced in treasure together, with No bound on agreement marriage, as meant in provision Article 36 of the Marriage Law. The phenomenon that occurs in practice is that there are different laws and several decision courts. Courts matter because of the stated perspective that the capital in the company nature limited (responsibility) answers to holder shares, only limited to wealth deposited into the company), so there is no need for agreement from a partner. Besides That, there is no existence of norm law in regulation legislation that regulates position agreement couples; when there is action law, sell buy shares in company limited.

2. Research Method

Normative legal research or a statutory, conceptual, and analytical approach are the methods employed in this study. Using primary legal material sources (binding and authoritative laws and regulations), secondary legal materials (books, literature, journals, papers, and other written legal materials), and tertiary legal materials (which are those that support and reference primary and secondary legal materials, such as dictionaries, encyclopedias, cumulative indexes, and the like) is what is known as normative legal research.⁶ In order to gather legal materials, one must first document and inventory primary legal materials (favorable legal rules), such as laws, secondary legal materials (books and journals), and tertiary legal materials (dictionaries), which will subsequently be examined and analyzed in order to draw conclusions and make recommendations for further research.

3. Results and Discussion

Legal Position of Spouse's Agreement in the Sale and Purchase of Shares Related to Investments in Limited Liability Companies.

A marriage is a physical and spiritual bond between a man and a woman as husband and wife. It is done according to their religion/beliefs to create a happy and eternal family based on the Almighty God. It is also registered according to statutory regulations. Applicable. The requirements for carrying out a marriage are regulated in the provisions of Article 6 to Article 12 of the Marriage Law, including:

- a. There is agreement from each prospective bride and groom (without any coercion from any party), as regulated in the provisions of Article 6 paragraph (1) of the Marriage Law.
- b. There is permission from the parents who are still alive or express their wishes when a marriage is to be held for the prospective bride and groom who have not yet reached the age of 21 (twenty-one) years, as regulated in the provisions of Article 6 paragraph (2) of the Marriage Law and if the parents have died or are unable to express their will. Permission is obtained from the guardian, caretaker, or family member who is related

⁵ Article 35, Law Number 1 of 1974 concerning Marriage.

⁶ Guidebook for Writing Scientific Legal Works, revised edition, (Depok: Publishing Agency, Faculty of Law, University of Indonesia, 2023), p. 18.

by blood in the straight line of descent as long as they are still alive and in a state able to express their will, as regulated in the provisions of Article 6 paragraph (2), (3) and (4) Marriage Law.

- c. The age of the prospective bride and groom has reached 19 (nineteen) years, as stipulated in the provisions of Article 7 paragraph (1) of the Republic of Indonesia Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and there is a dispensation in the form of a court or other official appointed by the parents of the male or female party;
- d. Not in blood/family relationships straight down or up, sideways bloodlines, marital relations, breast-breeding relations, related to wife or as aunt or nephew of the wife, in the case of a husband having more wives of a person, as well as having a relationship where marriage is prohibited by religion or other applicable regulations, as regulated in Article 8 of the Marriage Law.
- e. Not in another marriage bond, as regulated in Article 9 of the Marriage Law ;
- f. For husband and wife who divorce, then remarry each other and divorce again a second time, they are not permitted to remarry, as long as their religion and beliefs do not dictate otherwise, as regulated in Article 10 of the Marriage Law.
- g. Not being in the waiting period for prospective widowed brides, as regulated in Article 11 of the Marriage Law.

In the course of a marriage, all profits and losses obtained during the marriage become the responsibility of the husband and wife proportionally, as long as it is not agreed upon by the parties, so it is necessary to analyze joint assets, assets brought in, and marriage agreements. The definition of joint assets is that assets that can mean goods (money and so on) that are used together, and joint assets are regulated explicitly in Article 35 paragraph (1) of the Marriage Law. This means that since the marriage has occurred, whether goods or objects enter into joint assets is determined by factors during the marriage between husband and wife. The husband cannot act alone to transfer joint assets to another party without the wife's consent, and vice versa.⁷

The definition of inherited property is wealth that can mean goods (money and so on) obtained based on gifts, inheritance, wills, and grants by one party; this wealth becomes personal property for the recipient (as long as the parties do not determine otherwise) regulated explicitly in Article 35 paragraph (2) of the Marriage Law. Husband and wife have full rights to carry out legal actions against the brought property. , When it relates to joint or brought property, it is necessary to pay attention to the position of the marriage agreement regulated in Article 29 of the Marriage Law. A marriage agreement is an agreement (agreement) made by prospective husband and wife before or at the time the marriage takes place to regulate the consequences of the marriage on their wealth. ⁸This means that the marriage agreement is made before or at the time the marriage takes place and begins to take place from the time the marriage takes place. In its development since the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, the marriage agreement, which was initially interpreted as *a prenuptial agreement*, has now become *a prenuptial agreement and postnuptial agreement*.⁹

⁷ Jamaluddin, *Marriage Law* , (Lhokseumawe: Unimal Press, 2016), p. 105.

⁸ Setyaningsih, *Marriage Law* , (Depok: PT Rajawali Buana Pusaka, 2021) , p. 104 .

⁹ Damian Agata Yuvens, Critical Analysis of Marriage Agreements in Constitutional Court Decision Number 69/PUU-XIII/2015, Constitutional

The objectives of making a marriage agreement for the parties include:

1. Provide legal protection for assets acquired by husband and wife so that when a divorce occurs, there is no mixing of assets (joint assets or joint property);
2. All profits and losses obtained during the marriage are the responsibility of the husband and wife;
3. If one day the husband or wife wishes to transfer/sell/pledge the assets, they do not need the consent of their partner.

The distinction between legal events and legal events relating to shares can be studied, namely:

1. About inheritance, as regulated in the provisions of Article 57 paragraph (2) of the UUPt;
2. About grants and testamentary grants, as regulated in the provisions of Article 36 paragraph (2) of the UUPt;
3. About pledges or fiduciary guarantees, as regulated in the provisions of Article 60 paragraph (2) of the UUPt;
4. About mergers or spin-offs, as regulated in Articles 122 to 136 of the UUPt.

Legal acts through the sale and purchase of shares are *corporate actions* commonly carried out by shareholders or investors, in addition to inheritance, grants, testamentary grants, mortgages, fiduciaries, or mergers or spin-offs. When a shareholder dies, it automatically becomes an inheritance for the heirs. When a legal act occurs on shares, the position of the heirs acts together. The transfer of shares due to inheritance does not need to be approved by the GMS when there is a change in the name (shareholder) registered in the limited Company to the heirs.

The topic of grants can be related to the provisions of Article 1666 of the Civil Code (henceforth referred to as the "Civil Code"). This article defines a grant as an agreement wherein a grantor transfers an item for free, without the right to withdraw it, for the benefit of the recipient. Legal recognition is limited to gifts made by living individuals.¹⁰ Article 957 of the Civil Code pertains to testamentary grants. It specifies that a specific will is a decision made by the bequester to one or more individuals, whereby the bequeather gives some of his goods of a particular type, such as all movable or immovable goods, or grants the right to use the proceeds of all or part of the property of his inheritance.¹¹

About pawns, it should be noted that in the provisions of Article 1150 of the Civil Code, it is stated that a pawn is a right obtained by a creditor over a movable object, which is handed over to him by the creditor or by his attorney, as collateral for his debt. This authorizes the creditor to take payment of his debts and the goods before other creditors, except sales costs as implementation of the decision on the claim regarding ownership or control and the costs of saving the goods issued after the item is pledged, which must be prioritized.¹² Regarding fiduciary, it is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees as referred to in Article 1 number 1; fiduciary is stated as the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the object.¹³ One

Journal, Volume 14, No. 4 (2017), p. 815.

¹⁰ Article 1666, Civil Code.

¹¹ Ibid., Article 957, Civil Code.

¹² Article 1150, Civil Code.

¹³ Article 1 number 1, Law Number 42 of 1999 concerning Fiduciary Guarantees.

example of a stock fiduciary is when a limited company that has its business activities in the field of buying and selling securities (securities company) makes the shares an object of collateral. Mortgages and fiduciaries are understood as *accessory* collateral attached to the main agreement.

This research focuses on the sale and purchase of shares, which is also reviewed based on Article 1457 of the Civil Code, namely that sale and purchase is an agreement by which one party binds himself to... hand over an item and the other party to pay the promised price.¹⁴ The sale and purchase of shares are carried out with a deed of transfer of rights as referred to in Article 56 of the UUPT. For that, to provide legal certainty from the authentic side (perfect proof), it is made and signed before an authorized official, namely a Notary so that it is necessary to pay attention to the position of the shares obtained and classified based on joint assets, assets brought and the existence of a marriage agreement to ensure the consent of the couple.

Legal Certainty of Spouse's Consent in the Sale and Purchase of Shares from the Perspective of Separation of Limited Liability Company Assets.

Article 48 paragraph (1) of the UUPT states that the Company's shares are issued in the owner's name. A limited company is a capital association that offers a position on shares as proof of capital involvement. It is possible for a closed firm to become a public company and vice versa. The Board of Directors, the Board of Commissioners, and the General Meeting of Shareholders (henceforth referred to as the GMS) are the organs of a limited company. According to UUPT Article 1 number 4, the GMS organ has authority not granted to other limited liability firm organs. In the meanwhile, UUPT Articles 75 to 91 contain more detailed requirements. As owners of the company, shareholders exercise control on the Board of Directors' management, as well as over the assets and management guidelines implemented by the management of the company, through the GMS.¹⁵

The Board of Directors is the next organ. As stated in Article 1 number 5 of the UUPT, the Board is in charge of the Company's interests, purpose, and goals, and it has the duty and authority to act on the Company's behalf both inside and outside of the court. Articles 92 to 107 of the UUPT contain more detailed requirements at the same time. The Board of Directors is empowered to act as the company's agent and to carry out management functions on the company's behalf. In the context of the Company, the common idea of the management actions of the Board of Directors comprises the responsibilities or functions of exercising the administrative powers and upholding the Company's assets.¹⁶

The Board of Commissioners is the next organ. As stated in Article 1 number 6 of the UUPT, it is tasked with carrying out general and particular oversight as specified in the articles of association and directing, advising, or providing feedback to the Board of Directors. In contrast, UUPT Articles 108 through 121 have more detailed requirements.

The implementation of legal acts (buying and selling) of shares in a limited liability company has several requirements, as referred to in Article 57 of the UUPT, namely:

1. The duty, as stated in Article 58 paragraph (1) of the UUPT, to offer the shares for purchase and sale to other shareholders or to those with the same share classification within 30 (thirty) days; if this time frame elapses, the shareholder may offer the shares

¹⁴ Article 1457, Civil Code.

¹⁵ *Op.Cit.*., M. Yahya Harahap p. 306

¹⁶ Hirman, *Limited Liability Company Law*, (Solo: National Library of the Republic of Indonesia, 2017), p.75.

to a third party without having to give the Company's shareholders another opportunity to purchase them;

2. The UUPT's requirement to seek prior consent from the Company's organs does not specify which company organs are meant; the board of directors, the GMS, and the board of commissioners could all be considered. Consequently, it is imperative to carefully review the Company's articles of organization, including the sections pertaining to limits. Within a maximum of ninety (90) days from the day the limited liability company organ receives the application for permission of the sale and acquisition of shares, the approval or rejection form must be submitted in writing. This indicates that, in accordance with Article 59 of the UUPT, the company organ will approve the application if the deadline has passed;
3. The requirement to obtain prior approval from the authorized agency and laws and regulations, meaning that there are restrictions relating to approval from the authorized agency and laws and regulations (taking into account the restrictions in the articles of association), for example, if you wish to buy and sell shares in a public limited company or shares in banking, you must obtain prior approval from the Financial Services Authority by laws and regulations.

Therefore, in accordance with Article 57 of the UUPT, which is therefore specifically regulated in a limited liability company's articles of incorporation, it is necessary to acquire the approval of the GMS prior to selling or buying shares, and other shareholders must be notified in advance of the sale. It can be made available to other potential investors who will draft and execute a deed of rights transfer if the deadline has passed. Following the completion of the transfer of rights, a Notary notifies the Minister of Law and Human Rights of any modifications to the data (shareholders). A record must be made in the limited liability company's shareholders' register by the board of directors. The idea of legal certainty, as put out by Peter Mahmud Marzuki, was used to examine this study. It takes the form of written and unwritten legal laws that contain general instructions for how members of society should behave. These rules serve as guidelines and constraints when the community takes legal action against third parties.¹⁷

Law is realized through normative and positive law (statutory regulations) to provide certainty, justice, and benefits that contain orders and prohibitions accompanied by sanctions so that with the existence of rules and regulations, there is no doubt and conflict of norms and different perspectives in society. The government, through UUPT, regulates the legal status of limited liability companies, including those related to legal acts or events on shares. Still, the sale and purchase of shares are not explicitly regulated if the shareholder is a human/person (*natuurlijke person*).

4. Conclusion

Perma Number 1 of 2024, which serves as a guide for the application of restorative justice, has offered the appropriate means of improving the victim's condition while maintaining criminal The conclusion drawn from the research's background and explanation is as follows: the marriage law is the first source of review

¹⁷ Peter Mahmud Marzuki, *Introduction to Legal Science*, (Jakarta: Kencana, 2008), p. 158.

for the legal status of a couple's agreement to sell and buy shares related to an investment in a limited company; the marriage has been performed in accordance with the couple's religion or belief based on the Almighty God and is registered in accordance with statutory regulations (suitable). When it comes to the agreement status of the couple, consideration needs to be given to the acquisition of shares, which includes joint assets, inherited assets that were received as a gift or inheritance, and a marital agreement. When considering the limited nature of the separation between personal assets and shareholder assets in a limited liability company, the legal certainty of the spouse's consent in the sale and purchase of shares stems from the fact that the UUPT does not specifically regulate the article's provisions regarding the existence of a spouse's consent in the sale and purchase of shares.

This indicates that the assets deposited into the company and the GMS's consent are the extent of the shareholders' liability. When buying or selling a specific item, a spouse's approval is required for both immovable and moveable objects (shares). The position of the partner's agreement should be taken into consideration when a legal act of buying and selling shares is carried out through the creation of a deed of transfer of rights in order to avoid the consequences of the share sale being canceled. Accordingly, the UUPT should be amended by adding provisions to articles regulating the status of partner approval in order to avoid conflicts of interest and to give legal certainty to encourage investment in Indonesia through statutory regulations.

References

BOOK

- Abdul Kadir Muhammad, *Indonesian Company Law*, (Bandung: Citra Aditya Bakti, 1996).
Guidebook for Writing Scientific Legal Works, revised edition, (Depok: Publishing Agency, Faculty of Law, University of Indonesia, 2023).
Hirman, *Limited Liability Company Law*, (Solo: National Library of the Republic of Indonesia, 2017).
Jamaluddin, *Marriage Law*, (Lhokseumawe: Unimal Press, 2016).
M. Yahya Harahap, *Limited Liability Company Law*, (Jakarta: Sinar Grafika, 2016).
Peter Mahmud Marzuki, *Introduction to Legal Science*, (Jakarta: Kencana, 2008).
Sri Redjeki Hartono, *Selected Chapters on Corporate Law*, Mandar Maju, (Bandung: Mandar Maju, 2000).

LEGISLATION.

- Civil Code.
Law Number 1 of 1974 concerning Marriage.
Law Number 42 of 1999 concerning Fiduciary Guarantees.
Law Number 40 of 2007 concerning Limited Liability Companies.

JOURNAL

- Damian Agata Yuvens, Critical Analysis of Marriage Agreements in Constitutional Court Decision Number 69/PUU-XIII/2015, Constitutional Journal, Volume 14, No. 4 (2017).