

The Juridical Implications of the Sale and Purchase of Shares Agreement in a Closed Limited Liability Company Made by a Notary without the Consent of the Married Couple

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Abstract. *All assets/material rights obtained in a marriage are joint rights of the two parties who are bound in marriage and are binding (gebonden mede eigendom) so that the process of transferring joint assets must be based on the agreement of both parties. However, in making a share sale and purchase agreement by a Notary, it is common to find a share sale and purchase agreement that does not involve the consent of the marriage partner from the seller and the process of buying and selling shares without the consent of the marriage partner is justified by the West Jakarta District Court through decision No: 195/Pdt.G/ 2021/PN. Jkt. Brt. This study aims to determine juridical implications of the deed of the sale and purchase agreement of shares in a closed limited liability company made by a notary without the consent of the marriage partner and the responsibilities of the notary in making the deed of the sale and purchase agreement of shares in a closed limited liability company made by a notary without the consent of the marriage partner. This research was conducted using a Juridical Normative approach and Analytical Descriptive specifications. The data source used is secondary data which consists of: primary legal materials in the form of legislation, official records or treatises in the making of legislation and judges' decisions; secondary legal material in the form of Publications on law include text books, legal journals, expert opinions, information or opinions of sources and comments on court decisions; and tertiary legal materials in the form of legal materials that function to provide information on primary and secondary legal materials. Methods of data collection using literature study. The data analysis method uses qualitative data analysis which consists of data collection activities, data processing and drawing conclusions. The results of the research show that: First, the Sale and Purchase Agreement of Shares in a Limited Liability Company made by a Notary without the consent of the married couple, if the shares were acquired during the marriage period and there is no marriage agreement in the form of separation of assets and the shares are not acquired assets, then the Deed of Sale and Purchase of Shares made by the Notary is null and void because it is not based on lawful reasons. Second, to the Notary who made agreement to buy and sell shares in a closed limited liability company*

without the consent of the marriage partner if the shares are acquired during the marriage period and there is no marriage agreement regarding the separation of assets and the shares are not acquired assets, then the Notary may be subject to Code of Ethics sanctions, Administrative Sanctions and Civil Sanctions.

Keywords: Liability; Property; Share.

1. Introduction

Discussions about *Gono-Gini* assets or joint assets are still being discussed and are factual issues. In Indonesia, prior to the enactment of Act No. 1 of 1974 concerning Marriage in conjunction with Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage, there were 3 (three) legal systems that regulated marital property, namely the provisions in Civil Code, Islamic Law and Customary Law.

Differences in arrangements regarding assets in marriage as in the three legal systems result in unclear legal regulations governing marital assets that apply nationally, this is what prompted the birth of Act No. 1 of 1974 concerning Marriage, which applies universally to all Indonesian citizens. In this Law it is determined that in a marriage there are shared assets between husband and wife, namely assets acquired during the marriage, except for assets obtained as a result of inheritance or gift or gift. This provision can be waived if the husband and wife have a marriage agreement (*huwelijksse voorwarde*)¹.

The enactment of Act No. 1 of 1974 concerning Marriage Jo. Act No. 16 of 2019 concerning amendments to Act No. 1 of 1974 concerning Marriage, then stipulates that in a marriage as long as it is not stipulated otherwise in the Marriage Agreement, there is joint property as bound joint ownership (*gebonden mede eigendom*), where with the nature Bound joint ownership of joint property carries a legal consequence that all transfers of said joint property must be based on the agreement of both parties, both husband and wife.

The existence of rights for husbands and wives to use joint assets or to carry out legal actions on joint assets must be based on the agreement of both (reciprocally) is reasonable. This is considering that the rights and position of the wife are equal to the rights and position of the husband in household life and social life in society.²

According to Zulfiani, the regulation regarding property in marriage is to reinforce the idea of the difference between the law of objects and the law of persons as also regulated in the Civil Code, this is because the rules regarding

¹Wirjono Prodjodikoro. (1974). Marriage Law in Indonesia. Bandung: Bandung Well. p. 36.

²Arifah S. Maspeke and Akhmad Khisni. The position of joint assets in marriage according to Indonesian fiqh and positive law and the practice of the decisions of the Religious Courts. Khaira Ummah Law Journal Vol. 12 No. 2 June 2017, p. 179.

property relate to material rights, while marriage is a personal law or law concerning persons.³

According to the Big Indonesian Dictionary, Limited Liability Company Shares are proof of ownership of the limited liability company's capital which gives rights to dividends and others according to the size of the capital paid up.⁴ Article 48 paragraph 1 of Act No. 40 of 2007 concerning Limited Liability Companies stipulates that shares are a form of capital in a limited liability company, so that shares are securities instruments as regulated in the Civil Code (KUHPerdata) and the Commercial Code (KUHPerdata). KUHPerdata.⁵

The definition of shares mentioned above, provides an understanding that shares are proof of a person's ownership of the company's assets, so that because shares are a person's assets, any shares acquired in a marriage bond as long as there is no separation of assets based on a marriage agreement should be included in the assets. together are bound, but in notary practice as well as in the world of justice, Notary opinions and judges' considerations are still found stating that even though the shares of the limited liability company were acquired during the marriage period and there was no marriage agreement, the limited liability company shares were declared as the personal property of the party whose name is registered as the shareholder and not included in the group of joint assets as stipulated in the Marriage Act.

One of the opinions of the Notary which was strengthened by the Panel of Judges was broken down in case Number 195/Pdt.G/2021/PN.Jkt.Br. September 13, 2021, where in the decision of the case the Panel of Judges stated that the Deed of Sale and Purchase of shares was valid even though it was not known and approved by the marriage partner with the consideration that the Limited Liability Company Law had never regulated or determined that limited liability company shares were transferred requires wife's approval.⁶

Based on this, the researcher is interested in studying the legal implications of the sale and purchase agreement of shares in a limited liability company made by a notary without the consent of the marriage partner with the title "Juridical Implications of the Deed of Sale and Purchase of Shares Agreement in a closed limited company made by a notary without the consent of the married couple".

2. Research Methods

Approach Method The method used in this research is normative juridical (normative legal research method), namely library law research conducted by examining library materials or secondary data.⁷ The research specification used is

³Zulfiani. Legal protection for mastery of innate and joint assets after divorce according to Law no. 1 of 1974 concerning justice-based marriages. *Journal of Legal Renewal* Volume II No.2 May-August 2015. p. 359.

⁴Ministry of Education. (2008). *Indonesia Dictionary*. Jakarta: PT. Main Library Gramedia. p. 1201.

⁵Muhammad AbdulKadir. 1981. *The Law of Securities*. London: Alumni. P. 9

⁶West Jakarta District Court Decision Number 195/Pdt.G/2021/PN.Jkt.Br. September 13, 2021, Pg. 38

⁷Soerjono Soekanto and Sri Mahmudji. 2003. *Normative Legal Research: A Brief Overview*. Jakarta: Raja Grafindo Persada. p. 13.

descriptive analytical specification, that is, data analysis is carried out by describing or giving as detailed an overview as possible of the events that are the object of research research. The research was conducted using secondary data consisting of primary legal materials and secondary legal materials. Methods Data collection was carried out by means of a literature study. Data analysis uses qualitative analysis, namely data in the form of legal materials that have been collected, processed and compiled and then systematically narrated to answer the problems that are the object of this research.

3. Results and Discussion

3.1. Juridical Implications of the Deed of Sale and Purchase of Shares Agreement in a Closed Limited Liability Company made by a Notary without the consent of the married couple

That this research was conducted by taking a study of civil case decisions at the West Jakarta District Court which were registered with number: 195/Pdt.G/2021/PN. Jkt. Brt., where the Panel of Judges at the West Jakarta District Court who tried the case rejected the Plaintiff's lawsuit which questioned the transfer of joint assets in the form of share ownership in a Limited Liability Company acquired during the marriage period, which according to the Plaintiff, the transfer of shares required the approval of the Plaintiff. The Panel of Judges at the West Jakarta District Court rejected the Plaintiff's lawsuit with the legal consideration that there is no rule in the Limited Liability Company Law which regulates the transfer/sale of share ownership must obtain the plaintiff's/wife's approval. Therefore,

Based on the decision of the Panel of Judges of the West Jakarta Court, a legal issue arose, is it true that based on the Limited Liability Company Law the transfer of shares does not require the consent of the husband/wife, or has the Limited Liability Company Law never regulated provisions regarding the transfer of shares acquired during marriage, so they must comply with the provisions marriage law? Based on this, the researcher then examines the juridical implications of the Sale and Purchase Agreement of Shares in a Limited Liability Company made by a Notary without the consent of the married couple.

Act No. 11 of 2020 concerning Job Creation in Part Five of Article 109 concerning Limited Liability Companies in Article 1 paragraph (1) defines Limited Liability Companies as follows:

"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a partnership of capital, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual Legal Entities that meet the criteria for Micro and Small Enterprises as regulated in laws and regulations regarding Micro and Small Enterprises."

Based on the definition above, Limited Liability Companies can be divided into 2, namely: capital partnership companies and individual companies, in this study the subject matter is capital partnership companies. One of the fundamental characteristics of a Limited Liability Company as a corporation is the nature of the legal entity and the limited liability of the Limited Liability Company. The assets of a Limited Liability Company are separated from the personal wealth of the owner of the company so that own assets are expressly stated in Article 3 paragraph (1) of the Company Law. A Limited Liability Company is established by the founders by investing in a certain amount of capital, in the form of assets that can be valued in money. The capital included by the founders in the establishment of this Limited Liability Company is further divided into shares,

Shares in the provisions of the Company Law are categorized as rights or objects, this can be seen in the formulation of Article 60 paragraph (1) of the Limited Liability Company Law, which says shares are movable objects and give ownership rights to their holders. Provisions regarding the transfer of shares of a Limited Liability Company are regulated in the provisions of the Company Law No. 10 of 2007 as stipulated in Article 55 and Article 56 which principally state that the transfer of rights to shares is carried out by means of a deed of transfer of rights. With regard to the deed of transfer of rights to these shares, through the elucidation of Article 56 it states that it can be in the form of a deed drawn up before a notary or made privately. As for shares traded in the Capital market, they will comply with the provisions of the Capital Market law,

In connection with the transfer of rights to shares, especially through buying and selling, according to Gatot Supramono⁸ regardless of the type of sale and purchase, the rules refer to the provisions of Book Three Chapter Fifth of the Civil Code which regulates sale and purchase agreements (Article 1457 to Article 1540). For share sale and purchase agreements related to companies, in addition to applying the Civil Code, the Company Law also applies, namely the provisions of Articles 56 to 59 and Law no. 8 of 1995 concerning the Capital Market which is a special regulation (*lex specialis*). Through the provisions of article 56 paragraph (1) UUPT orders that the transfer of rights to shares is carried out with a deed of transfer of rights, this means that the agreement must be made in writing.

Based on the provisions of the Limited Liability Company, including among others regarding share ownership and transfer of rights to shares, the researcher did not find any provisions specifically stipulating that transferring rights to shares requires the consent of the marriage partner. This matter was then used in consideration of the West Jakarta District Court decision No. 195/Pdt.G/2021/PN.Jakarta.Brt which states that under the Limited Liability

⁸Gatot supramono. 2014. Share Business Transactions and Dispute Resolution Through Courts. Jakarta: Prenada Media Group. P. 29

Company Law the transfer of shares does not require the consent of the wife (marriage partner) in the transfer process. However, the next legal question is if the Limited Liability Company Law does not regulate the transfer of shares requiring the approval of a marriage partner,

Whereas based on the general provisions regarding the systematics of Civil law which are divided based on the Civil Code (*Burgelijke Wetboek*) and legal science, the Civil Code divides legal systematics into 4 books, namely: Book I is about people, Book II is about things, Book III is about Engagement and Book IV is about Evidence and Expired. Meanwhile, according to legal science, Civil Law consists of 4 (four) parts, namely: Individual law (*Personenrecht*), Family law (*Familierecht*), Property law (*Vermogensrecht*) and Inheritance Law (*Erfrecht*). The systematic arrangement of civil law referred to above does not mutually negate or eliminate the existence of one legal provision and another but complements each other and constitutes a legal entity.

According to Sudikno Mertokusumo⁹ Studying law by simply studying the rules of law is not enough. Understanding the rule of law does not mean mastering the law. In addition to the rule of law, the legal system must also be studied. Furthermore, Sudikno Mertokusumo stated¹⁰ Within the legal system there are parts of the system that are closed. This means that legislators do not give freedom to the formation of law, for example a closed system of absolute rights. Closed in this case does not mean that the rules cannot be interpreted at all. Property law and family law are closed systems. On the other hand, the law of the contract system is open. This means that the number and nature of legal institutions in property law and family law are certain and fixed.

According to HFA Vollmar, the nature of marriage law is coercive¹¹:

"All marriage laws are included in coercive laws; the (juridical) consequences of the marriage agreement are completely independent of the authority of the parties. Only regarding the law of marital property, the rights and obligations of the parties towards each other within certain limits can be determined according to the wishes of each.

Whereas based on the systematic legal provisions of civil law regulated in the Civil Code as well as the Civil Law Science and tracing the functions of legal systematization above, it has been explained that marriage law and or property law in marriage are in the family law group which is closed and coercive in nature and binding on the parties bound in marriage. this is also stated by Habib Adjie

⁹Sudikno Mertokusumo. 2018. Discovery of the Law an introduction. Yogyakarta: Atma Light Pustaka. P. 23-25.

¹⁰Ibid., p.29-30

¹¹HFA Vollmar. 1984. Introduction to the Study of Civil Law. Jakarta: Rajawali Press. P. 51

with regard to Family Law and Marital Property and Property, namely if it is linked to Book II of the Civil Code which is closed, then it is reasonable that contracts related to Family Law and Marital Property and Property are not allowed deviated, the provisions that apply to this matter are mandatory,¹².

Regulations regarding marriage law and marital property in Indonesia are currently being standardized through Act No. 1 of 1974 concerning Marriage juncto Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage. Provisions regarding property in marriage are regulated in the provisions of Article 35 Act No. 1 of 1974 concerning Marriage which reads as follows:

- (1) Property acquired during marriage becomes joint property
- (2) Inheritance of each husband and wife and assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise.

Based on the provisions of this marriage law, it has an influence on the assets of a marriage from the time a marriage takes place until the end of the marriage where through this provision has differentiated marital assets into 3 parts, namely: "joint property", "inherited property" and "inherited property".

Based on the provisions in the marriage law, it has a legal consequence that all matters related to material rights obtained in marriage will become joint property between husband and wife, as long as no marriage agreement is made. the provisions regarding joint assets that are binding on the parties in this marriage are emphasized in the provisions of Article 36 paragraph (1) of Act No. 1 of 1974 concerning marriage juncto Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage which requires joint property, the husband or wife can act with the agreement of both parties. This is also in accordance with the provisions of Article 92 of the Compilation of Islamic Law which states that a husband or wife without the consent of the other party is not allowed to sell or transfer joint property. As for the categories of what is included in joint property, it is regulated in detail in article 91 of the Compilation of Islamic Law, namely: joint property in the form of tangible or intangible objects; tangible shared assets may include immovable objects, movable objects and securities; Intangible joint assets can be in the form of rights or obligations.

In connection with the matters stated above, the author will also present the history of the legal arrangements for limited liability companies in Indonesia, which were originally regulated in the Commercial Code (*Wetboek van Koophandel*) in relation to the Civil Code and marriage law arrangements. In the

¹²Habib Adjie. 2013. Cancellation and Cancellation of Notary Deed. Bandung: Refika Aditama, p. 35-36

provisions of the Criminal Code Article 1 basically states that the Criminal Code is a *lex specialis* of the Civil Code which is a *lex generalis*, so that matters not specified in the Criminal Code will be subject to the Civil Code. Bearing in mind that in all provisions of the Limited Liability Company Law which came into effect after the Criminal Code both through Act No. 1 of 1995 concerning Limited Liability Companies, then Act No. 40 of 2007 concerning Limited Liability Companies and Act No. 11 of 2020 concerning Job Creation in Part Five of Article 109 concerning Limited company,

Based on this research, the researcher generally concludes that shares in a Limited Liability Company acquired during marriage, where the shares are not inherited property and are not acquired assets either in the form of grants or inheritance, the provisions for joint property in marriage apply unless otherwise specified. In the marriage agreement, this is in accordance with the provisions of the Marriage Law and Compilation of Islamic Law and it is also required that the transfer of these shares must also be with the consent of both parties, both husband and wife.

The Supreme Court of the Republic of Indonesia through its Jurisprudence issued very firmly recognizes the position of joint property and the existence of a marriage partner's agreement as the basis for the validity of a legal action, including¹³:

Decision of the Supreme Court of the Republic of Indonesia No: 701 K/PDT/1997 dated March 24, 1999: Legal Principles:

Sale and purchase of land which is joint property must be approved by the wife or husband, joint property in the form of land sold by the husband without the consent of the wife is invalid and null and void. Land certificates made on the basis of illegal buying and selling do not have legal force.

Decision of the Supreme Court of the Republic of Indonesia No: 209 K/PDT/2000 dated 26 February 2002:

(guaranteeing joint assets) the decision is null and void on the credit agreement due to non-fulfillment of a lawful cause as stipulated in article 1320 BW. The object agreed upon is joint property so that if the husband wants to guarantee it/transfer it to another party, the husband must obtain the consent of the wife as the entitled party.

¹³Jurisprudence of the Supreme Court of the Republic of Indonesia Volume 2. 2009. Jakarta: Ultima Jurisprudence Pillar. p. 783.

It is obligated to first check the ownership status of the shares before drawing up a deed of transfer of rights to shares, namely if the appearer through the identity he gives is married or married, the Notary is obliged to ask for the approval of his marriage partner in transferring the shares because it is reasonably suspected that the shares are joint property in marriage. Unless the Notary can prove that the shares are innate assets acquired before the marriage took place or it can be proven that the assets are acquired assets in the form of gifts or inheritance. This is in line with Tan Thong Kie's opinion which states that regarding joint property, a husband or wife can act with the consent of both parties, both in management, ownership, weighting and so on of assets, where it is stated that the husband and wife must act together (this is the perfect situation) or the husband acts alone with the written consent of the wife or vice versa; the approval must be attached to the original notary letter¹⁴.

In connection with the matters stated above, because this research wants to examine the legal implications or the validity of the sale and purchase agreement of shares in a limited liability company made by a notary without the consent of the marriage partner, the said sale and purchase agreement must be tested based on the terms of the validity of an agreement. The legal requirements for an agreement are regulated in article 1320 of the Civil Code which determines that four conditions for an agreement must be fulfilled, namely: 1. The existence of an agreement between the two parties, 2. The ability to carry out legal actions, 3. The existence of an object, and 4. The existence of a lawful cause.

The first and second conditions are called subjective conditions, because they involve the parties entering into an agreement. While the third and fourth conditions are called objective terms, because they involve the object of the agreement if the first and second conditions are not fulfilled then the agreement can be cancelled. If the third and fourth conditions are not fulfilled, then the agreement is null and void, meaning that from the beginning the agreement was considered non-existent.

Based on the description in this discussion, the researcher concludes that the juridical implication of the deed of the sale and purchase agreement of shares in a closed limited liability company made by a notary without the consent of the marriage partner is that the deed of the sale and purchase agreement is invalid and null and void as long as the shares being traded are joint assets acquired by the husband and wife during their marriage without any agreement on the separation of assets and are not included in the category of inherited assets or acquired assets of each husband or wife, this is because the agreement on the sale and purchase of shares made without the consent of the marriage partner is

¹⁴Tan Thong Kie. 2007. Study of Notary & sundries of Notary practice. Jakarta: Van Hoeve's New Attempt. pp 85-86

not based on lawful reasons as stipulated in Article 1320 paragraph (4) of the Civil Code, which is contrary to the provisions of the marriage law as stipulated in Article 36 paragraph (1) of Act No. 1 of 1974 concerning Marriage and the provisions of Article 92 of the Compilation of Islamic Law which basically state that the transfer of joint property must be with the mutual consent of the husband and wife.

3.2. Responsibilities of a Notary in Drawing up a Deed of Sale and Purchase of Shares Agreement in a Closed Limited Liability Company made by a Notary without the consent of a married couple

The discussion regarding the responsibilities of this Notary will be carried out using the theory and concept of legal responsibility proposed by Hans Kelsen. According to Hans Kelsen, legal responsibility (liability) is closely related to legal obligations or legal norms which, if not implemented, will result in sanctions.

Whereas in the previous discussion the researcher has concluded that the making of a deed of sale and purchase of shares without the consent of the marriage partner if the shares are joint property, namely assets acquired during the marriage period and in the marriage there is no marriage agreement either pre-nuptial or post-nuptial agreement, then the sale deed The Share Purchase is contrary to the terms of the agreement as stipulated in the provisions of Article 1320 paragraph (4) contrary to the provisions of the Law, where this is contrary to the provisions stipulated in Act No. 1 of 1974 concerning Marriage as stipulated in the provisions of Article 36 paragraph (1) and Compilation of Islamic Law as regulated in article 92. This, when associated with the responsibility of a notary in carrying out his duties, is considered to know all the applicable laws and regulations in making deeds so that the deed he makes has perfect evidentiary strength as stipulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, the actions of a Notary who makes a deed of a share sale and purchase agreement without the consent of the marriage partner can be declared as a Notary's negligence in carrying out his duties which must make a deed that provides legal certainty.

As for the sanctions that can be imposed on a Notary in making the Deed of Sale and Purchase of Shares in a Limited Liability Company without the consent of the married couple even though the shares were acquired during the marriage period and there is no marriage agreement that regulates the separation of assets and the assets are not acquired assets in the form of grants or gifts resulting in a deed the sale and purchase is null and void because it is not based on lawful reasons, namely contrary to the provisions of the marriage law, the sanctions are as follows:

1. Code of Ethics Sanctions, this is because the Notary has been negligent in carrying out his position to act carefully and safeguard the interests of the parties involved in legal actions. Such a notary action violates provisions that

violate moral values in the notary profession regarding the obligations of a notary stipulated in Article 3 point 4 of the Notary's Code of Ethics which states that a notary is obliged to behave honestly, independently, impartially, trustworthy, thorough, full of responsibility, based on statutory regulations and contents of the Notary's oath of office. The content of the notary's oath of office is also as stipulated in Article 4 paragraph (2) number 2 of the Notary Office Law, namely: "Notaries are required to carry out their positions in a trustful, honest, thorough, independent and impartial manner." Against this ethical violation against a Notary based on Article 6 point 1 of the Notary's Code of Ethics can be given sanctions in the form of: a. rebuke; b. Warning; c. Temporary suspension of Association membership; d. Honorable discharge from Association membership; e. Dishonorable termination of Association membership. The imposition of this sanction must be adjusted to the quantity and quality of violations committed by members of the Notary Public as stipulated in Article 6 point 2 of the Notary Code of Ethics.

2. Administrative Sanctions against Notaries are regulated in Article 85 of the Notary Office Law, administrative sanctions can be imposed on Notaries for violating the provisions contained in Article 16 paragraph (1) letter a of the Amendment Law on the Notary Office Law which states that a Notary must act trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of the parties involved in legal actions, namely in terms of being thorough. Therefore, the sanctions that can be imposed include: 1. Verbal warning; 2. Written warning; 3. Temporary suspension; 4. Honorable discharge; or 5. Dishonorable discharge

3. Civil sanctions against a notary public because the notary's actions can be categorized as an unlawful act as stipulated in Article 1365 of the Civil Code.

Article 1365 of the Civil Code states that the elements of an unlawful act are as follows¹⁵: a. There is an act, b. The act is against the law, c. There was an error on the part of the perpetrator, d. There is a loss, and e. There is a causal relationship between the deed and the loss.

Claims for compensation due to unlawful acts can be in the form of a replacement of money and restoration to its original state. In this case, the married couple who do not give their consent to the sale of shares by the husband/wife can apply for compensation to the Notary because they have not been careful and careful and violated the law, making the Deed of Sale and Purchase of Shares without their consent and requesting recovery from them. The original state with a lawsuit asking the Panel of Judges to cancel the deed that had been made.

As for criminal sanctions, they cannot be imposed on the actions of a Notary who makes a Deed of Sale and Purchase of Shares in a Limited Liability Company without the consent of the marriage partner, but if the Notary is still questioned in carrying out his position, then the provisions of Article 66 paragraph (1) of Act

¹⁵Munir Fuady. 2005. Unlawful Actions (Contemporary Approach). Bandung: Citra Adi Bakti. P. 10-14

No. 02 of the year may be used. 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary, namely: That for the benefit of the judicial process, investigators, public prosecutors, or judges require the approval of the Notary Ethics Council because currently MKN is a legal protection institution for Notaries to prevent arbitrariness against Notaries and upholding the dignity of Notaries.

4. Conclusion

The juridical implication of the deed of the sale and purchase agreement of shares in a closed limited liability company made by a Notary without the consent of the marriage partner is that the deed of the sale and purchase agreement of shares is invalid and null and void as long as the shares being traded are joint assets acquired by the husband and wife during the marriage period without an agreement on the separation of assets and these shares are not included in the category of inherited assets or acquired assets of each husband or wife, this is because he agreement on the sale and purchase of shares made without the consent of the marriage partner is not based on lawful reasons as stipulated in Article 1320 paragraph (4) of the Civil Code, which is contrary to the provisions of marriage law regulated in Article 36 paragraph (1) of Act No. 1 of 1974 concerning Marriage and also contradicts Article 92 of the Compilation of Islamic Law as stipulated through Presidential Instruction Number 1 of 1991. Responsibilities of a Notary in making the Deed of Sale and Purchase of Shares in a closed limited liability company without the consent of the married couple even though the shares are joint property acquired by the husband and wife during the marriage period without an agreement on the separation of assets and the shares are not inherited property or acquired property of the husband or wife, then against a Notary may be liable or subject to the following sanctions: a) Sanctions of the Code of Ethics because the Notary violates: Provisions of Article 3 point 4 of the Notary Code of Ethics and also violates the provisions of Article 4 paragraph (2) of the Notary Office Law; b) Administrative Sanctions because a Notary Public violates Article 16 paragraph (1) letter a of the Law Amendment to the Law on the Position of a Notary, c) Civil Sanctions because a Notary commits an unlawful act as stipulated in Article 1365 of the Civil Code, so that a Notary can be asked for compensation.

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