

## Legal Aspects of Cooperation Agreements with the Right to Buy Back Shares Accompanied by a Power of Attorney to Sell Under Hand

Dianita Imroatus sholikhah <sup>1)</sup> & Jawade Hafidz <sup>2)</sup>

<sup>1)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [Dianitaimroatus@gmail.com](mailto:Dianitaimroatus@gmail.com)

<sup>2)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [jawadehafidz@unissula.ac.id](mailto:jawadehafidz@unissula.ac.id)

**Abstract.** *Limited liability companies often require additional capital for business development, one solution is to enter into a cooperation agreement with investors through a share return mechanism. The cooperation agreement is made accompanied by a temporary transfer of shares to a second party, with a provision for the first party to repurchase the shares after the cooperation period ends, a practice like this is commonly found in the environment of closed limited liability companies. In this practice, it is also generally accompanied by the granting of a power of attorney to sell from the second party to the first party as a form of guarantee for the implementation of the share return. This study aims to examine the legal aspects of the cooperation agreement, assess the validity of the power of attorney to sell in transferring shares back to the original party, and analyze this practice based on the theory of legal certainty and utility. The research method used is a normative juridical method with a statutory and conceptual approach. Based on the research results, cooperation agreements containing share repurchase clauses are essentially valid under civil law as long as they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. However, the use of an irrevocable power of attorney to sell privately for the purpose of returning shares raises potential legal issues and opens up room for legal uncertainty in their implementation. From a utility theory perspective, this can provide efficiency and practical benefits for the parties, provided that the rights and obligations of the parties are clearly regulated and there is balanced legal protection.*

**Keywords:** *Cooperation Agreement; Closed limited company; Right to repurchase shares.*

## **1. Introduction**

The development of the business world demands various forms of collaboration between business actors to obtain capital, expand networks, and increase productivity. One frequently used form of collaboration is an investment agreement through the purchase of shares in a limited liability company. The presence of limited liability companies as a form of business entity, one means of conducting economic activity, has become a common occurrence in development.

In practice, investment agreements through the purchase of shares in a limited liability company (PT) can be accompanied by a share buyback clause which provides the seller with the opportunity to buy back the shares that have been transferred at a certain time and under certain conditions.

A limited liability company is a partnership for running a business whose capital consists of shares, whose owners have a share as many as the shares they own, a limited liability company in its operations, can transfer shares from one shareholder to another. This transfer of shares can occur for various reasons, including changes in ownership, company restructuring, or changes in business strategy. Although normatively in law number 40 of 2007 concerning limited liability companies has been clearly determined regarding how the share procedures and their legal consequences, but in practice often aside from that which ultimately gives rise to disputes between the parties.

In a closed limited company, regulations regarding share buybacks are regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), specifically Article 37 and Article 38 which regulate the limitations, approvals and time period for controlling shares resulting from the buyback.

In practice, the role of a Notary is required in carrying out the making of deeds, deeds made by a notary have an important role in creating legal certainty in every legal relationship, because notarial deeds are authentic and are the strongest and most fulfilled evidence in every case related to notarial deeds. A notary is an official who has the authority to make authentic deeds related to agreements and actions of interest to be stated in authentic deeds that are required in accordance with statutory regulations.

Buyback clauses are often associated with the granting of private power of attorneys to sell, as a precautionary measure in the event of default. This raises questions about the validity and legal force of private powers of attorney in the share transfer process, given that their validity must meet the requirements of a valid agreement as stipulated in Article 1320 of the Civil Code.

The case of PT Rizqita Sukses Abadi serves as an example of how a partnership agreement with the right to repurchase shares is applied in a business partnership. Under the agreement, the investor not only receives shares and a share of the profits but also holds a strategic position within the company. After a specified period, the shares must be returned to the original owner as agreed. This agreement raises legal issues related to share repurchase procedures, compliance with the Limited Liability Company Law, and legal protection for the parties.

Based on the background description above, the research problem formulation can be formulated as follows:

1. What are the legal aspects of a cooperation agreement with the right to buy back shares accompanied by a power of attorney to sell privately in a closed limited company?
2. What is the procedure for returning shares in a closed limited company after transfer to a second party?

## **2. Research Methods**

In conducting legal research, you must use a research method, because every research certainly uses a method to analyze the problems raised. According to Soerjono Soekanto, research is a scientific activity based on specific methods, systems, and thinking aimed at studying one or more specific legal phenomena through analysis. Furthermore, an in-depth examination of the legal facts is also conducted to then attempt to find solutions to the problems arising from the phenomenon in question.<sup>1</sup>

## **3. Results and Discussion**

### **3.1. Legal Aspects of Cooperation Agreement with the Right to Buy Back Shares accompanied by a power of attorney to sell privately**

A Cooperation Agreement accompanied by the right to buy back shares (buy back right) and a power of attorney to sell shares in a closed company or non-public company is a legal practice that is valid in Indonesian law, but it is necessary to pay attention to the legal aspects, especially referring to Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and the law on agreements in the Civil Code so as not to give rise to the risk of disputes.<sup>2</sup>

---

<sup>1</sup>Dimas Agung Prastomo, Akhmad Khisni, 2017, "Legal consequences of private deeds legalized by a notary, vol.4 no.4.

<sup>2</sup>Dian Mario, Hirasuddin & Muhaimin, 2020, "The Validity of Share Transfers Without a Sales and Purchase Agreement", Jurnal Jatiswara Vol. 35 no. 2 p. 233. url:<https://jatiswara.unram.ac.id/index.php/js/article/download/2246/210/902> accessed on June 14, 2025 at 09.22 WIB

In this case, based on the law of the Cooperation Agreement between the parties, including the arrangements for the right to buy back shares and the power of attorney to sell, such an Agreement VALID if it meets the conditions of an agreement in Article 1320 of the Civil Code. An agreement must meet the conditions to be considered valid, namely:

- 1) Words of agreement between the parties (subjective)
- 2) The subject's ability or capacity to make an agreement
- 3) Certain objects
- 4) A lawful cause.<sup>3</sup>

Based on these provisions, the Cooperation agreement with the right to buy back shares accompanied by a power of attorney to approve the sale is a legally valid agreement, because the buyback agreement or transaction fulfills the requirements for a valid agreement in Article 1320 of the Civil Code.

1. Firstly, there is an agreement between the parties which is shown by the signatures affixed to the standard contract made by the parties.

2. The two subjects of the agreement are mature and are considered legally competent, this is demonstrated by the creation of a standard agreement, namely a Cooperation Agreement with the right to buy back shares and buy and sell shares at PT Rizqita Sukses Abadai. This collaboration does not violate decency, public order and applicable laws and regulations and is not under conditions of coercion or abuse of circumstances.

3. Then, a specific object. The object in this case is the Company's shares that are being bought and sold and the parties to the agreement are adults and are considered legally capable of making an agreement and binding themselves in an agreement, this does not violate morality, public order and applicable laws and regulations and is not under duress and there is no abuse of circumstances (misbruik van anstandigheden).

Article 1338 of the Civil Code also relates to the legal basis for aspects of agreements, namely the principle of freedom of contract:

*"All agreements made legally apply as law to those who make them."*

A valid agreement is legally binding on the parties who make it. The parties are obligated to carry out the terms of the agreement as long as it does not violate the law, public order, or morality. An agreement cannot be unilaterally canceled unless there is mutual agreement and a valid legal reason, such as default or defective will.

An agreement must be carried out in good faith, namely not abusing rights, not harming other parties by cheating, and respecting the objectives and spirit of cooperation in the agreement.

---

<sup>3</sup>Suryodiningrat, RM, 1985, Principles of contract law, Second Edition Tarsino, Bandung, p. 37.

In a closed company, the transfer of shares is often limited by the articles of association, so that the exercise of the right to repurchase must be in accordance with the provisions in the articles of association of the limited company and must obtain the approval of the GMS and of course must also refer to Article 37 of the UUPT which limits the conditions under which a limited company may repurchase its shares.<sup>4</sup>

In Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), Article 37 paragraph (1) of the PT Law regulates the provisions for buyback/repurchasing shares as follows:

- a. The share repurchase does not result in the Company's net assets becoming less than the amount of issued capital plus the statutory reserves that have been set aside; and
- b. The total nominal value of all shares repurchased by the Company and pledges of shares or fiduciary guarantees for shares held by the Company itself and/or other Companies whose shares are directly or indirectly owned by the Company does not exceed 10% of the total capital placed in the Company.
- c. Share buybacks must be carried out in accordance with applicable laws and regulations, as explained above in the main legal regulatory framework that discusses share buybacks. Business is the Company Law. Share buybacks may only be carried out based on the approval of the General Meeting of Shareholders (GMS).

A power of attorney to sell shares can simply be defined as an agreement between the power of attorney and the power of attorney, where the power of attorney grants authority to the power of attorney to carry out certain affairs.

The granting of power of attorney is regulated in Book III Chapter XVI starting from Article 1792 to Article 1819 of the Civil Code, while power of attorney (*volmacht*) is not specifically regulated in the Civil Code or in other legislation, but is described as one part of the granting of power of attorney. Article 1792 of the Civil Code reads as: "granting power of attorney is an agreement by which another person, who receives it, carries out an affair on his behalf."<sup>5</sup>Therefore, a special power of attorney only concerns one specific legal action. Based on this, it can be seen that the elements of granting power of attorney are:<sup>6</sup>

- 1) Agreement
- 2) Giving power to the recipient of the power of attorney
- 3) On behalf of the grantor of power of attorney to carry out an affair

---

<sup>4</sup>Hardjian Rusli, 1997, *Limited Liability Companies and Their Legal Aspects*, Pustaka Sinar Harapan, Jakarta, p. 87.

<sup>5</sup>R. Subekti, 1999, *Various agreements*, Bandung, pp. 140-141.

<sup>6</sup>Abdukadir Muhammad, 2001, *Contract Law*, Citra Aditya Bakti, Bandung, p. 107.

From the above, the use of a power of attorney to sell to buy back shares is permitted but must be specific and not contradict the following principles:

"A power of attorney must not be used for things that are detrimental to the person giving the power of attorney." If a power of attorney is used to sell shares in the name of the person giving the power of attorney, then this power of attorney must be in written form and authentic.

The form of legal protection for the parties must also be fulfilled, an agreement to be valid and binding, ensure that the agreement includes the terms and procedures for implementing the right to buy back shares and the power to sell in detail, accompanied by an authentic notarial deed so that it is in accordance with statutory procedures and does not harm the parties.<sup>7</sup>

Example case begins from PT Rizqita Sukses Abadi got a coal procurement project and needed a work partner who could provide financial support so that the work project could run and develop, therefore PT Rizqita Sukses Abadi wanted to collaborate with Mr. X, an entrepreneur, then Mr. X agreed to collaborate or invest with PT Rizqita Sukses Abadi by investing capital in the form of purchasing shares in PT Rizqita Sukses Abadi. With the condition of sharing 30% of profits, as well as including Mr. X in the Board of Directors of the Limited Liability Company and occupying the position of President Director.

Long story short, they agreed to make a Cooperation Agreement with the right to buy back shares before a Notary. They agreed that this Cooperation Agreement would be valid for 12 months starting from the date they signed the cooperation agreement deed, they agreed that after this agreement ended, Mr. X was obliged to return the shares to PT Rizqita Sukses Abadi and return the composition of the share return and the composition of the board of directors to their original positions by transferring shares.

PT Rizqita Sukses Abadi also makes a power of attorney and agreement to sell under hand for Mr. X (the principal) is willing to grant power of attorney to the power of attorney Mr. Y (Representative of PT Rizqita Sukses Abadi), to and on behalf of the principal to submit, hold, attend and take decisions at the GMS Meeting and grant power of attorney to sell his share ownership. The purpose of making this power of attorney is made by PT Rizqita Sukses Abadi as anticipation in the future if there is a default.

In the case of the position which is the object of research as stated above, to analyze whether it is in accordance with the applicable legal provisions in relation to the legal aspects of the Cooperation Agreement with the right to buy

---

<sup>7</sup>Sumardi, Rahmat, & Abu Bakar, 2021, "Comparative study of sale and purchase with the right to repurchase according to the Civil Code (KUH Perdata) and the Compilation of Sharia Economic Law (KHES)" Vol. 1 no. 2 pp. 132-147. url:<https://e-journal.ianptk.ac.id/index.php>. Accessed on August 9, 2025 at 17.00 WIB

back shares accompanied by a power of attorney and approval from PT Rizqita Sukses Abadi.

Based on Gustav Radbruch's theory of legal certainty in his theory of legal philosophy, he states that legal certainty is one of the three basic values of law, based on justice and utility. According to Radbruch, good law is law that is not only written and enforceable, but also provides certainty as a legal subject in determining his rights and obligations.

The contents of the Cooperation agreement with the right to buy back shares accompanied by a power of attorney to sell and approval from PT. Rizqita Sukses Abadi in several parts have reflected the values of legal certainty according to Gustav Radbruch, especially in terms of:

- a. Clear identity of the parties
- b. The specific object of the agreement
- c. Detailed rights and obligations
- d. Settlement of disputes determined

However, there are still weaknesses that could potentially reduce the value of legal certainty, particularly in the unclear mechanism of buyback or share return, the lack of explicit and detailed explanation of the provisions regarding the power of attorney to sell, the absence of a clause safeguarding against conflicts of interest or default in share return, although the agreement is formally valid, it must be corrected to comply with correct and fair legal principles. Therefore, this agreement needs to be completed or refined to guarantee the value of legal certainty in substance.

Based on the description above, it is concluded that the legal aspects of the Cooperation Agreement with the right to buy back shares accompanied by a power of attorney to sell and the agreement are VALID agreements. The Cooperation Agreement containing the right to buy back shares is basically a manifestation of the principle of freedom of contract as regulated in Article 1338 of the Civil Code. This clause is valid and binding as long as it meets the requirements for the validity of the agreement in Article 1320 of the Civil Code, does not conflict with public order laws or the Company's articles of association.

For the use of a power of attorney to sell shares granted by a shareholder to another party (business partner or own party) is only valid if it is conditional, limited and not absolute and cannot be revoked unilaterally without basis. The power of attorney should be made in writing and a notarial deed is only valid if certain conditions agreed upon in the Cooperation agreement are met (for example, default, failure to achieve targets) the use of unilateral power of attorney without a clear mechanism has the potential to violate the principle of justice and can be revoked based on the law.

The implementation of the right to buy back shares and the power of attorney to sell must still be in accordance with the procedures of a limited company as



regulated in Law No. 40 of 2007 concerning limited companies, especially regarding registration in the shareholder register (DPS), approval of company organs, and recording changes in share ownership, negligence in these procedures can give rise to legal conflicts, disputes, share ownership and even civil lawsuits.

In order to avoid multiple interpretations and disputes in the future, all clauses regarding buyback, power of sale, implementation conditions, and settlement mechanisms must be stated explicitly, structured, and using clear legal language in the Cooperation Agreement. This requires the involvement of a notary and legal advisor to ensure that all clauses do not conflict with positive Indonesian law and can be implemented legally.

### **3.2. Share Return Process After Transfer to Second Party**

Shares as a form of capital ownership in a limited liability company are included in the legal structure of a limited liability company. Shares represent capital ownership and the company. As regulated in Law Number 40 of 2007 concerning Limited Liability Companies (PT Law), the capital of a limited liability company is divided into shares and each shareholder has inherent rights, including voting rights, rights to dividends, and rights to the company's assets in liquidation rights.<sup>8</sup> Thus, the transfer of shares in a Partnership does not only mean the transfer of wealth but also the transfer of power and responsibility within the Company.

A private limited company is a limited liability company that does not sell its shares to the public, is not listed on the Indonesian stock exchange, and is not traded on the capital market. Its transfer must comply with the provisions of the articles of association and the approval of other shareholders. This provides greater control over the entry and exit of parties within the company's ownership structure.

The legal basis for a closed limited liability company is regulated in:

- a) Law Number 40 of 2007 concerning Limited Liability Companies
- b) Civil Code
- c) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021

The mechanism for buying back shares (buyback) in a closed limited company actually follows the general provisions in Article 37 and Article 38 of the UUPT,

---

<sup>8</sup>Beamezar Daffa Alkautsar, Denny Suwondo, 2022, "Legal protection of individual limited liability companies (PT) based on Law Number 11 of 2020 concerning job creation", Sultan Agung Scientific Journal, ISSN: 2963-2730. [URL: https://jurnal.unissula.ac.id/index.php/JIMU/articel/download/26780/7461](https://jurnal.unissula.ac.id/index.php/JIMU/articel/download/26780/7461). Accessed on August 12, 2025.



because the shares are not traded on the capital market / stock exchange or shares of a closed limited company, namely:

The process of buying back shares by a private company for its requirements and procedures is fully regulated in the Company Law, namely:<sup>9</sup>

1. Agreement of the parties to carry out the transfer in accordance with the cooperation agreement.
2. Preparation of a deed of transfer of shares, before a notary.
3. GMS approval if required by the articles of association (Article 57 paragraph 1 of the Limited Liability Company Law)
4. Recording of Changes, to the list of shareholders by the Board of Directors.
5. Submission of reports on changes to Company data to the Ministry of Law and Human Rights via AHU online.

The procedures for buying and selling shares in a closed limited liability company are regulated by Indonesian law. Every step taken, starting from shareholder approval, sales and purchase agreement, making an authentic notarial deed to registration at the Ministry of Law and Human Rights / Directorate General of AHU, must be carried out to guarantee the validity of the transfer of shares.

From the description above, it can be concluded that in the cooperation agreement between the first party and the second party as stated in the notarial deed, it was agreed that the first party would sell 55% of its shares to the second party to support the smooth running of the coal procurement project, but the agreement also contains a clause that after the cooperation period ends (for 12 months), the second party is obliged to return ownership of the shares to the first party through a buyback mechanism.

Based on the theory of utility, Jeremy Bentham emphasized that good law is law that brings the greatest benefit to as many people as possible.<sup>10</sup> This share return provision reflects a legal effort oriented towards practical benefits, namely providing flexibility for the first party to obtain temporary financial support without losing permanent control over the Company, while also providing certainty to the second party regarding the economic rights received during the Cooperation period. This share return process is carried out in an orderly manner and based on the principle of agreement, in order to prevent future conflicts and maintain the Company's internal stability.

Therefore, from a utilitarian perspective, this kind of arrangement maximizes the benefits for both parties, both in terms of legality, economics, and business efficiency as long as the buyback clause is carried out in good faith and is legally

---

<sup>9</sup>Lifia Feby Wulandari, 2021, "Legal certainty of share return (acquisition) of a closed limited liability company with a share sale and purchase deed" vol 3 no.2 E-ISSN: 2623-2928.[url: https://online-journal.unja.ac.id/RR/article/download/12939/12512/45629](https://online-journal.unja.ac.id/RR/article/download/12939/12512/45629) accessed August 12, 2025 at 18.45 WIB

<sup>10</sup>Sudikno Mertokusumo, 2001, The discovery of law: an introduction, Liberty, Yogyakarta, p. 41.

written down, then this becomes a functional legal instrument that provides certainty, avoids conflict and creates mutual benefits for the parties involved.

#### **4. Conclusion**

Based on the description above, the following conclusions can be drawn: A cooperation agreement with the right to buy back shares in a private company, accompanied by a power of attorney to sell, is in principle legally valid as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code and the provisions of the Limited Liability Company Law Number 40 of 2007, specifically regarding the transfer of shares and approval of the Company's organs. The use of a private power of attorney to sell still has legal force as civil evidence, but its evidentiary power is lower than a notarial deed. In order to provide legal certainty, the share transfer process should be carried out through a notarial deed and recorded in the shareholder register. The mechanism for returning shares in a private company must go through the stages of approval of the Company's organs, making a deed of transfer, recording changes to the shareholder register, and reporting to the Ministry of Law and Human Rights to ensure legal certainty and protection for the parties.

#### **5. References**

##### **Journals:**

- Beamezar Daffa Alkautsar , Denny suwondo,2022,"Perlindungan hukum Perseroan terbatas (PT) Perorangan berdasarkan undang-undang nomor 11 tahun 2020 tentang cipta kerja", jurnal ilmiah sultan agung, ISSN:2963-2730.
- Dian Mario, Hirasuddin & Muhaimin, 2020, "Keabsahan pengalihan saham tanpa melalui perjanjian jual beli", Jurnal Jatiswara Vol. 35 no.2 hal 233.
- Dimas Agung Prastomo, akhmad khisni,2017," Akibat hukum akta dibawah tangan yang dilegailasi oleh notaris, vol.4 no.4.
- Lifia Feby Wulandari, 2021, "kepastian hukum pengembalian saham (akusisi)Perseroan terbatas tertutup dengan akta jual beli saham" vol 3 no.2 E-ISSN:2623-2928.
- Sumardi, Rahmat, & Abu bakar,2021, "studi komparasi jual beli dengan hak membeli kembali menurut kitab undang-undang hukum perdata (kuh perdata) dan kompilasi hukum ekonomi syariah (KHES)" Vol.1 no 2 hal 132-147.

##### **Books:**

- Abdukadir Muhammad, 2001, Hukum Perikatan, Citra Aditya Bakti, Bandung, hal. 107.

- Hardjian Rusli, 1997, Perseroan terbatas dan aspek hukumnya, Pustaka hlm. 10 Liberty, Yogyakarta, hal .41.
- R.Subekti , 1999, Aneka perjanjian, Bandung, hal. 140-141. Sinar Harapan, Jakarta, hal. 87.
- Soerjono Soekanto, Pengantar Penelitian Hukum, UI Press Jakarta, 1998
- Sudikno Mertokusumo, 2001, Penemuan hukum: sebuah pengantar