

## Legal Analysis of the Validity of Transfer of Limited Liability Company Shares Without a Sale and Purchase Agreement

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**Abstract.** *This study aims to analyze: 1) The validity of the transfer of shares of a limited liability company without a sale and purchase agreement. 2) Legal protection for shareholders due to the transfer of shares without a sale and purchase agreement. This type of research is included in the scope of normative legal research. The approach method in this study is the statute approach. The type and source of data in this study are secondary data. obtained from literature studies. The analysis in this study is prescriptive. The results of the study concluded: 1). The validity of the transfer of shares of a limited liability company without a sale and purchase agreement is considered invalid and is considered null and void by law, and therefore the judge stated that the plaintiff's actions in transferring the defendant's shares were unlawful and therefore required to pay compensation as regulated in Article 1365 of the Civil Code. 2) Legal protection for shareholders due to the transfer of shares without a sale and purchase agreement, namely in case Number 163 / Pdt.G / 2014 / PN Mtr, the court decided that the transfer of shares without a sale and purchase agreement was invalid. This is an example of the use of repressive legal protection facilities to enforce the rules and provide justice to the injured party. Preventive legal protection facilities can be interpreted that the court emphasizes the importance of a sale and purchase agreement as a preventive measure to protect the rights of shareholders and ensure the validity of stock transactions. The District Court's decision in case Number 163/Pdt.G/2014/PN Mtr is a form of legal protection which in principle aims to integrate and coordinate various interests in society by limiting these interests because in a traffic of interests, protection of these interests can only be done by limiting the interests of the other party.*

**Keywords:** Buy; Company; Limited; Sell.

## 1. Introduction

The presence of Limited Liability Companies as a form of business entity in everyday life can no longer be ignored. It is no exaggeration to say that the presence of Limited Liability Companies as a means of conducting economic activities has become a necessity that cannot be negotiated.<sup>1</sup> Limited Liability Company (PT) is the most popular form of economic activity today. This is because Limited Liability Company (PT) has limited liability, besides that it also provides convenience for its owners (shareholders) to transfer their company by selling all shares owned in the company.<sup>2</sup>

Limited Liability Company is a legal entity in which the legal entity status causes the Limited Liability Company to have its own assets and responsibilities. The legal status of a Limited Liability Company (PT) is the first element of all elements inherent in the definition of a limited liability company as described in Article 1 number 1 of Law Number 40 of 2007.<sup>3</sup>

Limited Liability Company (PT) is a legal entity which is a capital association, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfilling the requirements stipulated in this Law and its implementing regulations. A Limited Liability Company (PT) is established based on an agreement, as stated in Article 1313 of the Civil Code, an agreement is an act where one or more people bind themselves to one or more other people. Article 7 Paragraph (1) of Law Number 40 of 2007 requires that a Limited Liability Company be established by 2 (two) or more people with a Notarial Deed made in Indonesian, in this case the person referred to is an individual, either an Indonesian or foreign citizen or an Indonesian or foreign legal entity.

A Limited Liability Company can be defined as an association of shareholders created by law and enforced as an artificial person by the court, which is a legal entity and therefore completely separate from the people who founded it, with the capacity for continuous existence and as a legal entity, a limited liability company has the authority to receive, hold and transfer assets, sue or be sued and exercise other powers granted by applicable law.<sup>4</sup>

The deposit of share capital of a Limited Liability Company can be made in the form of money or in other forms. If the deposit is in other forms, then the assessment of the share capital deposit is based on the market value or the

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<sup>1</sup>Binoto Nadapdap, 2016, Limited Liability Company Law (Based on Law No. 40 of 2007), Jala Permata, Jakarta, p.1.

<sup>2</sup>Ahmad Yani and Gunawan Widjaja, 1999, Business Law Series, Limited Liability Companies, Raja Grafindo Persada, Jakarta, p. 1

<sup>3</sup>Herri Swantoro, 2019, Limited Liability Company Law and the Threat of Bankruptcy, Rayyana Komunikasindo, Jakarta, p. 17

<sup>4</sup>Munir Fuady, 2003, New Paradigm Limited Liability Company, Citra Aditya Bakti, Bandung, p. 2.

estimated value of an expert who is not affiliated with the company. In addition, if the capital deposited is in the form of immovable property (such as land), then the deposit must be announced in a newspaper within 14 (fourteen) days after the deed of establishment or after the GMS decides on the deposit of shares. For the deposit of shares in the form of land, the shareholder and the company will sign a Deed of Company Entry before the PPAT and then the certificate will be registered in the name of the company.

Shares are categorized as movable objects (property rights) so that shares can also be used as collateral for bank credit/financing. According to the Limited Liability Company Law, providing shares as collateral can be done in 2 ways, namely shares as fiduciary collateral and shares as collateral. However, generally, shares are used as collateral by way of collateral.

The owner or shareholder in a company can be an individual or a legal entity. If owned by an individual, of course the guarantee of shares must see whether approval from other parties is required, for example a husband/wife if married or there is a prenuptial agreement. Likewise, if the owner is a legal entity (for example another company), the guarantee must be carried out by considering the provisions in the articles of association of the legal entity. If the approval of the board of commissioners or GMS is required, then the guarantee of the company's shares must first obtain approval from the company's organs.<sup>5</sup>

Limited Liability Company (PT) in its operations, can transfer its shares from one shareholder to another. This transfer of shares can occur for various reasons, including changes in ownership, restructuring company, or changes in business strategy. Transfer of shares in a Limited Liability Company (PT) is one of the mechanisms that general in the business world. Transfer of shares without sale and purchase can refer to a situation where a PT shareholder transfers his shares to another party without a valid sale and purchase transaction. This type of transfer can occur through various means, such as a grant statement, inheritance, or transfer of shares to family members. Although there are some legitimate situations in the transfer of shares without sale and purchase, many cases also involve questionable or illegal practices, such as falsification of documents or transfer of shares that are contrary to applicable laws and regulations.

### **3. Research Methods**

This type of research is included in the scope of normative legal research. The approach method in this research is the statute approach. The type and source of data in this research are secondary data obtained from literature studies. The analysis in this research is prescriptive.

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<sup>5</sup>Dian Mario, 2020, Validity of Share Transfer Without a Sale and Purchase Agreement, Jatiswara Journal, Volume 35 Number 2, p.236

### 3. Results and Discussion

#### 3.1. Validity of Transfer of Limited Liability Company Shares Without a Sale and Purchase Agreement

Limited Liability Company comes from the Dutch Commercial Law term *Wetboek van Koophandel (WvK)* namely *Naamloze Vennootschap* with the abbreviation *NV*. The term limited liability company consists of two words, namely company and limited. Company refers to the capital of a PT consisting of shares or stocks. The word limited refers to the responsibility of shareholders whose scope is limited only to the nominal value of all shares owned.<sup>6</sup>

A limited liability company is an association to run a certain company by using a basic capital divided into a certain number of shares or shares, each containing a certain amount of money, namely the nominal amount, as stipulated in the notarial deed of establishment of the limited liability company, which deed must be requested for ratification by the Minister of Justice, while to become a partner it is mandatory to place in full and deposit the nominal amount of one or more shares.<sup>7</sup>

Sutan Remy Sjahdeni stated that the company is a legal entity that is different and separate from the shareholders of the PT. Therefore, the company in carrying out its legal functions does not act as an attorney for the shareholders but acts for and on behalf of itself. The shareholders are not parties to the agreement made by the PT with other parties. Therefore, the shareholders also do not have the right to force other parties to carry out their obligations as stipulated in the agreement. As a consequence, third parties cannot collect and sue the PT for the legal obligations of the company's shareholders. Conversely, he also does not have the right to collect third parties for obligations that must be paid to the company's shareholders. Thus, the shareholders and the PT are separate parties. The shareholders cannot be sued to pay off the company's debts, even though they are the owners.<sup>8</sup>This is because the shareholders have entered into an agreement, the contents of which are that each party has separated or released part of their personal assets into limited liability company assets that are separated from their personal assets, so that the shareholders' liability is limited to their personal assets that have been included in the PT.

Shares as a right that is an object that can be controlled with ownership rights can also be determined based on the general provisions stipulated in Article 511 number (4) of the Civil Code which states that shares or shares in a money trading

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<sup>6</sup>Ridwan Khairandy, 2007, Limited Liability Company as a Legal Entity, *Journal of Business Law*, Volume 26, Number 3, p. 5

<sup>7</sup>Sri Redjeki Hartono, 1985, *Forms of Cooperation in the World of Commerce*, Faculty of Law, University of August 17, 1945, Semarang, p.47.

<sup>8</sup>Sutan Remy Sjahdeni, 2001, *Personal Responsibility of Directors and Commissioners*, *Journal of Business Law*, Volume 14, p. 108

partnership, trading partnership or company partnership, even though the objects of the partnership concerned and the company are immovable objects. The shares or shares are considered to be movable objects, but only for the participants during the partnership. Therefore, shares as movable objects are used as collateral for debt with a pledge or fiduciary guarantee as collateral. This is in line with the provisions of Article 60 of Law Number 40 of 2007 paragraph (1) concerning Limited Liability Companies which has now been amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which states that shares are movable objects and provide the rights as referred to in Article 52 to their owners. For this reason, it is necessary to emphasize that shares are movable objects which ultimately provide clarity regarding the guarantee institution that can be charged against the shares.

The provisions regarding shares as objects that can be owned are reaffirmed in the formulation of Article 60 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, that ownership of shares as movable objects grants property rights to the holder that can be maintained by everyone. In the deed of establishment of a Limited Liability Company (PT), the amount of PT capital divided into shares must be stated. As previously explained, shares as capital participation in the ownership of a Limited Liability Company have stages/procedures in their ownership and previously we must first know that shares must be issued in the currency of the Republic of Indonesia.<sup>9</sup>

Law Number 40 of 2007 which was amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law also provides an explanation regarding the method of transferring rights to shares, which in this case is regulated in Article 57 paragraph (1) which reads:

1. The requirement to offer first to shareholders with certain classifications or other shareholders.
2. Requirement to obtain prior approval from the company's organs.
3. The requirement to obtain prior approval from the authorized agency in accordance with statutory provisions.

Each nominal share issued has one voting right, except in the case where the shares are owned by more than one person, then one person must be appointed as a joint representative for the ownership of the shares, this is as regulated in Article 52 paragraph (5). Shares as proof of ownership of capital participation in a company which if it is to be transferred to another party by the shareholder, the

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<sup>9</sup>Rusli, 1997, Limited Liability Companies and Their Legal Aspects. Sinar Harapan Library, Jakarta, p.79.

Law stipulates that the shares to be sold are valued at a fair price. The fair category referred to in this Law is that it does not result in losses for the shareholder.

The transfer of shares must pay attention to the provisions regarding the procedures for the transfer of shares as regulated in the Company's articles of association, in particular the provisions regarding the requirement to first offer the shares among the company's shareholders and the requirement to first obtain approval from the Company's Organ or authorized agency.

Decision Number 163/Pdt.G/2014/PN Mtr is one of the legal cases that attracts attention in the Indonesian legal system, especially related to the validity of the transfer of shares without a sale and purchase agreement. According to contract law in Indonesia, the transfer of shares must generally be based on a valid agreement between the seller and the buyer. This agreement is usually stated in written form, namely a share sale and purchase agreement.

Based on Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, Article 60 Paragraph (4) states that "Voting rights on shares that are collateralized with a pledge or fiduciary guarantee remain with the shareholder". This provision reaffirms the legal principle that does not allow the transfer of voting rights regardless of ownership of shares. Meanwhile, other rights outside of voting rights can be agreed upon in accordance with the agreement between the shareholder and the collateral holder. Based on Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), the transfer of shares in a limited liability company must be in accordance with the company's articles of association. In addition, the transfer of shares must be recorded in the shareholder register and reported to the Ministry of Law and Human Rights to ensure a legitimate change in ownership.

The decision of the Mataram District Court, which was later confirmed by the High Court, issued Decision Number 163/Pdt.G/2014/PN Mtr., dated July 1, 2015, with the following ruling:

1. Granting the Plaintiff's claim in part.
2. Declaring that the actions of Defendant I in not making company bookkeeping (balance sheets) for the years since the establishment of PT Gusung Duta Tamisa until 2013 were unlawful.
3. Declaring that the actions of Defendant I and Defendant II in holding a GMS on 27 October 2005 by changing the composition of the Plaintiff's shares to only 80 shares or 2.83% (two point eighty three percent) was an unlawful act.

This decision shows that the judge considered the defendant's actions in not carrying out his obligations as a director to make company bookkeeping (balance sheet) as a basis for determining the acquisition of dividends from each

shareholder and changing the composition of the plaintiff's shares without a legitimate basis indicating that the company did not run its business based on the Limited Liability Company Law consistently. This is contrary to the principles of a state of law, namely a state based on law (*rechstaat*) not based on mere power (*machstaat*). This is as stated in Article 1 paragraph (3) of the 3rd amendment to the Constitution of the Republic of Indonesia which states that "The State of Indonesia is a State of Law". Based on this provision, the consequence is that all actions of the government and the people must be in accordance with applicable legal provisions.

The ruling underlines the importance of complying with all legal procedures in the transfer of shares, including making a valid sale and purchase agreement and registering changes in ownership in the shareholders register. In addition, companies must ensure that any share transactions are in accordance with the company's articles of association.

Analyzing the decision of the District Court in case Number 163/Pdt.G/2014/PN Mtr regarding the transfer of shares without a sale and purchase agreement based on Gustav Radbruch's theory of legal certainty, can be done by considering the four main elements of the meaning of legal certainty according to Radbruch:

1. The Law is Positive

Gustav Radbruch stated that positive law is the prevailing laws and regulations. In this context, the UUPT or now amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and the company's articles of association are positive laws that regulate the transfer of shares. The court's decision rejecting the transfer of shares without a sale and purchase agreement shows that the existing positive law (UUPT or now amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and the articles of association) is respected and applied. The court upheld a clear rule that every share transaction must be supported by a valid sale and purchase agreement.

2. Law Based on Facts

Radbruch emphasized that the law must be based on clear facts, not on the subjective judgment of the judge. In this case, the court based its decision on the fact that there was no valid sale and purchase agreement between the parties involved in the transfer of shares. This decision shows that the court did not use subjective judgment but based its decision on the fact that the formal requirements (sale and purchase agreement) were not met.

3. Facts Must Be Formulated Clearly

Radbruch argues that the facts must be formulated in a clear manner to avoid misunderstandings. The court decision in this case provides a clear interpretation that without a valid sale and purchase agreement, the transfer of shares is invalid. This creates legal certainty for shareholders and companies, so that they know for sure that clear documents and procedures must be fulfilled for a valid transfer of shares.

#### 4. Positive Laws Must Not Change Easily

Legal stability is an important element in Radbruch's theory. Court decisions that uphold the provisions contained in the UUPT or now amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and the company's articles of association reflect legal stability, because they show that existing rules and procedures cannot be changed or ignored easily. This provides confidence to shareholders and business actors that existing rules will be applied consistently and will not change suddenly.

Thus, this decision is in line with the principles of legal certainty according to Gustav Radbruch, ensuring that existing rules are respected, applied consistently, and provide clarity and stability for the parties involved in the transfer of shares.

### **3.2. Legal Protection for Shareholders Due to Transfer of Shares Without a Sale and Purchase Agreement**

A limited liability company is a vehicle that brings together a person or people who work together in a PT, but all actions or deeds carried out within the framework of cooperation in the PT can be viewed by law solely as an act of a legal entity.<sup>10</sup>The importance of legal protection for shareholders who invest their shares in a PT raises very risky problems. Where the provisions in the PT Law are not clearly regulated, so that clear, special, and specific legal regulations are needed to resolve these problems.

The District Court's decision in case Number 163/Pdt.G/2014/PN Mtr is a form of legal protection which in principle aims to integrate and coordinate various interests in society by limiting these interests because in a traffic of interests, protection of these interests can only be done by limiting the interests of the other party. The law protects a person's interests by allocating power to him in a measured manner to act in the context of his interests which are called rights. The need for law is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be protected and regulated.

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<sup>10</sup>Erick Rianto F. Lubis, 2017, Responsibility of PT M Riau Airlines Directors to Shareholders After Business Failure, Volume IV Number 2, page 9



The theory of legal protection put forward by Philipus M. Hadjon provides important insights in the context of legal protection for shareholders in cases of share transfers without a sale and purchase agreement. Legal protection for shareholders due to share transfers without a sale and purchase agreement, namely:

1. Preventive Legal Protection Facilities

Preventive legal protection means aim to prevent violations or legal losses before they occur. In the context of a share transfer without a sale and purchase agreement, preventive legal protection means may include:

- a. Ensure that every transfer of shares must comply with the regulations set out in the Limited Liability Company Law (UUPT) and the company's articles of association.
- b. Encourage the parties involved to establish a valid sale and purchase agreement before carrying out a share transfer transaction. This can avoid disputes in the future and provide clarity on the rights and obligations of each party.

In case No. 163/Pdt.G/2014/PN Mtr, preventive legal protection facilities can be interpreted that the court emphasized the importance of having a sale and purchase agreement as a preventive measure to protect the rights of shareholders and ensure the validity of share transactions.

2. Repressive Legal Protection Facilities

Repressive legal protection means focus on enforcing the law against violations that have occurred. This includes legal action taken after the transfer of shares without a sale and purchase agreement, if proven to violate the rules or be illegal under applicable law. Repressive legal protection means can include:

- a. As in case No. 163/Pdt.G/2014/PN Mtr, the court ruled that the transfer of shares without a sale and purchase agreement was invalid. This is an example of the use of repressive legal protection means to enforce the rules and provide justice to the injured party.
- b. Parties who feel they have been harmed by an unauthorized transfer of shares can seek compensation or restoration of their rights through legal channels.

These two legal protection means if applied in the legal system can provide more comprehensive protection for shareholders, both in terms of prevention and law enforcement after a violation occurs, such as in the case of an unauthorized transfer of shares without a sale and purchase agreement. The theory of preventive and repressive legal protection means offers a holistic approach in

securing shareholder rights in the context of the transfer of shares of a limited liability company. In the specific case of Number 163/Pdt.G/2014/PN Mtr, the application of this theory shows how legal protection can be carried out by encouraging compliance with existing regulations and enforcing the law to ensure justice for all parties involved.

#### **4. Conclusion**

The validity of the transfer of shares of a limited liability company without a sale and purchase agreement, namely transferring shares in a limited liability company, then based on the provisions of Article 55 to Article 58 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, the requirement to first offer to shareholders with certain classifications or other shareholders and the requirement to obtain prior approval from the Company's Organ, then because the process of transferring rights to shares of the Limited Liability Company is not carried out through the basis of sale and purchase rights and is carried out without the knowledge of the Shareholders and the approval of the Limited Liability Company's organ, the transfer of shares is considered invalid and is considered null and void, and therefore the judge stated that the plaintiff's actions in transferring the defendant's shares were unlawful and for that he was required to pay compensation as regulated in Article 1365 of the Civil Code. Legal protection for shareholders due to the transfer of shares without a sale and purchase agreement, such as in case No. 163/Pdt.G/2014/PN Mtr, the court decided that the transfer of shares without a sale and purchase agreement was invalid. This is an example of the use of repressive legal protection measures to enforce the rules and provide justice to the injured party. Preventive legal protection measures can be interpreted that the court emphasizes the importance of a sale and purchase agreement as a preventive measure to protect the rights of shareholders and ensure the validity of share transactions. The decision of the District Court in case No. 163/Pdt.G/2014/PN Mtr is a form or form of legal protection which in principle aims to integrate and coordinate various interests in society by limiting these interests because in a traffic of interests, protection of these interests can only be done by limiting the interests of the other party. The law protects a person's interests by allocating power to him in a measured manner to act in the context of his interests which are called rights. The need for law is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be protected and regulated.

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