



Cancellation of Registration of Changes to the Articles of Association of a Limited Liability Company Due to the Lack of Transfer of Shares to the Heirs Due to the Death of the Shareholders

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ABSTRACT

Conflicts among shareholders are considered to be close firms' weak point. They can take many various forms, but they typically manifest as shareholder impasses, minority mistreatment, or persecution of the majority. The behavioral law and economics movement, which is now very popular, demonstrates how many cognitive biases and heuristics—such as information asymmetry, availability and representativeness heuristics, over-optimism, and strategic behavior—contribute to their genesis. Depending on the specific governance objective to be met, entrepreneurs use a variety of contractual protections in international corporation law practice to successfully avoid and settle the aforementioned shareholder conflicts. The most prevalent are limitations on share transfers (such as permission clauses and the right of first refusal), special rights for minority shareholders (such as the ability to veto management decisions, and super-majorities for important.

INTRODUCTION

Property that results from death is referred to as inherited property or inheritance estate. The testator's inheriting estate includes all of their possessions, whether they be liabilities or assets. The inheritance boedel, which must be given to all heirs who have elected to inherit the whole amount from the heir, includes everything that is still the heir's right or responsibility.

The procedure of transferring a deceased person's possessions to their heirs has existed since their passing. By law, the deceased person's heirs automatically acquire ownership rights to all of their possessions, rights, and receivables. In essence, inheritance consists of the following three (three) crucial elements.

a. the existence of an heir or recipient of inheritance who passes away; b. the existence of an heir or heirs, provided they are still living at the time of the inheritance opening; and c. the existence of testator-left inherited property whose ownership or control needs to be transferred.

As the owner of the assets left behind, the heir is fully entitled to control all aspects of his holdings. This is a result of the regulated nature of inheritance law.

Owning shares in a Limited Liability Company (PT) is one of the heir's possessions that may be passed down to his descendants. In their most basic form, shares are an intangible, transportable asset that grants its owner property rights, and they represent the shareholder's personal wealth. There are two methods to transfer ownership of these shares: either by a legal act, like a sale or gift, or through a legal event, like a person's death.

The Civil Code considers shares to be moveable assets or things. Article 499 of the Civil Code states that goods are any thing or right that may be the subject of ownership rights. The Civil Code's Article 511, number 4, thus highlights the following: *shares in a corporate partnership, money trading partnership, or trading partnership, even if the firm and the partnership's goals are immovable property. As long as the partnership is in operation, these shares are regarded as moveable property, but exclusively for the participants.*

Law Number 40 of 2007 respecting Limited Liability Companies ("UUPT"), Article 60, paragraph (1), affirms that shares are moveable property, hence granting the owner property rights (vermogensrecht). Absolute property rights provide one direct control over an object and can be used to protect oneself against others.

The term Limited Liability Company (PT) is made up of two words: "Company" refers to the company's capital, which is made up of shares or stocks, and "Limited" refers to the shareholders' obligation, which is limited to the nominal value of the shares they purchase. As a capital association founded on an agreement between its founders, PT is essentially a legal entity that was created by at least two individuals or parties by upholding the principle of agreement and conducting business operations using authorized capital that is fully divided into shares.

The Commercial Code (Wetboek van Koophandel voor Indonesie) originally had regulations pertaining to PT. Law Number 1 of 1995 concerning Limited Liability Companies was created in 1995 because the Commercial Code

was no longer in compliance with the Amendment's demands, particularly the numerous changes in economic traffic. However, as the business world changed and evolved, Law Number 1 of 1995 was unable to keep up with the changes in business activities, and as a result, it was replaced by the UUPT, which has taken into account the numerous developments in business activities. The UUPT specifically aims to regulate:

1. The steps involved in filing applications and receiving permission from legal entities;
2. Submitting a proposal and receiving permission for modifications to the association's articles;
3. Notification of changes to the Articles of Association and/or PT data, as well as receipt of those notifications;

PT's capital and shares; its work plan, annual report, and profit utilization; its social and environmental responsibility; its general meeting of shareholders; its board of directors and commissioners; mergers, amalgamations, acquisitions, and separations; its examination; the dissolution, liquidation, and termination of its legal entity status; and other clauses.

According to the UUPT's above division of regulations, capital and shares are one of the key elements of a PT and are therefore specifically regulated in a separate chapter in Chapter III of the UUPT. However, the UUPT does not define or explain capital; rather, it merely specifies that the basic capital of a PT is equal to the full nominal value of the shares.

Authorized capital, issued capital, and paid-up capital are the three (three) components that make up a PT's capital. A PT's capital must be specified in its articles of association; capital-related rules are typically governed by Article 4 of the PT's articles of association. The maximum number of shares that the PT is permitted to issue is known as authorized capital. This includes all notional shares, whereas issued capital refers to shares that have been taken and actually sold to the PT's founders and shareholders. The founders are required to make payments or deposits as they have consented to accept a specific percentage of the PT's shares.

According to the UUPT, a PT must have a minimum of IDR 50,000,000.00 (fifty million Rupiah) in basic capital. However, after the passage of Law Number 11 of 2020 about Job Creation ("Ciptaker Law"), the requirements for a PT's basic capital have altered. The choice made by the company's founders might set the amount of basic capital according on the Ciptaker Law. This implies that there is no minimum amount of basic capital required at the moment of establishment, and the founders are free to choose the amount. At least 25% (twenty-five percent) of the decided basic capital must be invested and paid in full into the PT in line with the percentage of shares owned.

The UUPT just states that the authorized capital of a PT is equal to the whole nominal value of the shares; it makes no mention of the concept of shares. The Big Indonesian Dictionary defines shares as a person's portion, contribution, or right to a corporation that results from the transfer of a piece of money, making them a stake in ownership and oversight. According to UUPT Article 53, paragraph 4, shares are classified into five (five) categories.

The personal wealth of shareholders is represented by their shares, which are moveable but intangible items. Shares can be transferred by purchasing and selling them or by pledging them through fiduciary or pawning agreements. They can even be given to someone else, in which case the receiver of the shares will fully acquire all of the rights associated with them.

According to Article 60 paragraph (1) of the UUPT, shares are movable property that grant their owners the rights mentioned in Article 52 of the UUPT. As a result, ownership can be transferred through a formal act like a sale or purchase or when a legal event occurs, like a shareholder's death. Shares become an item of inheritance that can be passed down to the heirs when they are a component of an individual's assets.

Article 833 of the Civil Code, on the other hand, states that all heirs automatically acquire ownership rights over all of the deceased's property, rights, and receivables because of this. "Saisine" refers to the transfer of a deceased person's rights and responsibilities to his heirs. This implies that the heirs receive all of the deceased's rights and responsibilities without needing to take any special action, even if they are unaware of the inheritance at this time. then the testator's assets are immediately transferred to the heirs. In this instance, the surviving heirs will immediately get all of the testator's remaining shares. If the heirs get ownership of the shares from the testator.

According to Article 48 paragraph (1) of the UUPT, shares are issued in the name of their owner as a sign of capital participation and proof of ownership of PT capital. Additionally, according to the UUPT's provisions, specifically those of Article 52 paragraph (1) and (2), shares grant their owner the following right.

In accordance with Article 51 of the UUPT, shareholders in a PT are provided proof of share ownership for the shares they own. This is done so that shareholders can exercise their rights as outlined in Article 52 paragraphs (1) and (2) of the UUPT. These provisions only apply and are attached to the shareholder after the shares are recorded in the shareholder register in the owner's name. This indicates that the only people who can exercise their share ownership rights as governed by the UUPT are those whose names are listed in the PT shareholder registry.

If we look at the Articles of Association of PT Big Bird, we can see that one of the clauses governing the transfer of rights to shares is as follows: Article 9 paragraphs (1) and (2) of the Articles of Association of PT Big Bird A copy of the Deed of Transfer of Rights mentioned in paragraph 1 or a deed signed by the transferor and transferee, or their legal representatives, must be provided to the company in order for the rights to shares to be transferred. That from the provisions of the articles of association, the transfer of rights to shares must first fulfill the provisions of Article 9 paragraph (1) and (2) of the articles of association, followed by recording in the Register of Shareholders as regulated in Article 56 The transfer of rights to shares, along with the date and day of the transfer, must be recorded by the Board of Directors in the register of shareholders or a special register as specified in Article 50 paragraphs (1) and (2) of the UUPT, according to paragraph (3) of the UUPT.

In a limited liability company, GMS is one of the three (three) organs. According to Law Number 40 of 2007 governing Limited Liability Companies (henceforth referred to as UUPt), a Limited Liability Company is a legal entity in and of itself. A Limited Liability Company is also defined by UUPt as "A legal entity which is a capital association, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations."

The Minister will reject the application for permission or notification based on the names and composition of the unnotified shareholders if communication to the appropriate Minister has not been made.

Following the procedures for the transfer of rights to shares as regulated in the UUPt and the Articles of Association of the relevant PT, the heirs will automatically acquire the status of share ownership due to inheritance based on the provisions pertaining to the transfer of rights to shares and the analysis of the *a quo case*. These procedures include:

According to Article 52 paragraph (4) of the UUPt, each share confers rights that cannot be divided, meaning that shareholders are not allowed to divide the rights to 1 (one) share in accordance with their own wishes; therefore, if there are 2 (two) or more heirs, it is necessary to agree on one of them as the shareholder's representative;

1. When transferring rights or evidence as an heir, a deed must be made in compliance with UUPt Article 56, paragraph (1). The transfer of rights to shares may be accomplished by a private or notarial deed. A private deed lacks perfect evidentiary power since its veracity rests in the parties' signatures, which, if accepted, provide perfect evidence similar to that of an authentic deed. In contrast, an authentic deed, also known as a notarial deed, is a document with perfect proof that includes elements of external, formal, and material evidentiary power.
2. sending the paperwork to the business. The filing of connected papers is intended to guarantee that the parties associated to the shares are informed in order to prevent legal issues like the *a quo case*, which is in compliance with Article 56 paragraph (2) of the UUPt. The transfer of rights to shares, along with the date and day of the transfer, will then be noted by the Board of Directors in the shareholders list or special list. This complies with the UUPt's Article 56, paragraph (3). The rights associated with the shares can be exercised by the PT shareholder as soon as their name appears on the shareholders list;
3. Within 30 days of the date the transfer of rights was recorded, the Board of Directors must inform the Minister of Law and Human Rights of any changes to the shareholder composition that will be documented in the business register. This complies with the UUPt's Article 56, paragraph (3). All decisions that need approval and notice to the relevant Minister will be rejected if they are not notified.

The highest authority in the limited company, the General Meeting of Shareholders, which in this instance consists of the shareholders, makes decisions

about significant rights inside the firm as well as other significant matters. However, there is a legal loophole in the Limited Liability Company Law pertaining to the Board of Directors who violate the law in order to continue operating the company because of the voting mechanism used in the General Meeting of Shareholders (GMS). This is a result of the majority shareholder's influence, which has a significant vote and shapes the GMS's decision. The majority shareholder's voting rights are used to propose and elect the members of the Board of Directors.

The process of correcting this situation is given the opportunity by the UUPT on the condition that the shareholder has at least or represents 1/10 of the total voting rights of all the voting rights on the shares in circulation. The UUPT's Article 97, paragraph (6), regulates this: Members of the Board of Directors who, through their carelessness or mistakes, cause losses to the Company or the State Administrative Court for Administrative errors may be sued by shareholders who represent at least 1/10 (one tenth) of the total number of shares with voting rights on behalf of the Company in the district court.

In an article titled "Cancellation of Registration of Changes to the Articles of Association of a Limited Liability Company Due to the Shares Not Having Been Transferred to Heirs Due to the Shareholder's Death," the author should address this issue.

THEORETICAL REVIEW

Theory of Justice

To know what is fair and what is unfair does not seem to be a big policy, especially if justice is associated with positive legal rules, how an action should be carried out and distribution upholds justice, and how to advance justice. But of course this is not the case if you want to play a role in upholding justice. The debate about justice has given birth to various schools of legal thought and other social theories. The two extreme points of justice are justice that is understood as something irrational and at another point understood rationally. Of course there are many variants that lie between the two extreme points.

Philosophy of Justice, it can be seen that the philosophical foundations in the discussion of this study began with Immanuel Kant stating that the highest justice is the greatest injustice. In other words, absolute justice is a manifestation of injustice. In a less dogmatic order, which among other things postulates that traffic police are Theory of Justice To know what is fair and what is unfair does not seem to be a big policy, especially if justice is associated with positive legal rules, how an action should be carried out and distribution upholds justice, and how to advance justice. But of course it is not the case if you want to play a role in upholding justice.

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In other words, absolute justice is a manifestation of injustice. In a less dogmatic order, which among other things postulates that traffic police are Legal Protection Theory Legal protection according to simajuntak is interpreted as the government's effort to guarantee legal certainty to provide protection to its people so that the rights of a citizen are not violated, and those who violate can be subject to sanctions in accordance with applicable regulations.

METHODOLOGY

The type of research used in this study is normative legal research. Normative legal research is legal research that places law as a building of a norm system. The norm system in question includes the rules in legislation, legal principles, legal systematics of decisions, agreements and other legal entities. This study emphasizes legal data sources, namely secondary data, both in the form of positive legal regulations in Indonesia relating to electronic contracts and theories of contract law, so that legal principles are found and can be used to analyze the problems discussed. This dissertation research is prescriptive analysis

RESEARCH RESULTS AND DISCUSSION

The phrase "legal entity" is a translation from another language, such as Dutch (*rechtspersoon*), Latin (*persona moralis*), and English (legal individuals). Neither the Criminal Code nor general laws provide a complete definition of the phrase "legal entity." Although the Criminal Code's Chapter IX Book III regulates *rechtspersoonlijkheid*, or legal personality – that is, the legal entity's status as a legal subject – the phrase "*rechtspersoon*" is likewise absent from this text. Experts have proposed the following definitions of legal entities.

According to R. Subekti, a legal entity is basically a body or association that can have rights and carry out actions like a human being, and has its own assets, can be sued or sued before a judge.

E. Utrecht explains that a legal entity (*rechtspersoon*) is any organization that upholds rights and is not inanimate, or more specifically, human. This means that a legal entity is an organization that is authorized by law to do so.

According to Rochmat Soemitro, a legal entity (*rechtspersoon*) is a body that has the same rights, duties, and assets as a person. According to the description given above, a legal entity is a legal subject whose manifestation differs from that of a typical human being but which still possesses the same rights, responsibilities, and capacity for legal action as an individual (natural person).

Leer van het ambtelijkvermogen, the theory of common property, the theory of legal reality, Von Savigny's fictional theory, Brinz's theory of purposeful property, Von Gierke's theory of organs, and Leon Duguit's theory are just a few of the numerous theories that investigate the existence of legal entities.

Clarity on the classification of different kinds of legal entities in Indonesia is the goal of the definition of the word "legal entity." Explaining the many components of the theory of legal entities is important because it attempts to

examine every facet of a legal entity, which is a collection of individuals who have been given permission by the government through laws and regulations.

Derivative Lawsuit Theory

A derivative litigation is one that is founded on the business's primary right but is handled by the shareholders instead of the company itself. To put it another way, a derivative litigation is one that a shareholder files on the company's behalf. The reason it's termed a derivative is that the shareholder filed the case on the business's behalf, and it truly stems from the litigation that the corporation ought to have handled. According to the definition of a derivative litigation given above, a derivative lawsuit consists of the following components:

The action is brought before the court by the company's shareholders, who do so on the company's behalf.

Because the lawsuit is filed for and on behalf of the company, even though the party filing it is a shareholder, all of the lawsuit's outcomes belong to the company; the party being sued is not the company, usually the directors of the company; the lawsuit is motivated by a failure in the company or an incident that is harmful to the company in question.

There are a number of unique features of a derivative litigation since the shareholder bringing the action does not represent himself but rather the corporation. These include:

As far as feasible, a request to file a lawsuit for and on behalf of the company in line with the terms of its articles of association must be made to the board of directors, the authorized party, prior to the lawsuit being filed. Other shareholders are requested to participate in the derivative lawsuit as far as possible, considering that the lawsuit is also in their interests. Other stakeholders' interests, including those of other shareholders, employees, and creditors, must also be taken into account. As a result, the court has to hear from more than just the plaintiff shareholders. In the event of a legal settlement, for instance, the court should approve the settlement even if the plaintiff shareholders object if the compensation is deemed acceptable and widely accepted. The act of rejecting a derivative lawsuit based on the reason of *ne bis in idem* must not harm the interests of other stakeholders. Other stakeholders' interests must not be harmed when a derivative case is dismissed on the grounds of *ne bis in idem*.

The existence of this derivative action is acknowledged by both the new UUPT (Law No. 40 of 2007) and the old UUPT (Law No. 1 of 1995). According to Article 97, paragraph (6) of the UUPT, shareholders who own at least 1/10 (one tenth) of the total number of shares with voting rights may sue board members who, through their errors or carelessness, result in losses for the company in district court on the company's behalf. According to the explanation of Article 97, paragraph (6), shareholders who fulfill the aforementioned criteria may act on behalf of the firm in bringing a lawsuit against the board of directors if the board's activities are harmful to the business.

Theory of Justice

If justice is linked to positive legal standards, how an action should be carried out, the allocation of sustaining justice, and how to advance justice, then

knowing what is fair and what is unjust does not appear to be a major policy. Of course, if you wish to contribute to the maintaining of justice, this is not the case. Numerous legal schools and other social ideas have emerged as a result of the discussion surrounding justice. One view of justice is illogical, while the other view is reasonable. These are the two extremes of justice. Naturally, there are a lot of variations in between the two extremes.

Philosophy of Justice: Immanuel Kant's assertion that the greatest injustice is the finest kind of justice served as the starting point for the intellectual underpinnings of this study's debate. Stated differently, absolute justice is an expression of injustice. In a less rigid order, which asserts that traffic police are the Theory of Justice, among other things If justice is linked to positive legal standards, how an action should be carried out, the allocation of upholding justice, and how to promote justice, then knowing what is fair and what is unjust does not seem to be a huge policy. Of course, if you wish to contribute to the maintaining of justice, this is not the case.

Numerous legal and social ideas have emerged as a result of the justice debate. There are two extremes to justice: the idea that justice is irrational and the idea that justice is reasonable. Naturally, there are a lot of variations in between the two extremes. Philosophy of Justice: Immanuel Kant's statement that the greatest injustice is the highest justice serves as the intellectual starting point for this research's topic.

Stated differently, absolute justice is an expression of injustice. Among other reasons, this less rigid system assumes that traffic police are part of the Legal Protection Theory. According to Simanguntak, legal protection is the government's endeavor to ensure legal clarity in order to safeguard its citizens and ensure that their rights are not infringed upon; those who do so will face consequences in line with relevant rules.

Legal protection theory is the defense of honor and dignity as well as the acknowledgment of human rights that belong to legal subjects based on legal provisions that are not arbitrary or that may be seen as a set of rules or laws that can protect one item from another. Regarding consumers, it implies that the law protects their rights against anything that might prevent their rights from being fulfilled. The presence of rights and obligations—in this context, those that humans as legal subjects possess in their interactions with one another and their surroundings—is also connected to the protection that the law offers.

Humans have the right and duty to pursue legal action as legal subjects. Fitzgerald, cited by Satjipto Raharjo, asserts that the natural law school or notion of natural law is the source of this legal protection idea. Plato, his pupil Aristotle, and Zeno (founder of the Stoic school) were the forerunners of this school. The natural law school holds that morality and law are inextricably linked and that God, who is everlasting and universal, is the source of law. This school's followers believe that morality and the law are mirrors of human existence, reflecting and enforcing standards both inwardly and outside. Fitzgerald describes Salmond's theory of legal protection, which holds that the goal of the law is to integrate and coordinate different interests in society since, in a flow of

interests, the only way to safeguard certain interests is to limit those of the other side.

In order to identify which human interests require regulation and protection, the law has the ultimate jurisdiction to defend human rights and interests. A legal provision and all community-provided legal regulations—basically, a community agreement to regulate behavioral relations between members of society and between individuals and the government, which is thought to represent the interests of society—are the foundation of legal protection.

CONCLUSIONS AND RECOMMENDATIONS

A notary who has a deed made in front of him that has been canceled by the district court runs the danger of having to accept and adhere to the court's ruling, which degrades and even renders his deed invalid, meaning it has no lasting legal power. The parties may sue a notary if the notary is not following the proper procedures for creating a notarial deed, such as when the notary does an illegal conduct, makes a mistake, or suffers a significant loss. By better comprehending the materials to be formulated in the pre-contractual phase and investigating the identification of the subject and object, it is anticipated that the notary will be able to create his deed in the future with regard to material truth (content or substance of the deed).

The judge of the Surabaya District Court has issued a condemnatory dicta, which just affirms a legal declaration or statement pertaining to the sought case. A number of articles of the Limited Liability Company Law were taken into consideration by the court. Article 36 paragraph (2) of the Limited Liability Company Law, which governs the exception to cross share ownership (cross holding), and Article 158 of the Limited Liability Company Law, which governs transitional provisions related to Article 36 paragraph (1), namely the provision of a one-year period of adjustment for the company, are important articles to consider in relation to the ban on cross holding. This shows that the corporation has also breached the transitory period since it has beyond it.

FURTHER STUDY

To provide deeper insights and wider applications, more study is invited to explore this area further, addressing any potential limits and broadening the scope of analysis.

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terdaftar dalam daftar pemegang saham PT yang memiliki kewenangan untuk menggunakan hak kepemilikan sahamnya sesuai dengan yang diatur oleh UUPT.

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