



# NOTARY'S RESPONSIBILITY FOR CANCELLATION OF THE CONTENTS OF SHARES SALE AND PURCHASE DEED THROUGH COURT RULING (STUDY OF SUPREME COURT DECISION NUMBER 188 PK/PDT/2020) Date 01 July 2020

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## Abstract

*Notary liability for the cancellation of the contents of the proforma share sale and purchase deed through a court decision caused by the existence of parties who do not have good faith who face the Notary because the shares are pretend (proforma), on the other hand of the notary are asked to use the principle of prudence and the principle of knowing their clients, but on the other hand notaries also need to get legal protection if they are able to prove that after applying the principle Prudence turns out to exist among parties who do not have good faith so as to harm other parties who also associate notaries as defendants to be held accountable for illegal acts, so this needs to be studied. The formulation of the problem that will be studied in this study is what is the responsibility of the Notary for the share sale and purchase deed that he makes and is canceled by the court? What is the legal protection for parties who are agreed to in the sale and purchase of shares due to the cancellation of the share sale and purchase deed by the court? What is the legal analysis used by the judge in canceling the proforma share sale and purchase deed in the Supreme Court Decision Number 188 PK/PDT/2020? The research method used is juridical normative with a case approach by analyzing cases in Bekasi District Court Decision Number 334 / Pdt.G / 2014 / PN. BKS, Bandung High Court Decision Number: 467/PDT/2016/PT. BDG, Supreme Court Decision Number: 1681 K / Pdt / 2017 and Supreme Court Decision Number : 188 PK / Pdt / 2020. The data sources used are secondary data with primary, secondary, secondary legal materials. Data collection tools with library research, qualitative data analysis. The results showed that notaries had difficulty reaching out and detecting further related to the sale and purchase of proforma shares (pretend) considering that after carrying out the precautionary principle, it turned out that there was one party who did not have good faith and harmed the other party who sued in court and made the notary a defendant, but in the case of Bekasi District Court Decision Number 334 / Pdt.G / 2014 / PN. BKS, Bandung High Court Decision Number: 467/PDT/2016/PT. BDG, Supreme Court Decision Number: 1681 K / Pdt / 2017 and Supreme Court Decision Number: 188 PK / Pdt / 2020, Notaries who conducted Judicial Review are proven innocent and are not charged with rent responsibility even though the notarial deed they made must still be cancelled, considering that Notaries only make shares sale and purchase terms between the parties which turns out that one of the parties applies the sale and purchase of shares.*

**Keywords:** *Stock, Proforma, Deed, Notary.*

## INTRODUCTION

In the current era of globalization that makes the world seem to lose distance, humans are required to develop quickly or they will be left behind. In this process, the world has been combined into a compact that is almost unified (compressed) and there is an intensification of awareness of the world as a whole. Today's life where everything is advanced seems to force us to take bold and creative actions from now on, especially in the business sector. A notary is a public official who is authorized to make authentic deeds and other authorities as regulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the

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Position of Notary (hereinafter referred to as UUJN). Notary is a profession that is based on special expertise that is taken in special education and training, this requires Notaries to have broad knowledge and responsibility to serve the public interest.

Initially, PT General Energi Indonesia had the following share ownership structure: PT Dafen Indonusa: 35,000 shares, each with a nominal value of Rp1,000,000, so the total share value was Rp35,000,000,000. Djoko Efendy Bostan: 5,000 shares, each with a nominal value of Rp1,000,000, so the total share value was Rp5,000,000,000.

**Sale and Purchase I** In the first stage of the sale and purchase of shares, PT Dafen Indonusa sold 7,800 of its shares to Djoko Efendy Bostan. Evidence of this transaction is documented in the Deed of Sale and Purchase (AJB) No. 04 and Minutes (BA) No. 03. After the transaction, the composition of share ownership became: PT Dafen Indonusa: 27,200 shares. Djoko Efendy Bostan: 12,800 shares (5,000 original shares + 7,800 shares purchased).

**Sale and Purchase II** In the second stage, PT Dafen Indonusa sold 13,700 of its shares to Indra Widya Agustina. Evidence of this transaction is documented in AJB No.05 and BA No.03. After this transaction, the composition of share ownership becomes: PT Dafen Indonusa: 13,500 shares. Djoko Efendy Bostan: 12,800 shares. Indra Widya Agustina: 13,700 shares.

**Sale and Purchase III** In the third stage, PT Dafen Indonusa sold 7,200 of its shares to PT Wira Prima Energy. Evidence of this transaction is documented in AJB No.30 and BA No.29. At the same stage, Djoko Efendy Bostan also sold 12,800 of his shares to PT Wira Prima Energy. After this transaction, the composition of share ownership became: PT Dafen Indonusa: 6,300 shares. Djoko Efendy Bostan: 0 shares. Indra Widya Agustina: 13,700 shares. PT Wira Prima Energy: 20,000 shares (7,200 shares from PT Dafen Indonusa + 12,800 shares from Djoko Efendy Bostan).

**Sale and Purchase IV** In the fourth stage, PT Dafen Indonusa sold the remaining 6,300 shares to PT Nusa Cipta Energy. Indra Widya Agustina also sold 13,700 shares to PT Nusa Cipta Energy. Evidence of this transaction is documented in AJB No.35 and BA No.29. After this transaction, the composition of share ownership becomes: PT Dafen Indonusa: 0 shares. Djoko Efendy Bostan: 0 shares. Indra Widya Agustina: 0 shares. PT Nusa Cipta Energy: 20,000 shares. PT Wira Prima Energy: 20,000 shares.

**Final Position of Shareholders** After the series of share sales that occurred in stages, the final shareholder position of PT General Energi Indonesia is as follows: PT Nusa Cipta Energy: 20,000 shares. PT Wira Prima Energy: 20,000 shares. This share sales transaction was carried out in accordance with applicable provisions and has been recorded and reported in the company register in accordance with the regulations stipulated by Law Number 40 of 2007 concerning Limited Liability Companies (UUPT).

Shares of PT General Energi Indonesia were transferred to PT Wira Prima Energi and PT Nusa Cipta Energi, and all management of PT General Energi Indonesia were replaced, including one of them, TAN HEDY LAURENT = COMMISSIONER

The plaintiffs (former shareholders and related parties) sued the defendants in connection with the change of ownership and management of PT General Energi Indonesia. The case of the sale and purchase of fake shares (proforma) of PT General Energi Indonesia involving the transfer of shares and changes in management.

**Summary** These cases center on the transfer of shares of PT General Energi Indonesia to PT Wira Prima Energi and PT Nusa Cipta Energi, and the replacement of all PT General Energi Indonesia management by Tan Hedy Laurent as commissioner. The plaintiffs are former shareholders and related parties who feel disadvantaged by the change in ownership and management.

The lawsuit of the plaintiffs, who are former shareholders and related parties, feel aggrieved by the process of transferring shares and replacing the management of PT General Energi Indonesia. They allege that the transfer of shares to PT Wira Prima Energi and PT Nusa Cipta Energi and the replacement of the management by Tan Hedy Laurent as commissioner were carried

out in an illegal manner or were detrimental to them. Therefore, they sued the defendants involved in the transaction and changes. The Legal Aspect and evidence of each share sale and purchase transaction are accompanied by evidence in the form of a Deed of Sale and Purchase (AJB) and a Deed of Minutes. The plaintiff must prove that the actions of the defendants violate applicable laws or agreements, or that there is an element of fraud in the transaction.

Most cancellation attempts are not entirely the Notary's fault because the Notary is only responsible for everything that the parties say in front of him. So to what extent a Notary is justified by law and what kind of actions result in a Notary being held responsible, especially civilly, for the deed he or she makes is the basis for this research. One of the roles of a Notary that will be observed is the Notary's responsibility in making share sale and purchase deeds.

Based on the Decision of the Bekasi District Court Number 334/Pdt.G/2014/PN.BKS dated February 3, 2016, the Bekasi District Court Judge stated that the unlawful acts committed by PT. Nusa Cipta Energi (Defendant II), Dahlan Iskan (Defendant III), Tan Hedy Laurent (Defendant IV) and Notary Maria Rahmawati Gunawan (Defendant VI) were void and had no legal force for the sale and purchase of shares and Minutes of PT. General Energy Indonesia (Defendant V) and because they were based on pretense (proforma).

Based on the Decision of the Bandung High Court Number 467/PDT/2016 dated December 22, 2016, in the Judge's consideration, it stated that the appeal from the defendants against the appeal memorandum did not contain any new evidence or statements so that the appeal was declared rejected and tried to uphold the Bekasi District Court Decision, the substance of the decision of which granted the Plaintiff's Lawsuit, stated that the defendant's actions were unlawful, declared the deed of sale and purchase of shares made by Notary Maria Rahmawati Gunawan (Defendant VI) null and void, Compensation for Losses (joint liability) and Legal Costs were sentenced to the Defendant.

Based on the Supreme Court Decision Number 1681/K/PDT/2017 dated August 16, 2017 which has permanent legal force, it states that the cassation applicants, previously as appellants filed a cassation, the cassation applicants requested a re-examination of all legal facts contained in the previous decision, then the consideration of the cassation judge stated that the defendants could not materially prove the existence of proof of payment in the form of receipts or other proof of payment as stated in the deed of sale and purchase of shares made by Notary Maria Rahmawati Gunawan (Defendant VI). The judge reasoned to state that such actions were unlawful.

The judicial review conducted by Notary MRG is based on the Judicial Review Decision Number 188 PK/PDT/2020 which has permanent legal force on July 1, 2020. The Supreme Court is of the opinion that there has been a mistake by the Judge or a clear error. The Supreme Court stated that an authentic deed essentially contains formal truth in accordance with what the parties have notified the Notary in accordance with Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. If in the end there is a party in the share sale and purchase agreement suing for an unlawful act committed by one of the parties by stating that the share sale and purchase agreement is only a sham (Proforma) then the Notary cannot be held responsible. In such cases, all legal consequences of the unlawful act will be a problem for the parties themselves who made the agreement.

Based on the description, this study analyzes the differences in the application of the judge's law in determining unlawful acts and their responsibility in terms of claims for compensation to the Notary. This needs to be analyzed because the Notary makes an Authentic Deed only to express the will of the parties. The Authentic Deed already requires that the receipt evidence has been proven by the signatures of the parties in the Deed. If it is proven that the share sale and purchase agreement is unlawful, namely only pretending (Proforma), then it is not the Notary's responsibility.

This study analyzes the legal certainty given to the parties in relation to the notarial deed that is made will not harm one of the parties. Legal certainty is the constitutional right of every citizen

as stated in Article 28D of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Because legal certainty is the constitutional right of every Indonesian citizen and is part of Human Rights (HAM), it has become an obligation for the State and all parties to ensure its fulfillment.

## **LITERATURE REVIEW**

### **Theory of Legal Responsibility**

According to the law, responsibility is a result of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an action. According to Soengeng Stanto, responsibility means the obligation to provide an answer which is a calculation of all things that happen and the obligation to provide compensation for losses that may be caused.

### **Legal Protection Theory**

The term legal protection comes from English, namely legal protection theory, while in Dutch, it is called *theorie van de wettelijke bescherming*, and in German it is called *theorie der rechtliche schutz*. Grammatically, protection is a place of shelter or an act (action) of protecting.

### **Theory of Legal Certainty**

The theory of legal certainty emphasizes that the law must be able to provide clarity and guarantees for the rights and obligations arising from an agreement stated in an Authentic Deed. In the context of the sale and purchase of proforma shares, the deed made by a Notary aims to provide a guarantee of certainty that the transaction is valid and recognized by law. However, when the contents of the deed are canceled by the court, the legal certainty expected by the parties is disrupted. Article 1868 of the Civil Code states that an Authentic Deed is a deed made by an authorized public official (in this case, a Notary), which provides legal certainty for the parties. Article 16 of Law No. 2 of 2014 concerning the Position of Notary (UUJN) regulates the obligations of Notaries to act in accordance with applicable legal provisions, so that the deed they make can provide legal certainty for the parties involved.

## **METHOD**

### **Types and Nature of Research**

The type of research used in this study is normative legal research or doctrinal legal research, meaning "a series of processes to find out a series of doctrines, principles, or legal rules to be able to describe the legal issues being studied". The legal issue studied is that the Notary is only responsible for everything that the parties say in front of him so that in some situations the Notary does not care and ignores the material of the deed he made which results in it being used or utilized by certain parties to obtain personal interests, one of which is in the making of a deed of sale and purchase of shares as a problem that will be studied further in this study.

### **Approach Method**

In accordance with the type of research, namely normative legal research, the approach used in this study is the statute approach. This approach is carried out to examine the views and doctrines that develop in legal science regarding the cancellation of a deed of sale and purchase issued by a Notary. By studying these views and doctrines, ideas will be obtained that give birth to legal understandings, legal concepts and legal principles that are relevant to the issues faced.

### **Data source**

In legal research, there is no such thing as data, because in legal research, especially normative juridical research, legal research sources are obtained from the library, not from the field, therefore the term used is legal materials.

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## **RESULTS AND DISCUSSION**

### **LEGAL ANALYSIS USED BY THE JUDGE IN THE CANCELLATION OF THE DEED OF PROFORMA SHARES SALE AND PURCHASE IN THE SUPREME COURT DECISION NUMBER 188 PK/PDT/2020**

#### **A. Problems of Cancellation of Deed of Sale and Purchase of Proforma Shares**

Baker states that pro forma disclosures are “essentially ‘what-if’ financial presentations often taking the form of summarized financial statements.” Pro forma statements are used to show the effects of significant transactions that occurred after the end of the period or that have occurred during the period but have not been fully reflected in the company’s historical cost financial statements.

Vincent defines pro forma as a picture of financial figures obtained based on a series of assumption figures, where assumptions are determined hypothetically or taken from previous business experiences of the company or similar companies. These assumptions are such as rate of return, inflation, market penetration or tax rates. Pro forma reporting allows companies to create variations in profit projections depending on how to manipulate the pro forma variables.

Investors as the main users of financial information, clearly need more relevant information to make decisions. If historical cost financial reports are unreliable, investors need alternative financial information to make decisions. One of the alternative financial information is proforma financial information. According to Stice et al., proforma earnings announcements are an effort by management to add value to information, or as a last resort to achieve profit targets that are impossible to achieve using generally accepted accounting principles.

Firms with low earnings informativeness prefer to disclose pro forma earnings than other firms. They also provide weak evidence that these firms have higher leverage and market-to-book ratios than other firms. Their test results on the relative and incremental information content of pro forma earnings suggest that investors find pro forma earnings more useful when earnings informativeness is low or when strategic considerations are absent. While the predictive power of pro forma earnings for future profitability and returns is mixed.

Cancellation of a fake (proforma) share sale and purchase deed raises various complex legal and practical issues such as uncertainty of Share Status because cancellation of a proforma share sale and purchase deed raises uncertainty about the status of share ownership. This can result in uncertainty about who legally owns the shares. The next problem is related to Financial Losses for Buyers and Sellers, Buyers may lose their investment, while sellers may lose their expected income. A long and expensive legal process can burden both parties financially, especially if it involves various legal efforts such as appeals.

Problematic impacts on creditors and investors who may be affected by uncertainty and potential losses arising from the cancellation of stock transactions. Business reputation, investor and business partner trust in the company may be negatively affected by legal issues that arise. Cancellation of transactions requires additional adjustments or reporting to capital market authorities and other regulators.

The problem of recovery and reconciliation with a return to the initial position as an effort to return the parties to the position before the transaction was made can be complicated and challenging, especially if the assets or funds have been allocated or used. Thus, in the sale and purchase of shares will be a form of restoration of rights to the injured parties.

#### **B. Ideally, the Notary's Responsibility for Resolving the Problem of Cancellation of Deeds for Sale and Purchase of Proforma Shares by the Court**

Relevant to the theory of responsibility, a Notary in carrying out his profession must be able to be held responsible if in the deed he made there is an error or violation that is deliberate by the Notary. There is a relationship between the Notary Law and the code of ethics for the profession as a notary. The Notary Law and the code of ethics mean that a notary in carrying out his obligations and duties is not only subject to the Notary Law but must also obey the code of ethics of the

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profession and be responsible to the community he serves, the professional organization, namely the Indonesian Notary Association, and to the State. With this relationship, a notary who ignores the dignity of his position can be subject to moral sanctions, reprimanded or dismissed from his professional membership and can also be dismissed from his position as a notary.

On the other hand. Notary as a public official (*openbaar ambtenaar*) who has the function of authority in making authentic deeds can be charged with responsibility for his actions related to his profession in making deeds.

In the continuity of a PT's business, capital is one of the most important aspects. This is because in essence a PT is a capital association of its members (shareholders). Capital itself is the basic wealth owned by a PT which is entirely divided into shares or also called *sero-sero*/share/stock. Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT 2007) does not explain in more detail the definition of shares, but if referring to the Black Law Dictionary, shares or "share" are interpreted as: An allotted portion owned by, contributed by". Share buying and selling transactions give rise to legal rights and obligations for both the seller and the buyer of shares. In essence, law is created because of rights, and the purpose of law is to protect rights by enforcing the implementation of obligations

A company is a form of economic activity that provides convenience for its owners (shareholders) to transfer the company (to anyone) by selling all their shares to the company. Etymologically, the word company refers to its capital consisting of shares, while the word "limited" refers to the responsibility of shareholders which does not exceed the nominal value of the shares they have subscribed to and owned.

Yahya Harahap in his book Limited Liability Company Law provides a definition of a Limited Liability Company (PT) namely a business entity in the form of a legal entity, namely a form of business that is often chosen by business actors in running their business. This is because, limited liability company law provides flexibility and ease to be responsible for legal actions taken by the corporation. This is closely related to the principle of limited liability and separate entity in a company where the parties who are shareholders are responsible only to the number of shares owned.

However, a Notary as a public official has full responsibility for every deed he/she makes, especially if later on the deed is disputed in court and contains legal defects, then it is appropriate to question it. In the deed that is disputed or contains legal defects, it must also be known whether there is an element of pure error from the Notary, or an error from the parties in providing information and other supporting documents.

Notaries as public officials must not ignore the nobility of their dignity. In order for a notary to behave well and in accordance with the provisions, the notary in carrying out his position must be guided by the notary's code of ethics and comply with the Law on the Position of Notaries.

Talking about professional ethics, Liliana Tedjosaputra defines professional ethics as all moral demands that are affected by the implementation of a profession, so that professional ethics pay attention to ideal problems and practices that develop due to the responsibilities and privileges attached to the profession, which are an expression of an effort to explain conditions that are not yet clear and still vague and are the application of general moral values in a special field that is further concretized in the Code of Ethics.

The Notary profession was formed with the aim of helping and serving the public who need physical and authentic evidence or what is called a deed. A Notary does not only focus on a few parties, especially all parties, from the lowest to the highest class.

In carrying out their duties, there are still many notaries who violate the notary code of ethics or related errors. The code of ethics is the main foundation for notaries to carry out their work, but there are still many cases of violations of the code of ethics by Notaries on the grounds of wanting to get clients, this is certainly not in accordance with ethics or moral values. By reading the deed by a Notary, the Notary will gain confidence that what is stated in the deed is in accordance with the wishes of the person appearing and the person appearing has truly understood what is stated in the

deed. In addition, by reading the deed, the Notary is also responsible that the contents of the deed are in accordance with applicable laws and regulations. Then after the reading, the deed must be signed by the person appearing and witnesses in front of the Notary.

Regarding the responsibility of a Notary as a public official related to material truth, it is divided into several points, namely:

Legal Protection for Notaries Based on UUJN, it has regulated the form of legal protection that can be given to Notaries as a profession, this is reflected in Article 66 of UUJN which is formulated "that for the interests of the judicial process, investigation, the public prosecutor or judge with the approval of the Regional Supervisory Council is authorized to take photocopies of the minutes of the deed and/or letters attached to the minutes of the deed or Notary protocol in the Notary's storage and summon the Notary to attend the examination related to the deed he made.

Notary's Right to Refute The Notary's oath of office consists of two parts, the first is called the oath or promise *belovende eed* or also called *politieke eed* and the second is called *zuiveringseed* or also called *beroepseed*. In the first part the Notary swears or promises to obey and be loyal to the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, UUJN and other laws and regulations while in the second part the Notary swears or promises to carry out his office with integrity, honesty, thoroughness, independence and impartiality and will maintain his attitude, behavior and will carry out his obligations in accordance with the code of ethics of the profession, honor, dignity and responsibility as a Notary and will keep the contents of the deed and information obtained in the performance of his office confidential. The right to refuse is an exception to the general provision which states that every person who is capable of giving sanctions is obliged to provide testimony, especially in the deed made before the court, both in civil proceedings and in criminal proceedings.

The minutes of the deed are the original deed that includes the signatures of the parties, witnesses, and the Notary which are kept as part of the Notary Protocol. The Notary Protocol is a collection of documents that are state archives that must be kept and maintained by the Notary in accordance with the provisions of the laws and regulations. The minutes are the main source of the Notarial Deed, without the minutes of the deed there will be no Copy/derivative or citation of the deed. Based on this understanding, the norm in the minutes must contain the signatures of the parties, witnesses and the Notary. Philipus M. Hadjon, that the requirements for an authentic deed are in the form determined by law (standard form) and made by and before a Public Official.

Notarial deeds have two forms, namely, Official Deed *ambtelijke acte* or *verbal acte*, which is a deed made by an official who is given the authority to do so in which the official explains what he saw and what he did, the characteristic is that there are no comparisons and the Notary is fully responsible for making this deed. The second is the Party/Contender (*partij acte*), namely a deed made before an official who is given the authority to do so and a deed made at the request of interested parties. The characteristic of this deed is that there is a comparison of information stating the authority of the parties in carrying out legal actions. contained in the deed.

In relation to the relationship with material truth, the responsibilities of a Notary as a public official are divided into 4 (four), namely:

1. Notary's civil liability. Civil liability for the material truth of a deed made by a Notary is seen from unlawful acts, which can be distinguished based on active or passive nature. The elements are the existence of an unlawful act, the existence of an error and the existence of material losses incurred.
2. Notary's criminal liability. If there is an element of false information in the deed, then the deed is null and void by law, meaning that the law considers that there was never an agreement or it is null and void without a lawsuit. If you want to prove that the Notary is guilty, pay attention to Article 263, Article 264, and Article 266 of the Criminal Code, which must be based on an investigation and proof process by looking for elements of error and intent by the Notary.

3. Notary's responsibilities based on Notary's job regulations. Notary's responsibilities are regulated in UUJN which is referred to in Article 65 relating to Notary's administrative sanctions, and in Article 85 UUJN 5 (five) types of administrative sanctions are determined.
4. Notary Responsibilities based on the Code of Ethics As a public official, a Notary in carrying out his duties must not be free from ethics. The ethics referred to here are the existing Notary professional code of ethics and aim for notaries to truly carry out their duties professionally, morally and skillfully in rational argumentation.

The role of a notary in the sale and purchase of shares is also related to the type of shares on the share certificate, the name of the shareholder is written on it and the method of transferring shares in the name is carried out by means of a deed of transfer of rights, the deed of transfer of rights or a copy thereof must be submitted in writing to the company, either in the form of a deed made before a notary or a deed made privately.

Article 78 paragraph 1 of the UUPT, states that the GMS consists of an annual GMS and other GMS which in practice is known as an Extraordinary GMS (hereinafter referred to as an LB GMS). The annual GMS must be held within a period of no later than 6 (six) months after the end of the financial year as referred to in Article 78 paragraph 2 of the UUPT, while other GMS may be held at any time based on the needs of the company, or at the request of the company's shareholders.

The need for an Extraordinary General Meeting of Shareholders for a company is related to activities that require the approval of a General Meeting of Shareholders as stated in the company's articles of association, laws and regulations and important activities that are not required by the rules.

The purpose of holding a GMS, whether based on statutory regulations or the articles of association, is so that shareholders have the opportunity to know and evaluate the company's activities and management without interfering with the company when the company is carrying out business activities.

During the GMS, they can cast their votes by approving the meeting agenda, rejecting the meeting agenda, or abstaining (not voting). The meeting agenda itself can be:

- Plan to change the articles of association;
- Plans for the sale of assets and the provision of debt guarantees;
- Appointment and dismissal of members of the Board of Directors and/or Board of Commissioners;
- Financial Report submitted by the Board of Directors;
- Accountability of the Board of Directors;
- Merger, amalgamation and acquisition plan;
- Plan to dissolve the company.

The notary's responsibility in resolving the issue of cancellation of a fake (proforma) share sale and purchase deed by the court is an important aspect to understand, considering that the notary is the party responsible for making the authentic deed. Ideally, the notary's responsibility in resolving the issue of cancellation of a fake (proforma) share sale and purchase deed by the court includes preventive, remedial, and collaborative aspects. The notary must ensure that every step taken complies with applicable laws, maintains the integrity of the profession, and protects the interests of all parties involved.

### **C. Legal Analysis Used by Judges in Cancelling Deeds of Sale and Purchase of Proforma Shares in Supreme Court Decision Number 188 PK/PDT/2020**

The profession of a notary requires individual and social responsibility, especially compliance with positive legal norms and a willingness to submit to a professional code of ethics, and is even mandatory so that it will strengthen existing positive legal norms.



In the Case at the Bekasi District Court Number 334/Pdt.G/2014/PN.BKS filed by PT. Da Fen Indonusa (Plaintiff I), Djoko Effendy Bostan (Plaintiff II), Indra Widya Agustina (Plaintiff III). With Defendants PT. Wira Prima Energi (Defendant I), PT. Nusa Cipta Energi, (Defendant II), Dahlan Iskan (Defendant III), Tan Hedy Laurent (Defendant IV); PT. General Energy Indonesia (Defendant V), Notary Maria Rahmawati Gunawan, SH, (Defendant VI). Minister of Law and Human Rights of the Republic of Indonesia Qq Director General of General Legal Administration (Defendant VII).

In the Case at the Bandung High Court Decision Number: 467/PDT/2016/PT.BDG, Supreme Court Decision Number: 1681 K/Pdt/2017 submitted by the defendant who lost the first instance court decision. At the First Instance Court, the Plaintiff won, at the appeal level, the appeal application of PT. Wira Prima Energi (originally Defendant I), PT. Nusa Cipta Energi, (originally Defendant II), Dahlan Iskan (originally Defendant III), Tan Hedy Laurent (originally Defendant IV); PT. General Energy Indonesia (originally Defendant V), the appeal application was accepted but the court upheld the first instance decision.

Then, the appellate parties continued their appeal to the Supreme Court and their appeal was rejected. However, the Notary filed a judicial review through the Supreme Court Decision Number: 188 PK/Pdt/2020, although he lost at the PN, PT, and Cassation, but in the PK process the Notary won, with Novum (new evidence) submitted by Defendant VI/Applicant for Judicial Review is a Notary/Land Deed Official who made the deeds with the following numbers: Notarial Deed Number 4 dated January 4, 2011, Notarial Deed Number 5 dated January 4, 2011, Notarial Deed Number 6 dated July 12, 2011, Notarial Deed Number 30 dated June 21, 2011 and Notarial Deed Number 35 dated June 23, 2011 at the will, desire or request of Plaintiff I, Plaintiff II, Plaintiff III and Defendant I, Defendant II to carry out the sale and purchase of shares with Defendant V. The parties who carried out the sale and purchase of shares have also signed the original minutes before Defendant VI/Applicant for Judicial Review as Notary. Defendant VI has also explained the contents of the deeds, including that the deeds also function as evidence or receipts for payment for the sale and purchase of shares.

Analysis of the PK Decision, that the Notary made an Authentic Deed only to express the will of the parties. An Authentic Deed already requires that the receipt evidence has been proven by the signatures of the parties in the deed. If it is proven that the share sale and purchase agreement is an Unlawful Act (PMH) which is only pretend (Proforma), then it is not the Notary's responsibility. In accordance with Article 65 of the UUN which stipulates that a Notary is not responsible for the contents of the deed he made if the contents are statements or statements from the parties, because in this case the Notary only acts as a witness.

The Supreme Court's Judicial Review (PK) Decision Number 188 PK/Pdt/2020 relating to the sale and purchase of proforma shares and the notary's responsibility in relation to the Supreme Court Decision Number 702 K/Sip/1973 dated September 5, 1973 can provide an important basis in terms of jurisprudence. This decision provides guidance on the legal principles applicable in cases of notary liability and the validity of authentic deeds that can be used to assess the validity of the PK decision. Relationship with PK Decision No. 188 PK/Pdt/2020 In the case of PK No. 188 PK/Pdt/2020, the core issue involves the legal responsibility of the parties involved in the preparation and implementation of the proforma share sale and purchase deed. The cancellation of the contents of the share sale and purchase deed decided by the court in this case raises the issue of the validity of the deed and the notary's responsibility, which was finally submitted for review at the PK level.

Supreme Court Decision Number 702 K/Sip/1973 dated 5 September 1973 essentially states that the function of a Notary is only to record and write down whatever is desired and stated by the parties appearing before the Notary and the Notary does not have the responsibility to assess the material truth of the data or information stated by the parties in their deed. Relevance of Supreme Court Decision Number 702 K/Sip/1973 dated September 5, 1973 has important relevance in affirming the principle that: An authentic deed is only valid if it is made in accordance with the

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actual legal facts. If it is proven that the deed contains incorrect or proforma information, the deed can be declared null and void by the court. Supreme Court Decision Number 702 K/Sip/1973 dated September 5, 1973 underlines that even though a deed is considered formally authentic, its substance must still comply with material truth. If it is proven that the deed was made on the basis of a proforma agreement, then the deed cannot be used as valid evidence in court, as happened in the PK decision No. 188 PK/Pdt/2020. Therefore, the cancellation of the deed by the court in the case of the sale and purchase of proforma shares reflects the application of this jurisprudence.

Study of Supreme Court PK Decision No. 188 PK/Pdt/2020 In PK Decision No. 188 PK/Pdt/2020, the PK application was filed by a notary who objected to the previous court decision stating that the Notary was charged with joint and several liability. The Supreme Court, in this PK decision, emphasized the basic principles regarding the Notary's responsibility, and stated that an authentic deed can be canceled if there is any discrepancy with the actual legal facts. This is in accordance with the doctrine in Supreme Court Decision Number 702 K/Sip/1973 dated September 5, 1973, that an authentic deed must reflect the legal truth, and must not contain false or proforma information. A proforma deed, which in the context of buying and selling shares is often used to deceive third parties, can be considered a form of unlawful act (PMH) as regulated in Article 1365 of the Civil Code. Relationship between PK Decision and MA Jurisprudence 702/1953 Supreme Court Decision No. 188 PK/Pdt/2020 is in line with the principles that have long been established in Supreme Court Decision Number 702 K/Sip/1973 dated September 5, 1973 concerning the validity of authentic deeds and the responsibilities of notaries.

Notary liability is one of the important issues in the context of Indonesian law, especially when the authentic deed he made is canceled by the court. In the context of proforma share sales and purchases, the deed made by the notary can be canceled if it is found that the deed does not meet the formal or substantial requirements stipulated in the laws and regulations, or if the deed violates civil law principles, such as good faith.

The notary's liability includes criminal, civil, and administrative liability, depending on the cause and impact of the cancellation of the deed. The notary is required to ensure that all legal aspects of the transaction are met, including the terms of the sale and purchase of shares in the proforma deed. This negligence can cause losses to parties who rely on the deed as evidence of a valid transaction. Criminal liability of a notary can occur if an element of intent or gross negligence (*culpa lata*) is found in the making of the deed, especially if the notary is involved in fraud or falsification of documents that lead to the preparation of a false or invalid deed.

In the case of proforma share sales and purchases, if the notary is proven to have intentionally approved or facilitated a transaction that is invalid or not in accordance with reality, the notary may be subject to criminal sanctions based on Article 263 of the Criminal Code concerning forgery of documents. In addition, Article 266 of the Criminal Code which regulates false statements in authentic deeds can also be applied if the notary knows that the statement in the deed does not correspond to reality, but still continues to make the deed.

Administrative Accountability of Notaries From an administrative perspective, the accountability of notaries is regulated in Law No. 2 of 2014 concerning the Position of Notaries (UUJN), specifically Article 16 paragraph (1) letter a which states that notaries must act honestly, independently, and impartially in carrying out their duties. If a notary violates this provision, he can be subject to administrative sanctions in the form of a warning, temporary suspension, or permanent suspension by the Regional Supervisory Board or the Central Supervisory Board.

When a proforma deed of sale and purchase of shares made by a notary is canceled by the court, this can be the basis for imposing administrative sanctions, if it is proven that the notary did not carry out his duties properly. The Theory of Notary Legal Liability associated with the cancellation of the contents of the deed can be analyzed through various legal theories. One of them is the theory of vicarious liability, where the notary as an official carrying out state functions is personally responsible for actions taken in his official capacity. However, in this case, the notary's liability must also be seen from the perspective that the notary is not responsible for the

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substance of the agreement made by the parties. The notary must ensure that the deed made is in accordance with the valid terms of the agreement and provides legal certainty for the parties. In the event that the deed is cancelled, the notary's liability will depend greatly on whether negligence or intent was involved in making the invalid deed.

In the context of notary liability related to the cancellation of a deed containing a proforma share sale and purchase through a court decision, there are three aspects of criminal, civil, and administrative liability. Criminal liability of a notary can arise if there is an indication of intent or negligence that leads to a criminal act, such as falsification of documents or abuse of authority in making a deed. Criminal Legal Basis Article 263 of the Criminal Code regulates the crime of falsifying documents. If a notary is found to have made a deed whose contents are falsified or not in accordance with reality, then criminal sanctions can be imposed. Article 264 of the Criminal Code which essentially regulates the falsification of authentic documents carried out in authentic deeds, which are notarial products. Article 266 of the Criminal Code which essentially regulates a person who includes false information in an authentic deed, including a notary who assists or approves of such actions, can be subject to criminal penalties. If it is proven that the notary played a role in the preparation of a fake proforma share sale and purchase deed, then criminal liability can be imposed based on these articles.

The civil liability of a notary can occur if the contents of the deed he made are null and void or harm the interested parties due to errors or negligence in carrying out his duties. Article 1365 of the Civil Code which essentially regulates the Liability for unlawful acts. A notary can be held liable if his actions or negligence in making a proforma share sale and purchase deed cause losses to another party. Article 1366 of the Civil Code which essentially regulates the Liability due to negligence that causes losses to others. Article 1869 of the Civil Code which essentially regulates the nullity of an authentic deed. If a deed is declared null and void by the court, then the deed no longer has legal force. A notary can be asked for civil compensation by the injured party if the deed he made is canceled by the court.

Administrative Responsibility Notaries also have administrative responsibility for violations in the implementation of their duties. If the deed they made is declared null and void by the court because it contains inconsistencies or errors made by the notary, then they can be subject to administrative sanctions. Article 84 of the UUJN which essentially regulates the administrative sanctions that can be imposed on notaries if they violate the provisions of the UUJN, which include verbal warnings, written warnings, temporary suspension, and dishonorable dismissal. Article 85 of the UUJN which essentially regulates the cancellation of a deed by the court and its impact on the notary, which is included in administrative sanctions. Administrative sanctions against notaries can be in the form of warnings, temporary revocation of permits, or even dismissal based on violations in the implementation of their duties as a notary.

The PK decision won by the Notary is a form of legal protection for the notary who has the right to fight for his rights, in this case as evidence that the cancellation of the notarial deed due to parties who do not act in good faith is not attached to the responsibility of the notary who must be charged with legal responsibility because the notary only expresses the wishes of the parties.

## **CLOSING**

### **Conclusion**

1. The notary's liability for the deed of sale and purchase of shares that he/she has made and is cancelled by the Court can be in the form of civil liability if the deed of sale and purchase of shares made by the Notary is cancelled by the court due to the Notary's error or negligence, the injured party can claim civil compensation. The Notary should not be asked to compensate for the losses suffered by the related parties due to the cancellation of the deed because it is absolutely the responsibility of one of the parties who has harmed the other party because they have carried out the proforma sale and purchase of shares. Administrative Liability Notaries who are proven to have committed violations in making a deed can be

subject to administrative sanctions by the Notary Supervisory Board. These sanctions can be in the form of reprimands, warnings, suspensions, or even dismissal from the Notary position. Criminal Liability If it is proven that the Notary intentionally committed an unlawful act, such as falsifying documents or providing false information in the deed, the Notary can be subject to criminal sanctions in accordance with the Criminal Code (KUHP). Accountability Process, Examination by the Notary Supervisory Board When there is a report or complaint regarding the Notary's error or negligence in making a deed, the Notary Supervisory Board will conduct an examination. If a violation is found, the Supervisory Board can impose sanctions according to the level of error committed. The legal basis for criminal, civil, and administrative liability is that the notary's criminal liability can be related to Article 263 of the Criminal Code, Article 264 of the Criminal Code, Article 266 of the Criminal Code. The notary's civil liability is related to Article 1365 of the Civil Code, Article 1366 of the Civil Code, Article 1869 of the Civil Code. The notary's administrative liability for violations in carrying out his duties can be related to Article 84 of the UUJN, and Article 85 of the UUJN.

2. Legal protection for the injured party in the sale and purchase of shares due to the cancellation of the share sale and purchase deed by the court can be done through various legal mechanisms. Some forms of legal protection that can be attempted include Compensation so that the injured party can file a claim for compensation to the party responsible for the losses experienced, this includes reimbursement of costs that have been incurred, including share purchase money, transaction costs, and other costs arising from the cancellation. The importance of the non-proforma share sale and purchase position so that it does not have implications for the cancellation of the proforma share sale and purchase deed, so that the non-proforma share sale and purchase position will provide protection for the parties. The cancellation of the share sale and purchase deed requires adjustments in the recording of shares in the company. Shares that have been recorded in the name of the buyer must be re-recorded in the name of the seller. The court decision provides legal certainty regarding the status of share ownership and minimizes disputes in the future. Cancellation of the share sale and purchase deed can affect the stability and operations of the company, especially if it involves the main or majority shareholder. This cancellation can have a negative impact on investor confidence in the company, especially if this case becomes public and creates uncertainty. The notary also needs to obtain legal protection for the act of buying and selling pro forma shares from one of the parties facing him who does not apply the principle of good faith in the process of buying and selling shares.
3. Legal analysis used by the judge in the cancellation of the proforma share sale and purchase deed in the Supreme Court Decision Number 188 PK/PDT/2020, the Supreme Court judge decided to cancel the proforma share sale and purchase deed. Legal considerations carried out by the judge include Examination of Notary Procedures by ensuring that the Notary has carried out his duties in accordance with the UUJN, including verification of the identities of the parties and compliance with the procedures for making the deed. The judge also considered the share sale and purchase agreement valid according to civil law, by examining the existence of a valid agreement, the competence of the parties, a clear object of the agreement, and a lawful cause. Examining the application of the law by the previous court. Determining the legal consequences of the cancellation, including regulating the return to the initial position and considering reasonable compensation for the injured party. In addition, the PK Decision proved that the Notary was not guilty because the loss was purely caused by one of the parties who did not act in good faith in carrying out the share sale and purchase. Thus, the preliminary agreement in this case cannot be categorized as a preliminary agreement because it has been canceled by the Court.

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