

**LEGAL ANALYSIS OF TRANSFER OF SHARES TO PARTIES
OTHER THAN THE HEIRS OF SHARE OWNERS WHICH
CAUSE ACTS UNLAWFUL (CASE STUDY OF MEDAN
DISTRICT COURT DECISION NO. 552/PDT.G/2018/PN.MDN)**

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ABSTRACT

Shares are movable objects so that shareholders can transfer shares to other parties by fulfilling the requirements for transfer of rights as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Shares can be transferred to the heirs of the shareholder if the shareholder dies. The transfer of shares due to inheritance is regulated in Article 57 paragraph (2) of the UUPT. This provision confirms that shares are an object of inheritance. Inheritance for Christians is regulated in civil law provisions (KUH Perdata). Article 833 of the KUH Perdata stipulates that the right to ownership of the heir is legally transferred to the heirs. This provision states that the heirs have rights to the shares owned by the heir so that if the shares are transferred or distributed to other parties without the consent of the heirs, it is a form of unlawful act.

This research is normative legal research with a statute approach and case study. The results of the study found that limited liability companies secretly transferred shares by distributing shares owned by deceased shareholders to other parties without the consent of the shareholder's heirs as in the Medan District Court Decision Number: 552/Pdt.G/2018/PN.Mdn. Based on the evidence in the trial, the Judge in the decision stated that the limited liability company's actions in distributing shares owned by deceased shareholders to other parties without the consent of the heirs was an unlawful act because according to the UUPT, limited liability companies are not shareholders so that limited liability companies do not have the right and capacity to distribute the shares.

Keywords: Transfer, Shares, Inheritance, Unlawful Actions.

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INTRODUCTION

Limited Liability Company is a legal entity established based on an agreement to conduct business activities with authorized capital divided entirely into shares, and meets the requirements stipulated in the law and its implementing regulations. ¹Article 1 number (1) of Law Number 40 of 2007 concerning Limited Liability Companies explains that a limited liability company is a company that collects as much capital as possible, ²where the authorized capital of a limited liability company consists of shares. Then in Article 31 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPA) that "The authorized capital of the Company consists of the entire nominal value of the shares".

Shares are movable objects that give the shareholder the right to attend and vote at the General Meeting of Shareholders (GMS) , as well as receive dividend payments and remaining assets resulting from the liquidation of the PT as stated in Article 60 paragraph (1) of the PT Law ³. Subekti is of the opinion that shares or shares are considered to be movable objects as explained in Article 511 number (4) of the Civil Code which ⁴confirms that:

"Shares or shares in a money trading partnership, trading partnership or company partnership, even though the objects of the partnership in question and the company are immovable property. Such shares or shares are considered to be movable property, but only for the participants as long as the partnership is running . "

In the Civil Code there are several articles that regulate property, Article 499 of the Civil Code stipulates that according to the law, property is every object and every right that can be an object of ownership rights. Property in terms of whether it is permanent or not is divided into 2 (two) types, namely:

1. Immovable Objects;
2. Moving Objects.

The property rights to shares will be attached to the shareholder after the shares are recorded in the name of the owner on the Share Registration List (DPS) as regulated in Article 52 paragraph (2) of the UUPA. The Share Registration List (DPS) is

¹Frans Satrio Wicaksono, *Tanggung Jawab Pemegang Saham, Direksi, Dan Komisaris Perseroan Terbatas (PT)*, (Jakarta: Visimedia, Cet.1, 2009), p 2..

² Man. S Sastrawijaya, *Perseroan Terbatas Menurut Tiga Undang-Undang*, (Bandung: PT. ALUMNI, 2008),p. 77..

³Frans Satrio Wicaksono , *Op.cit .*, p. 63.

⁴ Subekti, R., Tjitrosudibio, R, *Kitab Undang-Undang Hukum Perdata, Burgerlijk Wetboek dengan tambahan Undang-Undang Pokok Agraria, Undang-Undang Perkawinan* (Jakarta: PT. Pradnya Paramita, Cet. 31, 2001), hlm. 160.

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conducted to record the name of the shareholder or if there is a transfer of share ownership either by sale or purchase or by law, namely due to inheritance.

In this regard, the UUPT does not explicitly regulate the transfer of shares as an object of inheritance, however Article 57 of the UUPT states:⁵

- (1) The articles of association can regulate the requirements regarding the transfer of rights to shares, namely:
 - a. the requirement to offer first to shareholders with certain classifications or other shareholders;
 - b. the requirement to obtain prior approval from the company's organs; and/or
 - c. the requirement to obtain prior approval from the authorized agency in accordance with the provisions of laws and regulations.
- (2) The requirements as referred to in paragraph (1) do not apply in the case of transfer of rights to shares due to transfer of rights by law, except for the requirements as referred to in paragraph (1) letter c regarding inheritance.

The provisions of Article 57 paragraph (2) of the UUPT above basically regulate the transfer of rights to shares which can occur by law due to death or inheritance. So it can be said that shares are part of the inheritance object. Furthermore, Article 56 paragraph (3) of the UUPT clarifies the position of shares as an inheritance object, in this case the article explains that:

"The Board of Directors is required to record the transfer of rights to shares, the date and day of the transfer of said rights in the shareholders register or special register and notify the Minister of changes in the composition of shareholders to be recorded in the Company register no later than 30 (thirty) days from the date of recording the transfer of rights."

What is meant by "notifying the Minister of changes in the composition of shareholders" is notification to the Minister of Law and Human Rights regarding changes in the composition of shareholders caused by inheritance. In the case where shares are not owned by one person, with the occurrence of an inheritance event, then one of them must be a representative of the shareholders as regulated in Article 52 paragraph (5) of the UUPT.⁶

⁵Frans Satrio Wicaksono, *Op.cit.*, pp. 191-192.

⁶Ida Ayu Putu Widya Indah Sari., Ni Wayan Sukeni, *Saham Sebagai Objek Pewarisan Ditinjau Dari Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, (Kertha Semaya: Journal

Inheritance is one of the reasons for the transfer of ownership, namely the transfer of property and material rights of the deceased to the heirs based on law.⁷ The assets that are the object of inheritance can be tangible and intangible objects.⁸ That the assets that are the object of inheritance in the form of tangible objects, one of which is shares. The legal event of share inheritance is interesting to study because the shares of a deceased person do not belong to the company. However, it is the right of the heirs of the share owner in accordance with the provisions of Article 57 paragraph (2) of the UUPT which stipulates that the transfer of rights to shares can occur due to law, one of which is caused by death or inheritance.⁹ So that the company does not have the right to control or take over ownership of the shares.

The transfer of shares due to death by way of inheritance is one of the factors that causes inheritance rights between one person and another, or in other words, the cause of mutual inheritance is regulated in inheritance law. Inheritance law is a law that regulates the transfer/transfer of ownership rights of the testator's inheritance as regulated in Article 833 of the Civil Code.¹⁰ Because inheritance is very closely related to the scope of human life, because every human being must experience a legal event called death. The inheritance law that applies to Christians is subject to the provisions of western civil inheritance law or the Civil Code.

However, in this study, a limited liability company transfers shares owned by a deceased shareholder to another party outside the shareholder's heirs, as in the Medan District Court Decision Number 552/Pdt.G/2018/PN.Mdn. So it is necessary to know about the legal provisions for the transfer of shares from a deceased shareholder and the transfer of shares to another party outside the shareholder's heirs without going through a General Meeting of Shareholders (GMS) can it be qualified as an unlawful act.

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<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/13150>, diakses 16 Maret 2024.

⁷ Muhibbussabry, *Fikih Mawaris*, (Medan: CV Pusdikra Mitra Jaya, 2020), p 17.

⁸ I Ketut Markeling, *Hukum Perdata, Hukum Waris*, (Denpasar: Fakultas Hukum Universitas Udayana, 2016), p 37.

⁹ Frans Satrio Wicaksono, *Loc.cit.*, p. 192.

¹⁰ Subekti, R., Tjitrosudibio, R, *Op.cit.*, p. 322.

METHOD

The method used in this paper is a normative legal research method which is carried out based on main legal materials by examining theories, concepts, legal principles, norms and rules from statutory regulations.¹¹

The approach method used in this research is the statutory approach. This statutory approach is an approach taken by examining all laws and regulations related to the legal issue being handled.¹² Meanwhile, case studies are an in-depth qualitative research approach regarding groups of individuals, institutions, and so on over a certain period of time.¹³

DISCUSSION

Shares as Movable Objects and as Heritage Objects from a Legal Perspective in Indonesia

According to M. Yahya Harahap in his book *Limited Liability Company Law*, shares are an amount of money invested by investors in a Company. For this investment, shareholders (*aandelhouder, shareholder*) generally receive profits from the Company in the form of dividends in proportion to the amount of money invested.¹⁴ Shares are the personal property of shareholders in the form of movable property that cannot be touched (*intangibile*), but can be transferred (*fonsferable*). Therefore, shareholders can sell their shares or pledge them in the form of a "pawn" (*pand, pledge*) or in the form of a "fiduciary". They can even be transferred to someone else. So that all rights attached to the shares are transferred to the recipient of the shares in a package.

Shares as movable property according to Indonesian law because share ownership in a Limited Liability Company can be transferred in accordance with Article 60 paragraph (1) of the UUPT by classifying shares as movable property,¹⁵ so that ownership can be transferred to another party in the form of legal acts such as buying and selling, exchanging, granting, or by the occurrence of a legal event due to death. Even share ownership as movable property gives "property rights" to its owner

¹¹ Eka N.A.M. Sihombing, "Perkembangan Kewenangan Pembatalan Peraturan Daerah dan Peraturan Kepala Daerah; Kajian Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015 dan Nomor 56/PUU-XIV/2016", *Jurnal Yudisial* 10, no. 2 (Agustus 2017), hlm. 226.

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta Timur: Prenadamedia Group, 2019)

¹³ Eko Sugiarto, *Menyusun Proposal Penelitian Kualitatif: Skripsi Dan Tesis*, (Yogyakarta: Suaka Media, 2015), p 12.

¹⁴ M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, Cet. 6, 2016), p, 257.

¹⁵ Republik Indonesia, *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, Pasal 60 ayat (1), p 15.

as regulated in the explanation of Article 60 paragraph (1) of the UUPT. Therefore, the owner of shares has the right to sell, grant, pledge, and collect proceeds from the shares.¹⁶

Shareholders can claim their rights to the shares in the hands of anyone. Because shares are movable objects, they must pay attention to Article 1977 of the Civil Code which regulates the principle of movable objects. This is in line with the provisions of Article 499 of the Civil Code, shares are viewed as movable objects. Article 499 of the Civil Code defines goods as every object and every right that can be the object of ownership rights. The provisions in Article 511 number (4) of the Civil Code emphasize that:¹⁷

“Shares or shares in a money trading partnership, trading partnership or company partnership, even though the objects of the partnership in question and the company are immovable property. Such shares or shares are considered to be movable property, but only for the participants as long as the partnership is running.”

According to Hatta Isnaini Wahyu Utomo, shares as stated in Article 60 paragraph (1) of the UUPT are movable objects. In the explanation of Article 60 paragraph (1) of the UUPT, it is stated that ownership of shares as movable objects provides property rights (*vermogensrecht*) to the owner. Property rights are absolute rights over an object where these rights provide direct power over an object and can be defended against anyone. ¹⁸So from the provisions above, shares are movable objects and their property rights are attached to the owner of the shares.

If the deceased shareholder is a Christian, the legal provisions regarding the transfer of ownership rights from the testator to his/her heirs are stipulated in the Civil Code in Articles 830, 832, and 833. Article 830 of the Civil Code states, “Inheritance is only open (can be inherited by another party) if a death occurs”. This means that the transfer of ownership rights of assets caused by inheritance law events can occur if the testator has died. Inheritance can transfer ownership rights to heirs based on blood relations or marriage as stated in Article 832 of the Civil Code.

Abdulkadir Muhammad defines inheritance law as all legal regulations governing the transfer of inheritance property from the testator due to death to the heirs or designated persons. From this formulation, it can be seen that the elements contained in the definition of inheritance law consist of the subject of inheritance law, inheritance

¹⁶M. Yahya Harahap, *Op.cit* , p. 274.

¹⁷Subekti, R., Tjitrosudibio, R, *Op.cit* , Article 511 paragraph 4, p.160.

¹⁸Hatta Isnaini Wahyu Utomo, *Hukum Perseroan*, (Surabaya: Fakultas Hukum, Universitas Yos Soedarso, Bahan Ajar, 2017),p. 14.

law events, inheritance law relationships, and objects of inheritance law.¹⁹ Another opinion was put forward by A. Pitlo as quoted by Sudikno Mertokusumo, who argued that inheritance law is a collection of regulations governing the law regarding wealth due to someone's death, namely regarding the transfer of wealth left by the deceased and the consequences of this transfer for the people who receive it, both in their relationship with them, and in their relationship with third parties.²⁰

The provisions of Article 833 of the Civil Code explain that heirs, by law, automatically receive ownership rights to all goods, all rights and all receivables of the deceased. Shares as capital for the establishment of a limited liability company are obtained from capital contributed by the founders of the company themselves which can be transferred if the shareholder has died. Implicitly, several articles in the UUPT explain as stated in Article 57 paragraph (2) of the UUPT as a requirement for the transfer of share ownership from the deceased shareholder to his heirs. The transfer of share ownership rights due to inheritance legal events does not occur by itself, but rather through the procedures regulated in the UUPT Article 57 of the UUPT:²¹

Based on the description above, shares can be classified as an object of inheritance. Referring to Article 833 of the Civil Code, the transfer of ownership of rights to shares to heirs occurs automatically when the shareholder dies. Article 57 paragraph (2) of the UUPT regulates the transfer of shares due to inheritance so that shares are an object of inheritance. Then, Article 56 paragraph (3) of the UUPT clarifies the position of shares as an object of inheritance, in this case the article explains that, "*The Board of Directors is obliged to record the transfer of rights to shares, the date, and the day of the transfer of said rights in the shareholder register or special register and notify the Minister of changes in the composition of shareholders to be recorded*

¹⁹ Muhammad Abdulkadir, *Hukum Perdata Indonesia*, (Bandung: Citra Aditya Bakti, 2007), p, 267.

²⁰ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, (Yogyakarta: Liberty, 2002), p 180.

²¹ Pasal 57: Dalam anggaran dasar dapat diatur persyaratan mengenai pemindahan hak atas saham, yaitu:

- a. Keharusan menawarkan terlebih dahulu kepada pemegang saham dengan klasifikasi tertentu atau pemegang saham lainnya;
- b. Keharusan mendapatkan persetujuan terlebih dahulu dari Organ Perseroan; dan/atau;
- c. Keharusan mendapatkan persetujuan terlebih dahulu dari instansi yang berwenang sesuai dengan ketentuan peraturan perundang-undangan.

Persyaratan sebagaimana dimaksud pada ayat (1) tidak berlaku dalam hal pemindahan hak atas saham disebabkan peralihan hak karena hukum, kecuali keharusan sebagaimana dimaksud pada ayat (1) huruf c berkenaan dengan kewarisan.

in the Company register no later than 30 (thirty) days from the date of recording the transfer of rights ."²²

Mechanism for Regulating Share Transfer Due to Inheritance in the Limited Liability Company Law

The requirements for transferring rights to shares as regulated in Article 57 of the UUPT and also in the Articles of Association (AD) of the PT can regulate the requirements regarding the transfer of rights to shares, namely as follows:²³

- a. The requirement to offer first to shareholders with certain classifications or other shareholders.

In connection with the requirement to first offer the transfer of rights to shares due to other shareholders, there are 2 (two) provisions that need to be considered, namely:

- 1) Shareholders can offer it to third parties, if within a period of 30 (thirty) days, other shareholders do not buy.

Based on Article 58 paragraph (1) of the UUPT, the obligation to offer in advance to shareholders of a certain classification or other shareholders, "falls" or is deleted:

- (a) If within a period of 30 (thirty) days from the date the offer is made, it turns out that the other shareholders in question "do not buy",
- (b) in such a case, the selling shareholder can offer and sell his shares to a third party.

- 2) The selling shareholder has the right to withdraw the offer.

Article 58 paragraph (2) gives the selling shareholder the right to "withdraw" (*herroepen, revoke*) the offer according to the following references:

- (a) after a period of 30 (thirty) days has passed, other shareholders do not purchase the shares offered; and
- (b) After the offer is withdrawn, there is no longer an obligation for the shareholder to offer to shareholders of a certain classification or other shareholders, because the obligation to offer first in this way only applies 1 (one) time.

What is meant by "only valid 1 (one) time" according to the Explanation of Article 58 paragraph (3) of the UUPT, the Company's Articles of

²² Pasal 56 ayat (3), *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, *Op.cit*, hlm. 14-15.

²³M. Yahya Harahap, *Ibid* , p. 270.

Association may not include offering shares more than 1 (one) time before offering them to a third party.

b. Requirement to obtain prior approval from the Company's organs.

This second requirement is the requirement to obtain prior approval from the Company's organs. The Company's organs according to Article 1 number 2 of the UUPT are the GMS, the Board of Directors, and the Board of Commissioners. Furthermore, Article 59 of the UUPT determines the procedure for granting approval for the transfer of rights to shares that require the approval of the Company's organs. In this regard, if the Articles of Association determine that the transfer of rights to shares must have prior approval from the Company's organs, the procedure is as follows:

- (1) Approval or rejection must be given by the Company's organ in writing *and* must be given within a maximum period of 90 (ninety) days from the date the Company's organ "receives" the request for approval of the transfer of said rights.
- (2) If the time period is exceeded, it is deemed to have approved the transfer of rights to shares, meaning that if the time period of 90 (ninety) days is exceeded or passed (the company organ does not provide written approval) then the company organ is deemed to have approved the transfer of rights to the shares in question.
- (3) The Company's Organ approves the transfer, if within the said period the Company's organ gives written approval, the transfer of rights to shares must be carried out in a Deed of transfer of rights to shares in accordance with the provisions of Article 56 of the UUPT, which can be in the form of an Authentic Deed (Notarial Deed) or a Private Deed. And the transfer of rights to shares must be carried out within a maximum period of 90 (nine hundred) days from the date of approval given by the Company's organ.

c. Requirement to obtain prior approval from the relevant authorities.

The third requirement mentioned in Article 57 paragraph (1) UUPT letter c is the requirement to obtain approval from the authorized agency in accordance with the provisions of the law. This requirement is not always attached to every transfer of rights to shares. This requirement is only attached if the provisions of certain laws and regulations regulate it. Furthermore, according to Article 57 paragraph (2) UUPT, the requirements stipulated in Article 57 paragraph (1) UUPT do not apply if the transfer of rights to shares

occurs due to the transfer of rights due to law, including transfer of rights due to inheritance, merger, amalgamation or separation.

According to M. Yahya Harahap in his book *Limited Liability Company Law*, the last sentence of Article 57 paragraph (2) of the UUPT above, which reads "except for the requirement as referred to in paragraph (1) letter c regarding inheritance". This sentence is somewhat contradictory to the previous sentence which states that the requirement referred to in Article 57 paragraph (1) of the UUPT does not apply in cases where the transfer of rights to shares occurs by law. Then the last sentence states, regarding inheritance, the requirement letter c applies, namely the requirement to obtain prior approval from the authorized agency. According to him, it is not clear what the connection is between the transfer of rights due to inheritance and the approval of the authorized agency.

Considering this unclear provision, it is better to assume that the last sentence does not exist. Thus, the provisions applied to the transfer of rights to shares that occur due to law do not apply to the requirements referred to in Article 57 paragraph (1) of the UUPT.²⁴

Criteria for Share Transfers That Can Be Qualified as Unlawful Acts

Share transfer is a process of transferring rights to shares, UUPT regulates the requirements for transferring rights. Transfer of rights to shares in a limited company is regulated in the articles of association of the limited company which must also be adjusted to the provisions of laws and regulations (Article 55 UUPT). The process of transferring rights to shares is made in a deed of transfer of rights, in the explanation of Article 56 paragraph (1) UUPT explains that the deed of transfer of rights can be made in an authentic deed or a private deed. However, before the deed of transfer of rights is made, it must first fulfill the requirements stipulated by UUPT Article 57 paragraph (1).

The criteria for the transfer of shares in its implementation must meet the provisions of Article 57 paragraph (1) of the UUPT, namely that it must first be offered to shareholders with certain classifications or other shareholders, first obtain approval from the company's organs (GMS) and must first obtain approval from the authorized agency in accordance with the provisions of the law.²⁵ If the company or other shareholders do not implement the requirements for the transfer of rights as required in

²⁴M. Yahya Harahap, *Op.cit*, p. 271-274.

²⁵ Pasal 57 ayat (1), *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, *Op.cit*, hlm. 15

Article 57 paragraph (1) of the UUPT, it can be qualified as an unlawful act. The formulation of an unlawful act in the narrow sense is " any act that is contrary to the rights of others that arises due to the Law ".²⁶Therefore, if the transfer of rights in the context of the transfer of shares does not comply with the provisions of the law as regulated in Article 57 paragraph (1) of the UUPT, it is already an unlawful act.

UUPT excludes the transfer of shares that do not have to meet the requirements as stipulated in Article 57 paragraph (1), namely one of which is the transfer of shares due to the death of the shareholder or the transfer of shares due to inheritance. The transfer of shares due to inheritance is regulated in Article 57 paragraph (2) of UUPT, the process of transferring rights to shares from the deceased shareholder to his/her heirs without having to fulfill the provisions of Article 57 paragraph (1) of UUPT. This means that if a shareholder dies, the heirs only need to notify the limited company through the board of directors and the board of directors is legally required to record the transfer of rights to the shares in the shareholder register and notify the Minister through the Ministry of Law and Human Rights of the Republic of Indonesia of any changes in the composition of shareholders due to inheritance.

If the board of directors does not carry out the matters stipulated in the UUPT regarding the transfer of shares due to inheritance, for example not transferring shares owned by a deceased shareholder to his/her heirs but instead transferring shares to another party outside of the heirs, it is certain that the limited company can be qualified as a form of unlawful act because it causes losses for the heirs of the deceased shareholder, which is a form of conflict with the law or the rights stipulated by law are not fulfilled. In addition, the board of directors must also record the transfer of shares due to inheritance because if it is not recorded and not notified to the Minister in accordance with the time limit stipulated in the UUPT, namely 30 (thirty) days from the time the deed of transfer of rights is made as stipulated in Article 56 paragraph (3) and (4) of the UUPT, it can cause losses for the new shareholders (in this case the heirs as shareholders due to inheritance). As a result, shareholders do not receive the same treatment as other shareholders as stipulated in Article 52 paragraph (1) of the UUPT, namely attending and voting at the GMS, receiving dividend payments and remaining assets resulting from liquidation and exercising other rights based on the UUPT.²⁷

In addition, a limited company represented by a director is also prohibited from transferring shares owned by shareholders who place their shares in the limited company or company shares (company assets) either in the form of debt. Although the

²⁶MA Moegni Djojodirdjo *Perbuatan Melawan Hukum*, (Jakarta:Pradnya Paramita, 1979) .

²⁷ Pasal 52 ayat (1), *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, *Op.cit*, hlm. 14

board of directors is a representative of the limited company, the board of directors is prohibited from transferring shares owned by shareholders without the approval of the shareholders or their heirs and must first hold a GMS. Because shares are issued in the name of the shareholders themselves as regulated in Article 48 paragraph (1) of the UUPT, so that all forms whatsoever relating to shares, the UUPT determines that the owner of the shares is entitled to the shares.

Likewise, the board of directors is prohibited from transferring the company's assets (the company's assets are part of the collection of shares of the shareholders) which exceeds 50% if it is not done through a GMS or if it is known that the transfer of the company's assets is done in bad faith. The board of directors of a limited liability company for the act of transferring shares owned by shareholders or the company's assets carried out without going through a GMS can be qualified as an unlawful act.

The criteria for share transfer as stipulated in the UUPT must be complied with as stipulated in the articles of association of a limited liability company in accordance with statutory provisions, and if not implemented, it can be classified as an unlawful act.

Analysis of Medan District Court Decision Number 552/Pdt.G/2018/PN.Mdn

This problem started when the biological children of the late Zulpiter as shareholders, namely Plaintiff-I, Plaintiff-II and Plaintiff-III, told Defendant-I PT. Carsurindo Siperkasa to transfer shares owned by their biological father (the late Zulpiter) to the Plaintiffs. However, Defendant-I ignored the Plaintiffs' request and until it was discovered by the Plaintiffs, Defendant-I, without the knowledge of the Plaintiffs, distributed shares owned by his biological father to Defendant-II Lim Hui Ting by making a Letter of Agreement dated July 26, 2018 and confirmed in evidence Copy of Medan District Court Decision No. 19/Pdt.G/2018/PN.Mdn. For this reason, Plaintiff-I, Plaintiff-II and Plaintiff-III filed a lawsuit for Unlawful Acts against Defendant-I and Defendant-II at the Medan District Court.

Based on the legal facts revealed in court, Plaintiff-I, Plaintiff-II and Plaintiff-III (hereinafter referred to as the Plaintiffs) requested to be determined as legitimate heirs based on the following evidence:

- 1) Extract of Marriage Certificate Number: 180/1994 dated 8 August 1994 in the name of Zulpiter and Herdina issued by the Head of the Civil Registry Office of Pekanbaru City ;
- 2) Death Certificate Number: 646/PMK/IX/2016 in the name of Zulpiter dated 14 September 2016;

- 3) Death Certificate Extract in the name of Zulpiter based on Death Certificate Number: 1271-KM-26092016-0003 dated September 27, 2016, issued by the Medan City Government Population and Civil Registry Service;
- 4) Certificate of Heirs Number: 01/SKAW/V/2017 dated May 3, 2017 made by Notary & PPAT of Medan City Adi Pinem, SH;

Based on the evidence revealed in court, the Medan District Court Judge considered: "Considering, Plaintiff-I, Plaintiff-II, and Plaintiff-III are biological children from the marriage between the late Zulpiter and Herdina, then Plaintiff-I, Plaintiff-II and Plaintiff-III are the legal heirs of the late Zulpiter."²⁸

The legal consideration of the Medan District Court Judge was right to state that the Plaintiffs were the legal heirs of the late Zulpiter because based on Article 832 of the Civil Code it states that "those who are entitled to receive a portion of the inheritance are blood relatives, both legal and unmarried and the husband and wife who have lived the longest. Blood relatives who are heirs are divided into 4 (four) groups, each of which is the first, second, third and fourth group of heirs."²⁹

The Plaintiffs in the inheritance law are included in the first group so that the placement of the Plaintiffs as legal heirs as considered by the Medan District Court Judge is appropriate in accordance with the provisions of civil inheritance law.

Furthermore, the Plaintiff also requested that the actions of Defendant-I in distributing shares owned by the late Zulpiter to Defendant-II constitute an unlawful act and that the following facts be revealed in the form of evidence:

- 1) Letter of Agreement dated 26 July 2018;
- 2) Copy of Medan District Court Decision No. 19/Pdt.G/2018/PN.Mdn ;

Regarding this matter, the Medan District Court considered:

"Considering, the distribution of shares belonging to the late Zulpiter amounting to 32 shares held by Defendant-I, the only parties entitled to carry out a peaceful distribution are the heirs of the late Zulpiter and Defendant-I; do not have the legal capacity to distribute shares amounting to 16 (sixteen) shares to Defendant-II; because Defendant-I; is not the heir of the late Zulpiter;

Considering, regarding this matter, the Judge Declares that the Actions of Defendant-I; and Defendant-II; who distributed shares amounting to 16% of the shares owned by the late Zulpiter without the consent of Plaintiff-I; Plaintiff-II; and Plaintiff-III; as legal heirs, constitute an Unlawful Act (*Onrechtmatigedaad*).³⁰

²⁸ Pengadilan Negeri Medan, *Putusan Nomor 552/Pdt.G/2018/PN.Mdn*, *Ibid*.

²⁹ Effendi, Peranginangin, *Hukum Waris*, (Depok: Rajagrafindo Persada, 2013), p. 4.

³⁰ Pengadilan Negeri Medan, *Putusan Nomor 552/Pdt.G/2018/PN.Mdn*, *Op.cit*, hlm.20-29.

Considering, because it is proven that the Peace Agreement dated July 26, 2018 between Defendant-I PT. Carsurindo Siperkasa and Defendant-II Lim Hui Ting was without the consent of Plaintiff-I Diana Halim, Plaintiff-II Yudi Perina Halim and Plaintiff-III Christian Perina Halim and the Peace Agreement is contrary to the rights of the heirs and the Peace Deed Number 19/Pdt.G/2018/PN.Mdn dated July 30, 2018 is null and void and has no legal force and is not binding on Defendant-I PT. Carsurindo Siperkasa and Defendant-II Lim Hui Ting”.

The legal considerations above by stating that Defendant-I and Defendant-II held a distribution of shares owned by the late Zulpiter is an unlawful act because Defendant-I is not the owner of the shares so that he does not have the right and capacity to carry out the distribution of shares. In the UUPT, the party entitled to carry out the distribution of shares or carry out the transfer of shares is the owner of the shares themselves as regulated in Article 48 paragraph (1) of the UUPT explains that shares are issued in the name of the owner of the shares so that from the understanding of the article, the party permitted to carry out the transfer of shares is the owner of the shares. Therefore, the Judge's legal considerations are correct according to limited liability company law.

In this regard, the actions of Defendant-I and Defendant-II by agreeing to a peace settlement as stated in the evidence of the Agreement Letter dated July 26, 2018 and evidence of a Copy of the Medan District Court Decision No. 19/Pdt.G/2018/PN.Mdn constitutes an act. Is this act an unlawful act? From the Agreement Letter dated July 26, 2018 and evidence of a Copy of the Medan District Court Decision No. 19/Pdt.G/2018/PN.Mdn, it turns out that what was agreed upon was the distribution of shares belonging to the late Zulpiter, some of which were distributed to Defendant-II Lim Hui Ting by Defendant-I PT. Carsurindo Siperkasa. The distribution of shares carried out by Defendant-I to Defendant-II was not shares belonging to Defendant-I but belonged to the late Zulpiter.

According to UUPT Article 48 paragraph (1) states that shares are issued in the name of the shareholder so that from the wording of the article, the person who has the right to carry out any action whatsoever against the shares owned by the late Zulpiter is the shareholder himself. However, because Zulpiter has died, in accordance with Article 57 paragraph (2) of UUPT, it is regulated that the transfer of shares due to the death of the shareholder, the shares are transferred to his heirs in accordance with civil inheritance law (Article 833 of the Civil Code). Therefore, Defendant-I distributed shares that were not his to Defendant-II, which is a form of unlawful act because the distribution of shares in UUPT is prohibited by those who are not the owners, so this element is fulfilled.

The element of loss, certainly with the distribution of shares owned by the late Zulpiter will be reduced or cannot be enjoyed or obtained by the heirs so that it automatically causes losses for the heirs of the late Zulpiter, namely Plaintiff-I, Plaintiff-II and Plaintiff-III who experience losses.

Regarding the Letter of Agreement dated July 26, 2018 and the Copy of the Decision of the Medan District Court No. 19/Pdt.G/2018/PN.Mdn which were declared null and void and have no binding legal force, it has also been considered in accordance with the provisions of the law because it was proven that the peace agreement letter was contrary to the rights of the heirs, namely the Plaintiffs, because it was carried out without the consent of the Plaintiffs.

From the legal considerations in the Medan District Court Decision Number 552/Pdt.G/2018/PN.Mdn, the judge considered it based on a sense of justice because according to Aristotle in the Theory of Justice "obeying all rules is a form of justice". So this judge's decision has provided a sense of justice through the application of definite law.

CONCLUSION

Shares in a Limited Liability Company can be transferred in accordance with Article 60 paragraph (1) of the Limited Liability Company Law by classifying shares as movable objects. so that ownership can be transferred to another party by means or form of legal action such as sale and purchase, exchange, gift, or by the occurrence of a legal event resulting from death. So it can be seen that in the Limited Liability Company Law, it can be transferred in certain ways or because legal events occur due to death.

In particular, the rules regarding share transfer mechanisms have been regulated in the provisions of the law on limited liability companies. The requirements for a share to be transferable can be seen in Article 57 of the Limited Liability Company Law. Apart from the mechanisms regulated in the Law, generally every company has AD ART as regulations for the company. However, you need to remember that the law as a basic rule cannot be ignored regarding company implementation, both share transfer mechanisms and others.

Share transfers should follow existing regulations. The Law on Limited Liability Companies must be the basis for the share transfer mechanism. In principle, the criteria for share transfer must be implemented based on the provisions of Article 57 paragraph 1 of the Law on Limited Liability Companies. So when there is a discrepancy with the provisions of this article, it can be indicated that the transfer of shares was carried out in an unlawful manner.

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The case that occurred in Medan as registered in the case register number 552/Pdt.G/2018/PN.Mdn shows that the mechanism implemented for the transfer of shares was not carried out as it should be based on the provisions of the statutory regulations. So the transfer of shares that occurred in this case in the judge's decision stated that the transfer was carried out against the law.

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