

Peranan Notaris terhadap perubahan susunan pemegang saham yang dilakukan dengan pengembalian setoran saham melalui mekanisme penitipan: Studi Putusan Mahkamah Agung RI Nomor 46 PK/Pdt/2022 = The role of Notary towards changes in the composition of shareholders performed by returning share deposits through the consignment mechanism: Study Verdict of Indonesian Supreme Court Number 46 PK/Pdt/2022

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Abstrak

Pemindahan hak atas saham yang dijadikan objek permohonan penitipan tidak dapat diajukan dengan permohonan penitipan melalui pengadilan layaknya permohonan menurut Pasal 1404 dalam Kitab Undang-Undang Hukum Perdata, melainkan proses pemindahan hak atas saham harus dilaksanakan sesuai dengan Anggaran Dasar Perseroan dan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, sebagaimana yang terjadi dalam kasus pada Putusan Mahkamah Agung RI Nomor 46 PK/Pdt/2022. Penelitian ini menganalisis pelaksanaan perubahan pemegang saham perseroan dalam rangka mengakhiri perikatan antar pemegang saham serta peran dan tanggungjawab notaris dalam pelaksanaan pemindahan hak atas saham yang pembayarannya dilakukan dengan mekanisme penitipan. Penelitian ini disusun menggunakan metode penelitian doktrinal, adapun jenis data yang digunakan data sekunder melalui studi kepustakaan dan menggunakan metode analisis kualitatif. Melalui penelitian ini, ditemukan bahwa pelaksanaan perubahan pemegang saham perseroan dilakukan dengan cara melakukan pemindahan hak atas saham dengan menarik kembali saham sekaligus mengeluarkan saham pengganti untuk menghindari pengurangan modal. Adapun melalui forum Rapat Umum Pemegang Saham telah diputuskan bahwa pengembalian nilai saham dengan cara penawaran pembayaran tunai yang kemudian dititipkan kepada notaris. Peran notaris dalam pelaksanaan pemindahan hak atas saham tersebut ialah pembuatan akta autentik yakni akta pemindahan hak, risalah rapat dan akta pernyataan keputusan rapat pemegang saham di luar rapat. Sehubungan dengan peran tersebut, maka notaris bertanggungjawab atas memastikan dokumen lengkap, memverifikasi identitas, maupun memastikan prosedur telah sesuai dan benar. Adapun pertanggungjawaban notaris mengacu pada pelaksanaan dalam menjalankan jabatannya sekaligus pada akta yang dibuat, sehingga apabila terdapat kesalahan atau pelanggaran, notaris dapat dimintai pertanggungjawaban sesuai ketentuan yang berlaku.

.....The transfer of rights to shares that are the object of a custody application cannot be submitted with a request for custody through the court like a request according to Article 1404 in the Civil Code, but the process of transferring rights to shares must be carried out in accordance with the Company's Articles of Association and Law Number 40 of 2007 concerning Limited Liability Companies, as happened in the Study Verdict of Indonesian Supreme Court Number 46 PK/Pdt/2022. This research analyzes the implementation of changes in the company's shareholders in order to terminate the engagement between shareholders as well as the role and responsibility of notaries in the implementation of the transfer of rights to shares whose payment is made by a custody mechanism. This research was prepared using doctrinal research method, while the type of data used is secondary data through literature study and using qualitative

analysis method. Through this research, it is found that the implementation of changes in the company's shareholders is carried out by transferring rights to shares by withdrawing shares while issuing replacement shares to avoid capital reduction. As for the forum of the General Meeting of Shareholders, it has been decided that the return of share value by offering cash payments which are then deposited with a notary. The role of a notary in the implementation of the transfer of rights to shares is the making of authentic deeds, namely the deed of transfer of rights, minutes of meetings and deeds of statement of shareholders' meeting resolutions outside the meeting. In connection with this role, the notary is responsible for ensuring that the documents are complete, verifying identity, and ensuring that the procedures are appropriate and correct. The notary's responsibility refers to the implementation in carrying out his/her position as well as the deed made, so that if there is an error or violation, the notary can be held accountable in accordance with applicable regulations.