Law Enforcement Implementation and Efforts in Protecting Company Ownership Rights Over Rising Disputes over Share Ownership Reviewed Based on Law No. 40/2007 concerning Limited Liability Companies

Jeane Neltje Saly
Tarumanegara University
e-mail: jeanes@fh.untar.ac.id

Qonita Rizqi Iffani Putri
Tarumanegara University
e-mail: qonitarizqi1@gmail.com

Abstract

The primary objective of this study is to explore and identify effective legal measures to safeguard a company's ownership rights and resolve disputes over share ownership. To achieve this, the author employed normative legal research methods to analyze the issue thoroughly. This study specifically focuses on applying and enforcing laws designed to protect the administrators of limited liability companies, as stipulated in law number 30 of 2007 concerning limited liability companies. By examining these legal provisions, the author aims to provide insights into how companies can better protect their ownership rights and prevent conflicts over share ownership.

Keywords: legal safeguards, ownership rights, enforcement of laws, normative legal research

A. INTRODUCTION

As a nation governed by a legal system, Indonesia upholds the fundamental objective of peaceful coexistence, promoting a state of tranquility and harmony that benefits all individuals. According to Article 1 point 3 of the 1945 Constitution, Indonesia is recognized as a legal state wherein all aspects of people's lives are subject to the authority of the law. The law serves as a protective shield for society and bestows rewards upon its members. Central to the concept of a just and equitable society is the cornerstone of justice for every citizen, ensuring that the rule of law prevails. The Pancasila principles, deeply embedded in the fabric of Indonesian society, alongside the country's comprehensive legal framework, establish the foundation for Indonesia's legitimacy as a nation governed by law.

The notion of security extends beyond mere legal protection, encompassing a broader understanding. As legal subjects, human beings generate rights and obligations through their interactions with one another and the surrounding environment, thus warranting the entitlement to legal safeguarding. In their capacity as legal subjects, individuals possess both the right and the responsibility to seek legal recourse when necessary. Irrespective of their societal or governmental status, everyone is entitled to receive protection, as the state ensures the safety of all its citizens. This implies that the philosophy of legal protection evolves through the practical application of laws, which serve as tools employed by the state to uphold and preserve the inherent dignity of every individual.

According to Article 1 Point 1 of the relevant section of the Limited Liability Company Law (UUPT), a company is defined as a legal entity formed through a capital partnership agreement. The company conducts business activities using authorized capital fully divided into shares and meets the requirements outlined in the law and its implementing regulations. Additionally, Article 3, paragraph (1) of the UUPT states that the liability of business shareholders is limited. This provision clarifies that shareholders are not personally liable for the company's obligations arising from agreements entered into on behalf of the company, nor are they responsible for losses exceeding their share capital.

In simpler terms, shareholders are not personally liable for any losses incurred by the company that exceeds the amount of their initial investment or the paid-up capital they have contributed to the
company. This means that their liability is limited to the value of their initial investment.¹

In this study, legal protection signifies a commitment to safeguard individual rights, as exemplified by examining the directors’ share ownership in a company and their responsibilities in conducting business activities. Consequently, two key issues arise the provision of protection and the legal responsibilities involved in enforcing the law to ensure the safeguarding of companies.

As a fundamental principle, legal protection applies to all individuals, including business actors. Therefore, the law plays a crucial role in ensuring the protection of rights and fulfillment of obligations for various stakeholders, such as business managers, directors, and business owners, as outlined by legal regulations. With the rapid progress of today’s business landscape, it becomes imperative for companies to manage their operations effectively. Law Number 40 of 2007 concerning Limited Liability Companies (UUPT of 2007) specifically emphasizes the role of directors in assuming managerial responsibilities and defining their crucial and strategic functions within a limited liability company. By adhering to these legal provisions, companies can uphold their business activities while complying with the legal framework.²

B. RESEARCH METHOD

In this study, the normative juridical law approach serves as a theoretical framework that enables the exploration of coherence within the research context. The research methodology adopted in this study entails the comprehensive collection of legal data from primary, secondary, and tertiary sources, ensuring a multifaceted analysis. To facilitate a thorough examination, the reference approach employed encompasses both the statutory and conceptual approaches, allowing for a comprehensive understanding of the subject matter. The data utilized in this study draws from a wide range of sources, including research findings and previously published works, thereby contributing to the richness and depth of the analysis. By integrating these methodological components, this study endeavors to uncover a nuanced understanding of the topic while maintaining methodological rigor.

The methodological approach employed in this study entails a comprehensive review of relevant statutes and judicial precedents to gain a thorough understanding of the legal landscape. Within this approach, certain pre-existing legal viewpoints and concepts were deliberately set aside to adopt a conceptual approach, which allows for a fresh and innovative perspective.

To compile the necessary legal sources for this investigation, a literature review method utilizing library research was employed. This involved systematically gathering and analyzing secondary legal resources, including previously published papers and studies, to enrich the analysis and provide a comprehensive overview of the subject matter.

The analysis conducted in this study follows a qualitative analysis methodology. Specifically, it involves a meticulous examination of legal research, focusing on the interpretation of legal materials or sources obtained from various scholarly works, such as articles, scientific journals, and books, as well as relevant laws and regulations pertaining to the research topic. By employing this qualitative analysis methodology, the study aims to deepen the understanding of the legal framework and its implications within the research context.

C. RESULT AND DISCUSSION

Structured business operations in Indonesia, particularly in the form of PT (Perseroan Terbatas), are highly regarded for their numerous advantages in terms of mutual benefits and streamlined management. The legal framework governing businesses and ensuring equitable employment opportunities plays a crucial role in facilitating the growth and expansion of existing

According to the Company Law, specifically Article 1, Paragraph 1, a limited liability company (a "company") is defined as a legal entity operating as a capital partnership. It is established through an agreement and conducts business activities using authorized capital divided into shares. Moreover, the company must meet all the requirements specified in the relevant laws and their implementing regulations. The PT referred to in this context is precisely defined in the Company Law, also known as the Limited Liability Company Law. By adhering to the provisions outlined in the Company Law, businesses in the form of PT can operate within a legal framework that provides clarity, stability, and fair treatment for both employers and employees. This legal foundation catalyzes companies' continued growth and development, fostering an environment conducive to economic progress and prosperity.

In accordance with Article 2 Number 21 of 2021, the concept of limited liability companies encompasses two main categories: capital partnerships and individual PT. Capital partnerships refer to legal entities formed as a result of agreements and engaged in business activities using authorized capital that is fully divided into shares. On the other hand, individual PT refers to individual legal entities that fulfill the specific criteria outlined in the laws and regulations concerning UMK (Micro Small Enterprises), particularly related to meeting the Minimum Wage requirements. This provision in Article 2 Number 21 of 2021 expands the definition and scope of limited liability companies, recognizing the existence of both capital partnerships and individual PT as distinct forms of legal entities. By acknowledging these different categories, the law accommodates a wider range of business structures and entities, fostering diversity and flexibility within the business landscape.

It is important to note that a capital partnership limited liability company differs from a small micro enterprise (UMK) in classification. As such, it operates under a distinct framework where the establishment and functioning of the company are based on the concept of an "agreement" rather than a specific agreement with an individual entity. Contract law places a significant emphasis on the individual's freedom to enter into agreements and exercise autonomy in determining the terms and conditions thereof. This recognition underscores the inherent flexibility and autonomy afforded to capital partnership limited liability companies, allowing them to structure their operations and contractual arrangements to align with their specific needs and goals.

Article 1313 of the Civil Code states, "An agreement is an act by which one or more people bind themselves to one or more other people". This understanding implies that a corporation, including a limited liability company, is formed as a legal entity based on an agreement. Once a company is established, its PT founders assume the role of shareholders within the company, and the preferences and goals of these shareholders guide the company's objectives. Since a limited liability company must have a minimum of two founders, determining the legal responsibilities of each founder for the actions of the others can be challenging. Currently, there is no specific provision governing the nature of these relationships. However, the legal relationship between the founders of a limited liability company can be understood based on their collective intention to establish a business with the status of a legal entity. All actions taken by the founders are directed towards the common goal of establishing and operating the company. This understanding highlights the shared purpose and coordinated efforts of the founders in establishing a limited liability company. Although the precise legal framework governing these relationships remains unregulated, the founders' intent provides insight into the nature of their association and their mutual commitment towards establishing and operating the company as a legal entity.

In line with Article 7, paragraph (1) of the UUPT, "the formation of a company requires a minimum of two founders, and this process must be formalized through a notarial deed drafted in the Indonesian language". As stated in this article, each founder must contribute cash as their investment in the company, which will then be converted into shares and allocated to the shareholders. It is noteworthy that beyond the initial requirement of at least two founders, there are no further restrictions imposed on share ownership. This means no stipulation mandating a minimum number of shareholders beyond the initial founders. Paragraph (2) of Article 7 clarifies that "every founder is
obligated to hold shares at the time of the company's establishment". By law, founders are individuals who actively participate in initiating a business venture. Thus, the legal framework defined by the article highlights the necessity of at least two founders and their financial contributions in the form of cash investments, which are subsequently converted into shares. The law also emphasizes the active involvement of founders in shareholding at the time of the company's establishment, ensuring their commitment and engagement in the business.

Article 7, paragraph (2) emphasizes the requirement for founders to participate in shares without specifying the exact amount to be deducted from each founder's investment to facilitate equal ownership of shares in a PT with only two shareholders. As a result, there are no majority or minority shareholders within the corporation, as both founders hold an equal number of shares. In practice, decision-making in a GMS is typically based on the support of the majority when consensus cannot be reached through debate. While there may not be a formal division of majority and minority shareholders, decisions within the company are generally determined by the prevailing majority in the GMS. It is important to note that the absence of majority or minority shareholders in a two-shareholder PT reinforces the equal standing and decision-making power of the founders. This structure is designed to ensure a balanced and collaborative approach to decision-making within the company.

The infringement of Article 1365 of the Civil Code, particularly in disputes about the ownership of company shares, constitutes a violation of legal principles, public order, propriety, or decency. It is important to note that the rights held by shareholders in a corporation are not solely property rights but encompass privileges and the authority to participate in decision-making processes that shape the company's strategic direction. By characterizing shareholder rights as more than mere property ownership, it emphasizes the significance of their role within the company. Shareholders possess the power to influence and contribute to important decisions that impact the overall trajectory of the corporation. Consequently, any infringement upon these rights can be seen as a transgression against legal norms, public order, and societal standards of fairness and morality. The understanding of shareholder rights as extending beyond mere property ownership underscores their broader influence and involvement in corporate governance and decision-making processes. Protecting and upholding these rights is essential to ensure a fair and equitable business environment.

The resolution of this particular violation takes the form of an unlawful act case. This is due to the fact that the nature of the violation is not related to any tangible goods that can be delivered, promised, or withheld in order to bring the ongoing case to a close. Additionally, the violation pertains to the mechanism and procedure for its implementation, which cannot be resolved through deliberation.

In this context, a Limited Liability Company (PT) is granted rights and obligations over non-living objects or property, similar to a natural person, because their wealth originates from the assets of people who are considered worthy of legal protection. The company's wealth is independent of the owner; the company possesses its own wealth and can initiate and defend legal actions on its own behalf. For this reason, many business actors opt for the Limited Liability Company structure for several reasons, such as:

a. The shareholders have limited liability for the company's debts,
b. The shares can be easily transferred or sold,
c. The company has a clear management structure throughout its organs.

Since a limited liability company has obtained legal entity status, the law regards the owners or shareholders and the management or directors as separate parties from the company.

In accordance with the Limited Liability Company Law, the three key organs of a PT are the

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General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners, as outlined in Article 1, paragraph (2). Additionally, the ownership of a limited liability company is demonstrated through the possession of shares, as stipulated by Article 1, point 5, in conjunction with Article 48 to Article 53 of the Limited Liability Company Law, which governs the issuance of shares on behalf of the owner. The specific arrangements regarding ownership in each limited liability company are established in the Company's Articles of Association. These articles are formulated in compliance with all applicable laws and regulations. Shareholders who can provide evidence of ownership are entitled to various benefits as prescribed by the Limited Liability Company Law. These benefits encompass the right to participate and vote in GMS meetings, receipt of dividends, and distribution of remaining assets in the event of company liquidation. By delineating the roles of the GMS, the Board of Directors, and the Board of Commissioners, along with the significance of share ownership, the legal framework ensures transparency and accountability in the operations of limited liability companies. The rights granted to shareholders serve to protect their interests and uphold their entitlements as provided by the relevant provisions of the law.

As businesses strive for growth and development, the competitive landscape intensifies as organizations anticipate and respond to market demands for sustained profitability. To ensure continued operations and success, businesses often need to expand or diversify their scope through mergers, consolidations, or takeovers. Additionally, there may be a need to transition from a private company to a public company, which can be achieved by transforming into a public company or a publicly traded limited liability company through the sale of shares. Expanding or broadening the business's scope through strategic actions allows companies to tap into new markets, access additional resources, and enhance their competitive advantage. Mergers, consolidations, and takeovers enable businesses to combine their strengths, streamline operations, and potentially achieve economies of scale. These strategies are pursued to enhance market position, improve efficiency, and capitalize on emerging opportunities. Transitioning to a public company entails making shares available through an Initial Public Offering (IPO) or subsequent public offerings. This allows the business to raise capital from a wider pool of investors and potentially increase its market visibility. By becoming a publicly traded company, businesses can access additional funding sources, enhance liquidity, and provide shareholders with opportunities for capital appreciation. Overall, these strategic moves and transitions are undertaken to position the business for long-term sustainability, adapt to market dynamics, and capitalize on growth opportunities in an increasingly competitive environment.

In the absence of specific provisions in the articles of association of a limited liability company, the principle of "One Share One Vote" is typically employed to ensure legal protection within a corporation. This principle means that each share held by a shareholder carries one voting right. However, the presence of minority shareholders and majority shareholders can arise due to variations in the number of shares owned by each shareholder. In accordance with the Limited Liability Company Law, the protection of shareholders is determined in relation to the size of the shares they possess. This protection encompasses various rights, including the right to transfer ownership of company shares. The law aims to safeguard the interests and rights of shareholders, irrespective of their minority or majority status, thereby ensuring equitable treatment and preventing any potential abuse of power. By recognizing the principle of "One Share One Vote" and providing legal protection to shareholders based on their share ownership, the Limited Liability Company Law promotes transparency, fairness, and the proper governance of corporations. This framework allows for the proper exercise of shareholder rights and facilitates the transferability of shares within the company.

Article 61, paragraph (1) of the UUPT outlines the rights of shareholders, specifically addressing the protection afforded to minority shareholders. The provision states that "Every shareholder has the right to bring a lawsuit against the company to the district court if they suffer harm due to the company's actions that are deemed unprofitable". This article serves to regulate and ensure

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the implementation of protection mechanisms for minority shareholders. It recognizes that minority shareholders, who may hold a smaller percentage of shares compared to the majority shareholders, should still be safeguarded from detrimental actions by the company that may cause them harm. By granting the right to file a lawsuit against the company in the event of perceived losses or harm resulting from actions deemed unprofitable, the law offers a means for minority shareholders to seek legal recourse and assert their rights. This provision contributes to maintaining equity and fairness within a limited liability company by providing avenues for redress and addressing potential imbalances of power between majority and minority shareholders.

As per Article 62 of the UUPT, shareholders hold the right to request that the company repurchase their shares under specific circumstances. These circumstances include situations where shareholders object to the company's decisions related to amendments in the articles of association, transfer or guarantee of company assets exceeding 50% of the company's net assets, or the execution of a merger, consolidation, acquisition, or separation. The provision in Article 62, paragraph (1) states that "Every shareholder has the right to request the company to repurchase their shares at a fair price if they disagree with the company's actions that cause harm to the shareholders or the company. Such actions may include amendments to the articles of association, transfer or guarantee of company assets involving an excess value of 50% of the company's net assets, as well as mergers, consolidations, or similar activities". This regulation is designed to protect the interests of shareholders who may oppose significant decisions that could potentially impact their investment or the company's well-being. By granting shareholders the right to request the repurchase of their shares at a fair price, the law offers a mechanism for dissenting shareholders to seek an equitable resolution in situations where they perceive actions by the company as detrimental.

Shareholders possess the right to initiate a corporate investigation if they have reasonable grounds to suspect that the company, its directors, or commissioners have engaged in illicit activities. According to the third paragraph of Article 138 of the Limited Liability Company Law (UUPT), applications for a corporate audit can be submitted by:

a. One or more shareholders collectively hold at least 1/10 (one-tenth) of all shares with voting rights.
b. Other authorized parties can request an examination based on relevant laws, regulations, the company's articles of association, or other agreements with the company.
c. The Public Prosecutor's Office.

In a PT, there exist both majority and minority investors. The distribution of shares can result in situations where the number of shares owned by a single shareholder is less than 50% or 40%. In such cases, other shareholders would collectively possess no more than 40% or 10-15% of the shares, respectively. When shareholders' ownership exceeds 50% of the total shares, they become the majority shareholder, holding the largest portion of the company's shares. This delineation of majority and minority shareholders acknowledges the varying degrees of ownership and influence within a PT. It underscores the importance of share distribution and the potential implications on decision-making processes within the company.

D. CONCLUSION

The legal analysis conducted in this discourse highlights significant issues established businesses face, particularly in the face of intensified competition arising from anticipated adverse events and rapid industry expansion. Consequently, businesses need to adopt strategies that enable them to sustain operations, such as expanding their scope through mergers, consolidations, and providing protection for minority shareholders. The limited liability company law regulates the power of shareholders to take legal action against companies. Article 61, paragraph 1 of the limited liability company law specifically

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grants shareholders the right to bring a lawsuit against the company in a district court if they suffer harm due to unfair actions and lack of justifiable reasons. This legal provision serves as a mechanism to safeguard the rights and interests of shareholders who experience negative consequences due to unjust actions by the company. By enabling shareholders to seek legal recourse through the court system, the law seeks to ensure fairness, accountability, and rectification in cases where shareholders are harmed due to unfair practices. In summary, based on the legal analysis and exploration of these issues, it is evident that businesses operating in a competitive environment must implement strategies to sustain their operations. Moreover, the limited liability company law allows shareholders to initiate legal proceedings if they suffer harm due to unfair actions by the company.

E. REFERENCES


