

RINGKASAN

GALIH WICAKSONO, Program Studi Magister Kenotariatan, Fakultas Hukum Universitas Jenderal Soedirman, Tanggungjawab Hukum Notaris Atas Akta Jual Beli Semu Saham Perseroan Terbatas dan Implikasi Hukumnya (Studi Putusan Nomor 188 PK/Pdt/2020), Komisi Pembimbing: Ketua Prof. Tri Lisiani Prihatinah, S.H., M.A. Ph.D. dan Anggota Dr. Sulistyandari, S.H., M.Hum.

Pembuatan akta perjanjian jual beli saham perseroan harus mengikuti kaidah-kaidah hukum yang diatur dalam Hukum Perseroan Terbatas (PT). Namun dalam pembuatan akta jual beli saham PT dijumpai jual beli yang mengandung kausa yang palsu, prosedurnya dilalui dengan melanggar Anggaran Dasar PT yaitu tanpa persetujuan RUPS dan tanpa pembayaran jual beli, sehingga disebut jual beli semu. Istilah lain jual beli semu adalah perjanjian jual beli simulasi, jual beli pura-pura, jual beli proforma, atau jual beli bohong-bohongan. Salah satu kasus yang terjadi berdasarkan Putusan Peninjauan Kembali Nomor 188 PK/Pdt/2020 tanggal 1 Juli 2020 dan putusan sebelumnya.

Penelitian ini bertujuan untuk menganalisis tanggungjawab hukum notaris atas akta jual beli semu saham PT dan implikasi hukumnya bagi para penghadap dalam akta dan bagi akta autentik. Penelitian ini merupakan penelitian hukum normatif, dengan pendekatan perundang-undangan, konseptual, dan kasus. Sumber data yang digunakan adalah data sekunder. Pengumpulan data yang dilakukan melalui studi kepustakaan. Penyajian data dalam bentuk uraian-uraian yang tersusun secara sistematis. Metode analisis data normatif kualitatif.

Hasil Penelitian menunjukkan bahwa: Pertama, tanggungjawab hukum notaris atas akta jual beli semu saham PT dapat dikenakan sanksi perdata berupa ganti rugi, karena adanya PMH oleh notaris, sanksi administrasi berupa peringatan tertulis oleh Majelis Pengawas Wilayah hingga pemberhentian sementara oleh Majelis Pengawas Pusat Notaris, dan sanksi etik berupa sanksi teguran, peringatan, atau pemberhentian sementara dari keanggotaan perkumpulan oleh Dewan Kehormatan Daerah/ Wilayah berdasarkan Kode Etik Notaris. Kedua, terdapat dua implikasi hukum atas jual beli semu saham PT. Implikasi hukum pertama bagi PT. Y (Tergugat I) dan PT. YY (Tergugat II) dikenakan pertanggungjawaban perdata berupa ganti rugi materiil secara tanggungrenteng, kepemilikan dari PT. Y (Tergugat I) atas 20.000 lembar saham di PT. YYYYYY dan kepemilikan dari PT. YY (Tergugat II) atas 20.000 lembar saham di PT. YYYYYY dinyatakan batal dan tidak sah, sehingga saham tersebut dikembalikan seperti semula kepemilikannya kepada Para Penggugat. Implikasi hukum kedua yaitu bagi akta autentik jual beli saham PT karena dilanggarnya syarat obyektif berupa suatu sebab yang halal, maka dinyatakan batal dan tidak berkekuatan hukum, sehingga perbuatan hukum yang dilakukan dalam akta autentik tersebut tidak mempunyai akibat hukum sejak terjadinya perbuatan hukum tersebut atau berdaya surut (*ex tunc*).

Kata Kunci: Tanggungjawab, Notaris, Jual Beli Semu, Saham, Implikasi

SUMARRY

GALIH WICAKSONO, Master of Notary Program, Faculty of Law, Jenderal Soedirman University, *Notary's Legal Liability for the Deed of Fake Sale and Purchase of Limited Liability Company Shares and Its Legal Implications (Study of Decision Number 188 PK/Pdt/2020)*, Supervisory Commission: Chair Prof. Tri Lisiani Prihatinah, S.H., M.A. Ph.D. and Member Dr. Sulistyandari, S.H., M.Hum.

The making of a deed of sale and purchase agreement of company shares must follow the legal rules stipulated in the Limited Liability Company Law. However, in the making of a deed of sale and purchase of shares of a limited liability company, it is found that the sale and purchase contains a false causa, the procedure is followed by violating the Articles of Association of the Limited Liability Company, namely without the approval of the general meeting of shareholders and without payment for the sale and purchase, so it is called a fake sale and purchase. Other terms for fake sale and purchase are simulated sale and purchase agreement, pretend sale and purchase, proforma sale and purchase, or fake sale and purchase. One of the cases that occurred based on Judicial Review Decision Number 188 PK/Pdt/2020 dated July 1, 2020 and previous decisions.

This research aims to analyze the notary's legal liability for the deed of quasi-purchase of limited liability company shares and its legal implications for the parties to the deed and for the authentic deed. This research is a normative legal research, with statutory, conceptual, and case approaches. The data source used is secondary data. Data collection is done through literature study. Presentation of data in the form of descriptions arranged systematically. The data analysis method uses qualitative normative.

The research results show that: First, the notary's legal liability for the fake sale and purchase of company shares can be subject to civil sanctions in the form of compensation, due to unlawful acts by the notary, administrative sanctions in the form of written warnings by the Regional Supervisory Council to temporary dismissal by the Notary Central Supervisory Council, and ethical sanctions in the form of reprimands, warnings, or temporary dismissal from membership of the association by the Regional Honor Council based on the Notary Code of Ethics. Second, there are two legal implications of the fake sale and purchase of company shares. The first legal implication is that PT. Y (Defendant I) and PT. YY (Defendant II) are subject to civil liability in the form of material damages, the ownership of PT. Y (Defendant I) of 20,000 shares in PT. YYYY and the ownership of PT. YYY (Defendant II) of 20,000 shares in PT. YYYY are declared null and void so that the shares are returned to the Plaintiff. The second legal implication is that for the authentic deed of sale and purchase of company shares due to violation of the objective requirement in the form of a lawful cause, it is declared null and void, so that the legal actions carried out in the authentic deed do not have legal consequences since the occurrence of the legal action or retroactive force (*ex tunc*).

Keywords: *Liability, Notary, Fake Sale and Purchase, Shares, Implications*