

Pewarisan Kepemilikan Hak Saham yang dimiliki atas Perjanjian Nominee dalam Kasus PT. ZANGRANDI PRIMA dalam Putusan No. 7/Pid.B/2020/PN. Sby. = Strength Of Proof Of Notary Deed In Disputes On Transfer Of Rights To Share Due To Inheritance (Analysis Of Court Decision Of The Surabaya State Court No. 7/Pid.B/2020/PN.Sby jo Court Decision Of The Surabaya High Court 1476/PID/2020/PT SBY)

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Abstrak

Pada saat peralihan hak atas saham karena pewarisan berdasarkan hibah wasiat dilaksanakan, pewaris harus memiliki saham yang ia hibah wasiatkan pada saat ia meninggal dunia. Permasalahan timbul dalam hal pewaris memiliki saham tersebut untuk dan atas nama orang lain berdasarkan perjanjian nominee yang pada umumnya dibuat dihadapan Notaris, yang menimbulkan sengketa kepemilikan hak atas saham diantara beneficiary atau pemilik sebenarnya berdasarkan perjanjian nominee dan para ahli waris penerima nominee dengan tercampurnya saham dalam boedel waris pewaris, yang keduanya memiliki hak atas saham tersebut, baik secara hukum adalah ahli waris penerima nominee (legal owner) dan beneficiary berdasarkan perjanjian nominee. Rumusan permasalahan dari tesis ini adalah kekuatan pembuktian akta notaris yang memuat perjanjian nominee dalam sengketa peralihan hak atas saham karena pewarisan serta pertimbangan hakim terkait akta Notaris yang memuat perjanjian nominee dalam sengketa tersebut. Penelitian ini dilaksanakan dengan metode yuridis normatif, berdasarkan data sekunder yang dikumpulkan melalui studi kepustakaan atas bahan hukum primer, sekunder dan tersier. Penelitian ini menghasilkan kesimpulan bahwa hak atas saham dalam sengketa karena pewarisan yang melibatkan perjanjian nominee dengan bentuk akta Notaris, jika perjanjian nominee tersebut dibuat sebelum adanya ketentuan larangan atas perjanjian nominee berdasarkan Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal, maka yang berhak atas saham tersebut adalah pihak beneficiary berdasarkan ketentuan perjanjian nominee. Dalam hal perjanjian nominee dibuat setelah ketentuan larangan Perjanjian nominee, maka hibah wasiat dapat dilaksanakan karena tidak melanggar ketentuan perjanjian nominee, dan batal demi hukum dengan adanya ketentuan larangan perjanjian nominee dalam Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal.

.....During Transfer of Rights to Shares due to inheritance based on a testamentary grant is carried out, the testator must own the shares at the time of his death. Legal issue arises in the event that the testator owns the shares for and on behalf of another person based on a nominee agreement, which is generally made in front of a notary. This creates a dispute over the ownership of shares between the beneficiary based on a nominee agreement, and the heirs of the legal owner, both whom have rights to the shares, whether by law, the heirs of the legal owner and the beneficiary based on the nominee agreement with the legal owner. Research question of this thesis is the proof of notarial deed that contains nominee agreement, and dispute of transfer or shares due to inheritance as well as judge's consideration regarding notarial deed that contains nominee agreement in such dispute. This research is conducted using Juridical-normative research method, based on secondary data collected through literature study on positive law and legal literature, which was examined through a case approach, which resulted a conclusion that the rights to shares in dispute due to inheritance involving a nominee agreement in the form of a notarial deed, is that if the nominee agreement is made prior

to the prohibition of nominee agreement based on Law Number 25 of 2007, concerning Investment, then the beneficiary is entitled to the shares based on the clauses of nominee agreement, and in the event that the nominee agreement is made after the prohibition of nominee agreement, the testamentary grant then can be executed as it does not violate the clauses within the nominee agreement, which is null and void based on the provisions within Law Number 25 of 2007, which prohibits nominee agreements