

Understanding the Aspect of Legal Certainty in the Binding Agreement for the Sale and Purchase of Shares

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Abstract : *A share sale and purchase agreement (PPJB) is commonly used as a preliminary agreement before the transfer of rights becomes valid. However, its validity and binding force are still debated, especially when the transfer of rights to shares is included in a dispute in court. This paper aims to answer the problem of the position of PPJB from the perspective of agreement law and the legal certainty aspects of PPJB shares as part of the legal protection of the parties. The research method used is normative juridical by examining secondary data sourced from primary, secondary, and tertiary legal materials, especially those correlated with the research topic. The description-analytical method is used to describe the existence of PPJB in the process of transferring shares to be further analyzed using legal principles and concepts so that its validity and binding force can be known. The results show that from the perspective of agreement law, the position of the PPJB is valid and has binding force for the parties if the material and formal requirements of the PPJB have been fulfilled. The transfer of shares is juridically transferred after the PPJB is followed by fulfilling the requirements stipulated in the PPJB, followed by the notarial deed of transfer of shares and the recording of the transfer of shares in the company's register of shareholders.*

Keywords : *Agreement, Sale and Purchase Binding, Shares, Legal Certainty.*

Abstrak : Perjanjian Pengikatan Jual Beli (PPJB) saham umumnya digunakan sebagai perjanjian pendahuluan sebelum peralihan hak menjadi sah. Namun, keabsahan dan kekuatan mengikatnya masih diperdebatkan, khususnya ketika peralihan hak atas saham masuk dalam suatu sengketa di pengadilan. Tulisan ini bertujuan untuk menjawab permasalahan kedudukan PPJB ditinjau dari perspektif hukum perjanjian serta aspek kepastian hukum PPJB saham sebagai bagian dari perlindungan hukum para pihak. Metode penelitian yang digunakan adalah yuridis normatif dengan cara meneliti data sekunder yang bersumber dari bahan hukum primer, sekunder dan tersier, khususnya yang berkorelasi dengan topik penelitian. Metode deskripsi-analitis digunakan untuk menggambarkan eksistensi PPJB dalam proses peralihan saham untuk selanjutnya dianalisis dengan menggunakan asas dan konsep hukum sehingga dapat diketahui keabsahan dan kekuatan mengikatnya. Hasil penelitian menunjukkan bahwa ditinjau dari perspektif hukum perjanjian, kedudukan PPJB sah dan memiliki kekuatan mengikat bagi para pihak apabila persyaratan materiil maupun formil PPJB telah terpenuhi. Peralihan saham secara yuridis beralih setelah PPJB saham diikuti dengan pemenuhan persyaratan yang



ditetapkan dalam PPJB dan ditindaklanjuti dengan pembuatan akta peralihan saham secara notarial serta pencatatan peralihan saham dalam daftar pemegang saham Perusahaan.

Kata kunci : Perjanjian, Pengikatan Jual Beli, Saham, Kepastian Hukum.

I. INTRODUCTION

Today, buying and selling of shares is commonly done by both individuals and companies. There are various reasons behind this legal action. For individuals, the sale of shares is mostly motivated by the desire to obtain profits (*capital gains*), while for companies it is seen as a form of corporate action to increase company value. Related to this, Faizan Malik *et.al* by quoting Georgios stated *the main objective of the firm behind entering into the deal of merger and acquisition is to work with other companies that can be more beneficial as compared to working alone in a market. Due to mergers and acquisitions the return on equity and shareholders wealth increases and it decreases any related expenses (operating costs) for the firm as well.*¹ However, in contrast to buying and selling transactions in general, where the seller delivers the goods and at the same time the buyer delivers the money so that the juridical transfer of ownership occurs immediately, in the sale and purchase of shares the sale and purchase process is bound by certain formalities, such as the approval of the company's organs (company). The existence of formalities that must be fulfilled in buying and selling shares certainly has its own purpose, because buying and selling shares cannot be separated from the existence of a company as an independent legal subject, namely a legal entity which in every action is represented by a company organ. In addition, changes in the composition of share ownership in the company can have a negative or positive impact on the sustainability of the company's operations. As a result, every activity related to the transfer of shares, including through sale and purchase, must take into account the interests of the company as a whole, thus requiring the approval of the company's organs.²

In the practice of buying and selling shares, it often happens that the parties agree to make a sale and purchase with a certain amount and price, but at the same time there are still several conditions (formalities) that have not been fulfilled by the seller, such as approval from the company's organs or approval from certain institutions so that the process of transferring shares juridically cannot be carried out. This is common because in a sale and purchase agreement with immovable objects, such as shares, generally requires a *juridical* delivery process (*juridische levering*), namely a delivery that must meet the formalities of the law, including the fulfillment of requirements; carried out through established procedures; using documents; made by / in front of PPAT.³ This is different from a sale and purchase agreement with movable objects, which is sufficiently carried out by physical delivery of the object / goods that are the object of sale and purchase (*feitelijk levering*), without requiring certain formalities.

To avoid the cancellation of a sale and purchase agreement by one of the parties while the required formalities are being fulfilled, the parties usually perform a legal act

¹ Muhammad Faizan Malik *et, al*, *Mergers and Acquisitions: A Conceptual Review*, International Journal of Accounting and Financial Reporting ISSN 2162-3082 2014, Vol. 4, No. 2, pg. 521

² Article 57 paragraph (1) letter b of Law Number 40 Year 2007 on Limited Liability Companies.

³ M Hadi Subhan, *Bankruptcy Law*. Prenada Media, Jakarta, 2015, pp. 195

called a Sale and Purchase Binding Agreement (PPJB), which is an assistance agreement that functions as a free-form preliminary agreement.⁴ For example, in the sale and purchase of land, the PPJB is used as a preliminary agreement to the main intention of the parties to transfer land rights. This sales and purchase agreement contains promises to carry out the sale and purchase of land when the conditions necessary for it have been fulfilled.⁵

PPJB is called a preliminary agreement because PPJB is made as a preliminary legal act before the sale and purchase agreement is formalized in a deed of sale and purchase by a notary. The substance contained in the PPJB broadly includes the rights and obligations of each party, just like a sale and purchase agreement. The signing of the PPJB proves that the parties have agreed to transfer and receive shares and often the purchase price has been paid in full by the buyer, but the PPJB is not yet considered as evidence that the transfer of shares has juridically occurred because there are still certain formalities that have not been fulfilled.

In practice, the existence of PPJB as a preliminary agreement raises differences of opinion. First, there is an opinion that states that the signing of the PPJB means that the juridical transfer of ownership of shares has occurred so that the buyer as the new owner of the shares has several rights, such as receiving dividends and voting rights. Second, the PPJB is seen as a preliminary agreement that only confirms that the parties agree to sell and purchase shares without having any juridical implications for the parties, especially in the form of voting rights and dividends

The emergence of different views regarding the existence of PPJB, especially in the context of share transfer, of course raises juridical problems especially from the aspect of legal certainty because even though PPJB has been applied in the practice of share transfer, the existence of different views regarding the legal force of PPJB can be a source of dispute. Therefore, considering the importance of obtaining clarity regarding the existence of PPJB shares in share sale and purchase transactions as part of the legal protection of the parties, this paper analyzes the existence of PPJB in the perspective of agreement law and PPJB shares in terms of legal certainty so that PPJB has binding force for the parties.

II. RESEARCH METHODS

This research uses type of normative research, namely legal research conducted by examining library materials or secondary data⁶ related to legal products, while the nature of the research is descriptive analytical, namely by describing the existence of a Sale and Purchase Agreement (PPJB) as a preliminary agreement in a share sale and purchase transaction, to be further analyzed in order to obtain a complete picture related to the legal certainty aspects of the PPJB which have so far caused debate. This research is conducted by searching for various *library materials (library research)*, especially

⁴ Herlin Budiono, H. *Sale and Purchase Agreement and Absolute Power of Attorney*, Renvoi Magazine, Ed. Year I, No.10, March 2004.

⁵ Supriadi. *Ethics and Responsibilities of the Legal Profession in Indonesia*. Jakarta: Sinar Grafika, 2006, p. 15

⁶ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview*, Jakarta: Rajawali Pers, 2015, p 34

legal materials that correlate with PPJB and share sale and purchase agreements, which are sourced from primary legal materials, secondary legal materials and tertiary legal materials. The legal materials that have been collected are then analyzed by the author to serve as a basis for answering the problem.

III. DISCUSSION

Perspective of Covenant Law in Sale and Purchase Binding Agreement

Making agreements is an activity that humans often do in their daily lives, from children to the elderly even though the perpetrators are not aware, for example buying vegetables at the market, taking public transportation, and ordering food *online*. The emergence of ignorance that human activities are not free from agreements is solely due to the assumption that agreements must always be made in writing to be valid and binding. In fact, agreements can also be made orally without the need for written evidence because the existence of written evidence in an agreement is solely used to facilitate proof, both in the event of a dispute and no dispute. The provisions stating that agreements are not only made in writing but also unwritten (oral) are expressed in Article 1 point 7 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, which states: An agreement is an act of one or more business actors to bind themselves to one or more other business actors by any name, *either written or unwritten*

Based on Article 1313 of the Civil Code (KUHPerdata), an agreement is an act in which one or more people bind themselves to one or more other people. Some legal experts have criticized Article 1313 of the Civil Code because the word "act" has a very broad meaning so that it includes social, political or moral actions, even though these actions are not included in the scope of the agreement. Another thing that has also been criticized is the word "person". It seems that agreements can only be made by people (humans), while legal entities are not included, even though legal entities are legal subjects just like humans who can make agreements. This is also related to the notion of "binding oneself to one or more other persons" which is interpreted as the attachment of only one or more parties, while the other parties seem not to be bound. In an agreement, there should be an act of binding one another. Related to this RM Suryohadiningrat said: So in Article 1313 of the Civil Code it (seems) excludes reciprocal (bilateral) agreements in which both parties perform, for example, sale-purchase agreements, leases.⁷

Noting the various weaknesses of the definition of agreement in Article 1313 of the Civil Code, a definition of agreement has emerged which aims to improve the formulation of Article 1313 of the Civil Code, among others: Wirjono Prodjodikoro states: Agreement is a legal relationship regarding property between the two parties, in which one party promises to do something or not to do something, while the other party has the right to implement the agreement.⁸ Likewise, R. Setiawan who states: Agreement (agreement) is a legal act, in which one or more people bind themselves or bind each other against one or more people.⁹

⁷ RM Suryohadiningrat, *Azās-azās Hukum Perikat*, Tarsito Publisher, Bandung, 1985, pp. 73

⁸ Wirjono Prodjodikoro, *Principles of Covenant Law*, Mandar Maju Publishers, Bandung, 2000, pp. 9

⁹ R. Setiawan, *Principles of Bond Law*, Putra Abardin, Bandung, 199, pp. 49

In order for an agreement to be binding and have legal consequences for the parties who make it, the agreement must be made in accordance with the legal requirements of an agreement, as stipulated in Article 1320 of the Civil Code which states: For the validity of an agreement, four conditions are required: 1. Agreement of those who bind themselves 2. Capacity to make an agreement 3. A certain thing 4. A halal cause.¹⁰ If the first and second elements of the validity of the agreement above are not fulfilled, the legal effect is that the agreement can be canceled, otherwise if the third and fourth elements are not fulfilled, the agreement is null and void.¹¹

If the agreement made by the parties has fulfilled all the requirements stipulated in Article 1320 of the Civil Code, of course the agreement is valid and binds the parties as well as the law. This is confirmed in Article 1338 paragraph (1) of the Civil Code which states: that all agreements made legally shall apply as laws to the parties who make them. Another thing that cannot be ignored from the existence of an agreement is the binding force of an agreement (*pacta sunt servanda*)¹², as stipulated in Article 1338 paragraph (2) of the Civil Code, which states: An agreement cannot be withdrawn other than with the agreement of both parties, or for reasons stated by the law as sufficient for that. The implied meaning of this provision is that each party to the agreement is obliged to obey every thing that has been agreed upon in the agreement, of course with the threat of sanctions if it does not comply, unless there are other things that exempt it, such as the existence of *force majeure*. The principle of *pacta sunt servanda* is the basis for the implementation of the rights and obligations of the parties to the agreement. Based on the principle of *pacta sunt servanda*, the agreement party can ask the other agreement participants to carry out what has been agreed in the agreement. It can almost be said that the applicability of the principle of *pacta sunt servanda* is absolute.¹³

The parties involved in an agreement must have good faith to carry it out so that the purpose of making the agreement is realized. The principle of good faith in implementing an agreement is stated in Article 1338 of the Civil Code paragraph (3) which states: An agreement must be carried out in good faith. In *good faith*, there is an intention (will) of the parties to carry out the agreement in accordance with the purpose of the formation of the agreement, where this intention must be followed by concrete actions from the parties so that the agreement is carried out properly. Thus, good faith is not enough only at the level of the intention (will) of the parties, but must also be followed by concrete actions from the parties to make it happen.¹⁴ Good faith that lies in the

¹⁰ Cancelable means that either party can request the cancellation. The agreement itself remains binding on both parties, as long as it is not canceled (by a judge) at the request of the party entitled to request cancellation.

¹¹ Null and void is a term used when an agreement is considered invalid or void from the start, so it can be said that the agreement never existed.

¹² *Pacta sunt servanda* comes from Latin which means "promises must be kept". *Pacta sunt servanda* is a basic principle in the civil law system, which in its development was adopted into international law. Basically, this principle relates to contracts or agreements made between individuals, which implies: 1) the agreement is a law for the parties who make it, and 2) implies that the denial of the obligations contained in the agreement is an act of breaking the promise or default.

¹³ Harry Purwanto, The Existence of the *Pacta Sunt Servanda* Principle in International Agreements Mimbar Hukum, Volume 21, Number 1, February 2009, p. 168.

¹⁴ Elisatris Gultom, *Inti-Plasma Partnership Agreement: Conception and Implementation*, Logoz Publishing, Bandung, 2021, p. 39

soul of man can change from time to time in view of the circumstances and conditions as well as things that may affect his mind. To avoid this, the good faith of the parties is in many cases further and more detailed in the terms of the agreement.¹⁵

Although Article 1338 paragraph (3) of the Civil Code determines that good faith must exist at the time the agreement is executed, the author argues that in order for the purpose of the agreement to be achieved, good faith must also exist in the parties before and after the execution of the agreement considering that the agreement is a complete, comprehensive and continuous process starting from the pre-agreement, agreement implementation and post-agreement implementation stages.

An agreement is only binding on the parties who make it as stated in Article 1340 of the Civil Code. This means that every agreement made by the parties only binds the parties who make it, and does not bind parties outside those who make the agreement, unless otherwise specified. Article 1340 of the Civil Code implies the principle of personality. The existence of this principle is very important to prevent claims from parties outside the parties who make the agreement, thus, the existence of this principle can be seen as a form of legal protection for the parties who make the agreement.

How is the existence of a binding sale and purchase agreement (PPJB) from the perspective of agreement law? This question is important to raise considering that various opinions arise regarding the validity and binding force of the PPJB. On the one hand, PPJB is seen as an agreement similar to other agreements recognized in the Civil Code and outside the Civil Code, so that its validity and binding force are no different from other agreements. On the other hand, PPJB is just a preliminary agreement that is not complete so that it cannot be equated with agreements in general because in making PPJB there are still several requirements that have not been fulfilled by one of the parties (tough conditions). In fact, in the practice of making PPJB, it has become common legal knowledge that PPJB is only a preliminary agreement that needs to be "perfected" with other legal actions. Evidently, in District Court Decision No. 7/Pdt.G/2023/PN. G/2023/PN Tte, the judge gave a legal consideration that PPJB cannot be used as the sole basis for the transfer of share ownership rights if it does not meet the requirements of a share transfer deed. Even though the PPJB between the seller and buyer has been signed, it must be followed up with the preparation of a deed of transfer and recorded in the company's register of shareholders before the transfer of rights to shares is officially recognized by the court. Therefore, this decision reaffirms that the PPJB is only a binding agreement arrangement and does not legally transfer share ownership.

The existence of several different opinions regarding the validity and binding force of the PPJB certainly raises the issue of legal certainty of the PPJB itself, which ultimately leads to the unprotected parties in the PPJB.

¹⁵ Felix O. Soebagjo, *Development of Contract Law Principles in Business Practice over the Last 25 Years*. Paper presented at the Civil Law Workshop held by the Faculty of Law, Gadjah Mada University, Yogyakarta 25 -31 October 1995, pp. 12-13.

To determine the existence of a PPJB from the perspective of agreement law, so that the PPJB can be seen as a valid and binding agreement like other agreements in general, it must be seen from 2 (two) points of view. First, materially, whether the substance contained in the PPJB has met all the requirements for the validity of an agreement, as stated in Article 1320 of the Civil Code. Second, the formal aspect, namely whether the PPJB is a recognized institution in legal traffic and has a legal basis or not.

To assess the existence of PPJB from a material point of view, of course, the juridical basis must be seen from Article 1320 of the Civil Code. From the results of the analysis of the PPJB of shares of PT Crownindo Unggul Permai,¹⁶, the following picture is obtained:

1. The agreement of the parties that make the PPJB.

In the PPJB, there is an agreement made between the parties which is indicated by the sentence "The Parties agree to make and sign this Agreement". The agreement is strengthened by the signatures of both parties (seller and buyer) affixed at the end of the PPJB.

2. The skill of the maker.

PPJB shares at the beginning provide information related to the parties (legal subjects) who perform the agreement, namely the buyer represented by its Managing Director and the seller who is also represented by its Managing Director, both of which are entitled to act for and on behalf of the company they represent.

3. A specific object.

In the PPJB, the object of sale and purchase is listed as a number of shares whose purchase price is Rp1,375,000,000.00 (one billion three hundred seventy five million Rupiah). The number of shares sold amounted to 1,300 (one thousand three hundred) shares in PT Crownindo Unggul Permai.

4. A lawful cause (kausa)

Article 1337 of the Civil Code states that a cause is prohibited if it is prohibited by law, or if it is contrary to good morals or public order, thus, a halal cause (causa) can be interpreted that it is not allowed to promise something that is prohibited by law or that is contrary to the law, values of decency or public order. In the PPJB shares, it can be seen that the clauses in it do not include things that are contrary to law, decency, or public order, one of which is related to the object of sale, namely shares.

By paying attention to the description of the PPJB above, it can be concluded that materially the share PPJB has fulfilled the legal requirements of an agreement because all elements have been fulfilled, so that if it is related to Article 1338 paragraph (1) of the Civil Code, the share PPJB is valid and has binding force for the parties like a law.

¹⁶ Retrieved from chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/202008/8d3d1eba21_74b4a30934.pdf. April 2, 2025

Looking at the formal aspect means looking at the PPJB from the point of view of the legal basis for its making. Initially, the making of PPJB, both shares and land, was motivated by practical needs in legal and economic traffic, especially when the parties wanted legal certainty over the transfer of shares or land they were doing. However, with the development of the community's economy, land and share transaction activities are increasingly being carried out, giving rise to the need for PPJB to be given a strong legal basis through a statutory regulation in order to provide legal certainty. For example: Law Number 1 Year 2011 on Housing and Settlement Areas, Law Number 20 Year 2011 on Flats and Government Regulation Number 12 Year 2021 Amendment to Government Regulation Number 14 Year 2016 on the Implementation of Housing and Settlement Areas

Before the birth of laws and regulations that provide a legal basis for the PPJB institution, PPJB was actually a valid and binding agreement because based on Article 1319 of the Civil Code, the legislator provided an opportunity for the birth of new types of agreements outside those regulated in the Civil Code and the Commercial Code, including PPJB. Therefore, with the fulfillment of the material and formal aspects of the PPJB institution, it can be concluded that the existence of PPJB is valid and recognized from the perspective of the Law of Treaties. In addition, as an agreement, PPJB has binding force as long as the general provisions in Book III of the Civil Code have been fulfilled.

Legal Certainty of Sale and Purchase Agreement in the Transfer of Shares

Talking about a Limited Liability Company (PT) cannot be separated from talking about shares as the authorized capital of the PT (company). There are at least 2 (two) perspectives in viewing the existence of shares in a PT. From the company's side, how many shares there are in the PT represents the "strength" of the PT in carrying out its activities, especially in order to achieve the aims and objectives of the PT, while from the side of the owner (*share holders*), shares have an important role because in them are attached several rights, namely to: a. attend and vote in the GMS; b. receive dividend payments and the remaining assets from liquidation; c. exercise other rights based on this law.¹⁷ Related to this, Gutterman states: *Under common law and modern corporation law statutes, shareholders are given certain rights to monitor their investment in the corporation, including the right to vote on certain matters and certain rights with respect to inspection of corporate records, including the charter documents, minutes of directors' and shareholders' proceedings, and specified books and records.*¹⁸

Although the existence of shares in a PT plays an important role for the sustainability of the PT and its owner, Law No. 40/2007 on Limited Liability Companies (UUPT) does not contain a single article regulating the definition of shares. Several provisions in the UUPT only mention shares, such as Article 31 paragraph (1) which states: "The authorized capital of the Company consists of the entire nominal value of shares," and Article 34 paragraph (1) of the UUPT which states: "Deposits of share capital may be made in the form of money and/or in other forms," and based on the Explanation of Article 34 paragraph (1), it is stated: In general, the contribution of a person or business

¹⁷ Article 52 paragraph (2) of the Company Law

¹⁸ Alan S. Gutterman, *Shareholders*, <https://dx.doi.org/10.2139/ssrn.4525600>

entity to a PT is made in the form of money, although it does not rule out the possibility of depositing shares in other forms, both in the form of tangible and intangible objects, which can be valued in money

Although the definition of shares is not found in the UUPT (authentic definition), as a guideline, several definitions of PT can be mentioned just to provide a general overview of the definition of shares. Sutantya and Sumantoro stated: Shares are an abstract term that indicates the existence of a right and can be interpreted as a sign of participation in the company's capital.¹⁹ Another definition was put forward by Dahlan Siamat, who stated: Shares can be considered as evidence or a sign of ownership of part of the capital of a limited liability company in a different sense.²⁰ HMN Purwosutjipto states: *Share* certificates are (Dutch: *aandeel*; English: *share*; German: *Aktie*; French: *Action*) securities that include the word "share" in it, as proof of ownership of part of the company's capital.²¹ Although the wording of some of the definitions above is different, they all have the same meaning, namely shares are a sign of participation / ownership of capital in PT.

Shares are one type of securities, which one of its characteristics according to Emmy Pangaribuan Simanjuntak is that they can be traded.²² Therefore, shares are instruments that can be transferred or traded by the owner to other parties, as implied in Article 55 of the Company Law which regulates the procedures for transferring rights to shares. Furthermore, based on Article 56 paragraph (1) of the Company Law, the transfer of rights to shares is carried out through a deed of transfer of rights. In connection with the transferability of shares to other parties

Sjawie states: After the company becomes a legal entity, a person can become a shareholder because first, the transfer of shares (*overdraft*), for example sale and purchase, grants, exchange of shares, which results in the transfer of ownership of shares based on a special title (*onderbijzondere title*); and second, the transfer of shares (*overgang*) in the case of inheritance which causes the transfer of ownership rights to shares based on the general title (*onderalgemene title*),²³ while related to the mechanism for transferring shares according to Nindyo Pramono must go through a process or method by making a deed of transfer of rights either notarially or under hand. Thus shares can be used as an object of sale and purchase, exchange, borrowing and lending, can even be mortgaged, fiducia-kan and granted and bequests.²⁴

Of the several ways to transfer or transfer shares that have been available, the most widely used share transfer mechanism is the buying and selling mechanism, especially if you pay attention to buying and selling shares in the secondary market (stock

¹⁹ RT Sutantya R. Hadikusuma and Sumantoro, *Basic Understanding of Company Law, Forms of Companies Applicable in Indonesia*, Rajawali Pers, Jakarta, 2021, pp. 56

²⁰ Dahlan Siamat, *Management of Financial Institutions*, Jakarta: LPM FEUI, 2001, p. 268.

²¹ HMN Purwosutjipto, *Basic Understanding of Indonesian Commercial Law 7, Securities Law*, Djambatan Publisher, Jakarta, 2019, pp. 14-15

²² Emmy Pangaribuan Simanjuntak, *Commercial Law of Securities*, Section of Commercial Law, Faculty of Law, Gadjah Mada University, Yogyakarta, 1982, pp. 11

²³ Sjawie, H. F, *Directors of Limited Liability Companies and Corporate Criminal Liability*, Kencana, Jakarta, 2017, p. 34

²⁴ Nindyo Pramono, *Law of PT Go Public and Capital Markets*, Publisher Andi, Yogyakarta, 2013, p. 127

exchange) where the number of transactions and market capitalization (*market cap*) is very large, as stated by the Director of the Indonesia Stock Exchange: "Currently on the Indonesia Stock Exchange every day there are stock transactions of no less than Rp 12.2 trillion per day, which are cleared every day no less than 1.2 million transactions.²⁵ The high frequency and volume of buying and selling shares on the Indonesia Stock Exchange is shown in the table below.²⁶

Table 1

Recap of Indonesia Stock Exchange Stock Trading Period March 11, 2025

Nama	Frekuensi	Total Volume	Total Value	Update
Perdagangan Saham	1.089.948	19.520.068.732	9.8 T	11/03/2025
Pasar Reguler	1.089.173	15.071.675.100	8.3 T	11/03/2025
Pasar Tunai	11	852.600	23.4 M	11/03/2025
Pasar Negosiasi	764	4.447.541.032	1.4 T	11/03/2025
Pasar Tutup Sendiri	0	0	0.0 K	11/03/2025
Perdagangan HMETD	12	770.100	770.1 K	11/03/2025
Perdagangan Waran	11.580	486.937.400	5.7 B	11/03/2025
Total	1.101.540	20.007.776.232	9.8 T	11/03/2025

Source: *Kontan Data Center*, 2025

The table above shows that stocks are one of the investment instruments that are "favored" by the public as well as playing a central role in the world of investment and national financial markets so that their movements are very dynamic from time to time. In addition, on a macro level, stock movements are a reflection of the development of capital flows in the country.

Based on Article 56 paragraph (1) of the Company Law, it is stipulated that in carrying out the transfer of shares, including through a sale and purchase mechanism, the Company Law provides guidelines, among others: The transfer of rights to shares shall be carried out with a deed of transfer of rights, the Board of Directors shall record the transfer of rights to shares, the date, and the day of the transfer of rights in the register of shareholders or special register,²⁷ and the articles of association may regulate the requirements regarding the transfer of rights to shares, namely: a. the requirement to offer in advance to shareholders with a certain classification 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 competent authority in accordance with the provisions of laws and regulations.²⁸ Based on these provisions, it is clear that the transfer of shares has its own specificity, unlike the transfer of rights to goods in general.

In practice, the transfer of shares through a sale and purchase mechanism still causes problems, especially when the parties have agreed to complete the share sale and

²⁵ <https://www.tempo.co/ekonomi/bei-sebut-market-cap-pasar-modal-indonesia-terbesar-se-asean-angkanya-tembus-rp-12-7-triliun-11861>. Cited March 12, 2025

²⁶ https://pusatdata.kontan.co.id/market/rekap_data. Cited March 12, 2025

²⁷ Article 56 paragraph (3) of the Company Law

²⁸ Article 57 paragraph (1) of the Company Law

purchase transaction but there are one or several requirements that cannot be fulfilled by the (old) shareholder who wants to sell shares. For example, at the time the transaction is carried out the selling party has not obtained approval from the Company's Organ, and/or approval from the authorized agency, as stipulated in Article 57 paragraph (1) letters b and c of the Company Law or based on Article 57 paragraph (1) letter a, Articles of Association of PT which requires the need to offer in advance to shareholders with certain qualifications or other shareholders. Therefore, when these requirements have not been met, the deed of transfer (sale and purchase) of shares as evidence of the juridical transfer of share ownership cannot be made. In the face of such conditions, the solution taken by the parties is to conduct a share sale and purchase binding agreement (PPJB) either notarially or under hand.

In practice, PPJB is usually used as a tool to "bind" the parties before the transfer of shares officially (juridically), because the making of PPJB is inherent in the function:²⁹

- a. As evidence that the parties concerned have entered into a particular agreement.
- b. As evidence for the parties that what is written in the agreement is the purpose and desire of the parties.
- c. As evidence to third parties that on a certain date, unless otherwise specified the parties have entered into a agreement and that the contents of the agreement are in accordance with the will of the parties.

Redactionally, the clauses contained in PPJB shares vary greatly, but in essence have similarities, including: the identity of the parties (seller and buyer), the object of the agreement, the price and method of payment, the term of the agreement, the conditions of resilience, statements and guarantees of the parties and the company, as well as termination and the consequences of termination

The making of PPJB shares is a stage that is usually used before the deed of sale and purchase agreement is made, especially when there are still some requirements related to the transfer of shares that have not been fulfilled (tough conditions), but the existence of PPJB often leaves legal problems when viewed from the aspect of legal certainty. This relates to the question "does the making of a PPJB automatically bind the makers so that the transfer of shares from the seller (the old shareholder) to the buyer (the new shareholder) has already occurred and is legally valid with all its legal consequences?" or "is the execution of a PPJB, the parties cannot cancel the PPJB or the seller cannot sell to another party outside the party whose name is listed in the PPJB?".

To answer questions related to the legal certainty of the PPJB, we must first understand the concept of legal certainty. According to Soedikno Mertokusumo, "The existence of the principle of legal certainty is a form of protection for justiciables (justice seekers) against arbitrary actions, which means that a person will and can obtain something that is expected in certain circumstances."³⁰ Another definition of *legal certainty*

²⁹ H.S, Salim, *Contract Law Theories and Contract Drafting Techniques*, Jakarta, Sinar Grafika, 2010, pp. 43

³⁰ Soedikno Mertokusumo, *Chapters on the Discovery of Law*, Citra Aditya Bakti: Bandung, 1993, pp. 2

*is a fundamental right in any legal system and plays a crucial role in the stability and proper functioning of a state. Legal certainty refers to the predictability and stability of legal norms within a legal system, implying that laws and regulations should be clear, stable, and applied uniformly. When a country has legal certainty, individuals can understand and foresee the legal consequences of their actions and decisions.*³¹ Thus, legal certainty refers to the clear, stable and consistent application of the law where its implementation cannot be influenced by subjective circumstances.³² Legal certainty plays an important role with respect to the validity of an agreement and includes law enforcement in a legal action. If it is related to the PPJB shares, then legal certainty means the attachment of the parties in the PPJB shares to comply with all the clauses in the PPJB with all its legal consequences, because the parties want the realization of what is stated in the PPJB shares as a form of legal protection

If we consider the whole process of transferring shares through the sale and purchase mechanism, there are two legal actions that arise, namely the making of PPJB shares (especially when there is a tough condition) and further legal actions in the form of transferring rights to shares to the new owner (buyer) by making a deed of sale and purchase.

The PPJB of shares is actually an ordinary agreement like any other agreement. In order for the PPJB of shares as an agreement to have binding force for its makers like a law (Article 1338 paragraph (1) of the Civil Code (KUHPerdata), the making of the PPJB of shares must fulfill the legal requirements of an agreement, as stipulated in Article 1320 of the Civil Code, namely: agreement of the parties, capacity to perform legal acts, specific object and halal causa. Fulfillment of these requirements is important to ensure that the PPJB shares have legal certainty so that they have binding force and become a legal basis for demanding the fulfillment of achievements if one of the parties defaults. In the event of a dispute, usually the first thing the judge considers in deciding the dispute is to examine whether the PPJB in dispute has fulfilled the elements/requirements for the validity of an agreement based on established legal norms or vice versa. Thus, the PPJB will bind the parties as long as the requirements in Article 1320 of the Civil Code have been met, otherwise, the agreement can be canceled or null and void. This can be seen in the Supreme Court Decision Number 4267/K/Pdt/2022³³ in which the judge basically considers that the consequences of an agreement (PPJB) that does not comply with the provisions of the validity of an agreement in Article 1320 of the Civil Code, specifically related to the requirement of "agreeing those who bind themselves", so that the agreement is canceled and the parties return to the situation as it was before the agreement was made.

After the parties agree and sign the PPJB, of course it does not yet have a legal effect on the juridical transfer of share ownership from the seller to the buyer, so that the

³¹ <https://central-law.com/en/the-importance-of-legal-certainty-in-the-legal-system/>

³² R. Tony Prayogo, "Application of the Principle of Legal Certainty in Supreme Court Regulation Number 1 of 2011 concerning the Right to Material Test and in Constitutional Court Regulation Number 06 / PMK / 2005 concerning Procedural Guidelines in Law Testing", Indonesian Legislation Journal, Volume 13, Number 2, 2016, p.194.

³³ This case is a dispute between Mr. Sunarjo Dharmando and Mr. Sri Paduka Mangkoenagoro. In front of Notary Ninoek Poernomo, both parties agreed to make a Deed of Sale and Purchase Agreement. However, because there was a discrepancy between the two parties, one of the parties sued to cancel the signed Sale and Purchase Agreement.

buyer (new shareholder) is entitled to enjoy his rights as a share owner, such as obtaining dividends and voting rights, considering that the PPJB is only a preliminary agreement that describes the "intention" of the parties to sell shares. Moreover, the background behind the making of the PPJB is the existence of several formalities that cannot be fulfilled by the seller (tough conditions) at the time the PPJB is made.

In order for the transfer of shares from the seller to the buyer to be juridically valid, the parties must carry out further legal actions, namely making a notarial deed of sale and purchase of shares before a notary. However, in order for the deed of sale and purchase of shares to be executed, the requirements stipulated in the PPJB must first be fulfilled by the buyer. If we refer to Article 57 of the Company Law, the requirements include: the requirement to offer in advance to shareholders with a certain classification or other shareholders, the requirement to obtain prior approval from the Company's Organs and/or the requirement to obtain prior approval from the authorized agency in accordance with the provisions of laws and regulations. For example, when a PT will carry out a legal action of transferring rights to shares through a sale and purchase process (corporate action), where the transfer of rights has the potential to cause unfair business competition, notification to the Business Competition Supervisory Commission is a requirement that must first be fulfilled so that the share transfer process can be carried out, because the obligation to notify the KPPU is a mandate from Article 29 paragraph (1) of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition jo. Article 126 paragraph (1) letter c of the Company Law

Finally, it can be concluded that the PPJB has legal certainty for the parties who make it as long as all the requirements for the validity of an agreement stipulated in Article 1320 of the Civil Code have been fulfilled at the time the PPJB is made, so that the parties are bound to implement it like the power of a law. However, the signing of the PPJB has not yet given legal effect to the juridical transfer of share ownership before the requirements stipulated in the PPJB are implemented. The transfer of shares is juridically transferred after the PPJB is followed up with the notarial deed of transfer of shares and the recording of the transfer of shares in the company's register of shareholders. The deed of share transfer can be made after all the requirements stipulated in the PPJB have been fulfilled. The determination of legal certainty in a share PPJB is highly dependent on the suitability of the legal procedures carried out by the parties in making the PPJB. Therefore, legal certainty in the PPJB can be obtained when both parties to the transaction comply with all formal procedures that have been determined, including the making of a valid deed of transfer of share ownership and registering the change of ownership in the company's register of shareholders.

The legal formality for the validity of the transfer of share ownership itself is highly dependent on the suitability of the contents of the PPJB with the applicable legal provisions. The clarity of what are the rights and obligations of the parties in the PPJB is a very decisive factor because without the conformity of the will of the parties with the applicable legal provisions, it has the potential to cause disputes.

IV. CONCLUSIONS

The PPJB carried out in a share transfer transaction has an important role as a temporary binder between the parties who bind themselves before the transfer of shares is officially carried out with a notarial deed. Therefore, with the fulfillment of the material and formal aspects of the PPJB institution, the existence of PPJB is valid and recognized from the perspective of Agreement Law. In addition, as an agreement, PPJB has binding force as long as the general provisions in Book III of the Civil Code have been fulfilled.

The signing of the PPJB has not yet given legal effect to the juridical transfer of share ownership before the requirements stipulated in the PPJB are implemented. The transfer of shares is legally transferred after the PPJB is followed up by making a notarial deed of transfer of shares and the transfer is recorded in the company's register of shareholders.

The issue of legal certainty in the transfer of shares in Indonesia is often an obstacle, due to several ambiguous legal provisions, and procedures that are considered complicated. Therefore, the government needs to improve the PPJB and share transfer regulations to make it easier for business actors to comply with procedures without causing disputes. The existence of a PPJB that has legal certainty also makes it easier to build trust between parties conducting share transactions, improve the investment climate, and attract both domestic and foreign investors to enter the Indonesian stock exchange.

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