

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)



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ABSTRACT: Aims and scope. This research aims to know the legal status of shares in a limited liability company if the shareholder's whereabouts are unknown in the case of PT APCKP and PT Sun Toy and to analyze the concept of transferring shares in a limited liability company if the shareholder's whereabouts are unknown which provides legal certainty. Method. The form of prescriptive research with statutory and conceptual approaches, using normative juridical methods where the legal materials used are sourced from laws and regulations, books, legal writings and journals, as well as dictionaries or encyclopedias. Using a qualitative method of analysis by interpreting the legal materials that have been processed. The results of the research show that (1) Unknown shareholders in a PT have implications for the existence and validity of the PT, in this case disrupting the quorum at the RUPS, transferring shares becomes difficult because approval from unknown shareholders cannot be obtained, hampering the process of dissolving the PT, and can affect the ownership and control structure of the PT. The request through the court for the unknown shareholder to be determined in a state of absence (afwezigheid) made by PT APCKP and PT Sun Toy, does not provide legal certainty because the concept of absence (afwezigheid) cannot be applied in the case of transfer of rights to shares, which creates ambiguity and is prone to causing new legal problems;(2) KUHPperdata has regulated people whose whereabouts are unknown or have disappeared, in this case the Balai Harta Peninggalan will be appointed as the party that will manage the assets left by the owner. Furthermore, it has also regulated that property rights can be lost if they have expired, which is also adopted in the provisions of the UUPT 2007 regarding the expiration of profits (dividend). When looking at these two concepts, when applied in the transfer of rights to shares owned by unknown shareholders, the concept of expiration is more efficient and provides legal certainty compared to the concept of absence (afwezigheid).

KEYWORDS: Shareholders whereabouts are unknown, Absence (afwezigheid), expiration.

INTRODUCTION

Economic development is carried out by prioritizing economic democracy which aims for the general welfare of society.¹ To achieve these economic development goals, a rule of law is needed that regulates the course of a conducive business climate. Accelerating economic development must see and consider the development and needs of the community and the development of the business world so as to create legal certainty and stability of the national economy. Indonesia has made efforts to accelerate national economic development in terms of regulating good corporate governance, which is then referred to as a Limited Liability Company (hereinafter abbreviated as "PT").

PT is a form of company or business organization that is recognized by law as a legal entity. As a legal entity, a PT can act like a person or in Dutch called *natuurlijk persoon*, which can be burdened or bear rights and obligations like a person or *natuurlijk persoon*. PT law was formerly called *naamloze vennootschap* (company limited by shares), which is abbreviated as NV. At first, it was regulated in the 1847 KUHD in Book One, Third Title, Third Part, entitled About Limited Liability Companies, consisting of Articles 36-56, so only 26 Articles so it is really very short.²

¹ Penjelasan UUPT 2007 paragraf I, menyebutkan: "*Pembangunan perekonomian nasional yang diselenggarakan berdasarkan demokrasi ekonomi dengan prinsip kebersamaan, efisiensi yang berkeadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional bertujuan untuk mewujudkan kesejahteraan masyarakat.*"

² M. Yahya Harahap, S.H., 2016, *Hukum Perseroan Terbatas, Edisi 1, Cet. 6*, Jakarta: Sinar Grafika, hlm. 21.

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

Starting from the brevity of the provisions governing PTs in the KUHD, Article 1 of the KUHD itself confirms the applicability of the Civil Code in commercial law.³ Considering that the provisions governing PT are very minimal in the KUHD and are considered not to accommodate the development of the economy, science and technology substantially, Law No. 1 of 1995 concerning PT (hereinafter abbreviated as “UUPT 1995”) was made, which was then amended again with Law No. 40 of 2007 concerning PT (hereinafter abbreviated as “UUPT 2007”).⁴

From the amended company regulation, PT is defined as a legal entity which is a capital partnership established based on an agreement and conducts business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated under the provisions of the applicable laws and regulations.⁵ From this definition, establishing a PT must fulfill these 4 conditions, namely:⁶ (a) the existence of capital partnership⁷ which means that a PT has an authorized capital consisting of and divided into shares or sero (aandelen, share, stock), where the capital is subscribed by the shareholders to the Company; (b) established based on an agreement⁸ which means that between the founders and/or shareholders, must comply with the provisions of the agreement law stipulated in the Civil Code, regarding the general provisions of the agreement (Articles 1313-1319) and the second part on the legal conditions of the agreement (Articles 1320-1337), as well as the third part on the consequences of the agreement (Articles 1338-1341); (c) conducting business activities⁹ which means that a PT must have a purpose and objective as well as business activities and must be stated in the Company's Articles of Association.¹⁰ Thus, if a PT does not have business activities, it is considered to no longer exist as a legal entity; and (d) the birth of the company through a legal process in the form of Government authorization.¹¹ The Company is born as a legal entity, created through a legal process. That is why the Company is called a legal entity with an artificial form (kumstmatig, artificial) created by the state through law. Thus, the process of the birth of a PT as a legal entity is absolutely based on a Decree of Authorization by the Minister.

Based on these conditions, the company as a legal entity is considered an agreement between one shareholder and another shareholder and on the other hand is an agreement between the shareholders and the government on the grounds that the company cannot be run if it is not authorized by the Minister of Law and Human Rights of the Republic of Indonesia. Furthermore, what distinguishes PT with other legal entities is that the company has important personal characteristics, including:¹² (a) The company is treated as a form or entity (entity) that is separate and distinct from its owner in this case from shareholders (separate and distinct from its owner).¹³ So that the existence and validity of a PT will not be jeopardized by the death, bankruptcy, replacement or resignation of individual shareholders; (b) can sue and be sued on behalf of the Company itself;¹⁴ (c) the company may acquire, control and transfer its property in its own name;¹⁵ (d) the responsibility of shareholders is limited to the value of their shares; (e) shareholders do not manage the company, unless they are elected as members of the Board of Directors; and (f) continuous business activities according to the period stipulated in the Company's Articles of Association.

³ Pasal 1 KUHD, menyatakan: “Kitab undang-undang Hukum Perdata berlaku juga bagi hal-hal yang diatur kitab undang-undang ini, sekedar di dalam kitab undang-undang ini tidak diatur secara khusus menyimpang.”

⁴ M. Yahya Harahap, S.H., *Op. Cit.*, hlm. 23-24.

⁵ Pasal 1 ayat (1) UUPT 2007, menyebutkan: “badan hukum yang merupakan persekutuan modal, didirikan berdasar perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham dan memenuhi persyaratan yang ditetapkan dalam undang-undang ini serta peraturan pelaksanaannya”.

⁶ M. Yahya Harahap, S.H., *Op. Cit.*, hlm. 34-37.

⁷ Pasal 31 ayat (1) UUPT 2007, menyebutkan: “Modal dasar Perseroan terdiri atas seluruh nilai nominal saham.” Dan Pasal 32 ayat (2) UUPT, menyebutkan: “Modal dasar Perseroan paling sedikit Rp 50.000.000,00 (lima puluh juta rupiah).”

⁸ Pasal 7 UUPT 2007, menyebutkan: “Perseroan didirikan oleh 2 (dua) orang atau lebih dengan akta notaris yang dibuat dalam bahasa Indonesia.”

⁹ Pasal 2 UUPT 2007, menyebutkan: “Perseroan harus mempunyai maksud dan tujuan serta kegiatan usaha yang tidak bertentangan dengan ketentuan peraturan perundang-undangan, ketertiban umum, dan/atau kesusilaan.”

¹⁰ Pasal 18 UUPT 2007, menyebutkan: “Perseroan harus mempunyai maksud dan tujuan serta kegiatan usaha yang dicantumkan dalam anggaran dasar Perseroan sesuai dengan ketentuan peraturan perundang-undangan.”

¹¹ Pasal 7 ayat (4) UUPT 2007, menyebutkan: “Perseroan memperoleh status badan hukum pada tanggal diterbitkannya Keputusan Menteri mengenai pengesahan badan hukum Perseroan.”

¹² M. Yahya Harahap, S.H., *Op. Cit.*, hlm. 57-60.

¹³ Pasal 3 ayat (1) UUPT 2007, menyebutkan: “Pemegang saham Perseroan tidak bertanggung jawab secara pribadi atas perikatan yang dibuat atas nama Perseroan dan tidak bertanggung jawab atas kerugian Perseroan melebihi saham yang dimiliki.”

¹⁴ Pasal 61 ayat (1) UUPT 2007, menyebutkan: “Setiap pemegang saham berhak mengajukan gugatan terhadap Perseroan ke pengadilan negeri apabila dirugikan karena tindakan Perseroan yang dianggap tidak adil dan tanpa alasan wajar sebagai akibat keputusan RUPS, Direksi, dan/atau Dewan Komisaris.”

¹⁵ Pasal 60 ayat (1) dan ayat (2) UUPT 2007, menyebutkan: “(1) Saham merupakan benda bergerak dan memberikan hak sebagaimana dimaksud dalam Pasal 52 kepada pemilikinya. (2) Saham dapat diagunkan dengan gadai atau jaminan fidusia sepanjang tidak ditentukan lain dalam anggaran dasar.”

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

Based on the above characteristics of the personality of PT, as a legal entity whose company capital consists of a number of shares, the shares are transferable (transferable shares) with the transfer provisions stipulated in the Company's AOA¹⁶ and the provision that the transfer of rights to shares is done by deed of transfer of rights.¹⁷ Broadly speaking, the provisions for the transfer of shares are regulated in Article 57 of the 2007 Company Law¹⁸, with the following requirements:

- a. Shareholders who wish to sell their shares must first offer them to shareholders in the same classification or other shareholders. The transfer of rights to shares through sale and purchase must comply with the provisions of Article 1457 of the Civil Code, namely there is an agreement between the parties to bind themselves in the transfer of shares.¹⁹ Furthermore, the delivery must be subject to the provisions of Article 613 of the Civil Code.²⁰ In relation to the requirement to first offer the transfer of rights to shares to other shareholders, there are two provisions that need to be considered, namely: (1) the shareholder may offer the shares to a third party if, within 30 (thirty) days, the other shareholder does not purchase them (Article 58 paragraph (1)); and (2) the selling shareholder has the right to withdraw the offer (Article 58 paragraph (2)). It is intended that if other shareholders do not buy the offered shares after 30 (thirty) days and after the withdrawal of the offer, there is no longer an obligation for the shareholder to offer to certain classification holders or other shareholders, because the obligation to offer first, as such, only applies 1 (one) time.
- b. Requirement to obtain prior approval from the company's organs (GMS, Board of Directors and Board of Commissioners)²¹. In this case, the Articles of Association (hereinafter abbreviated as "AD") are given the freedom to determine or regulate which Company Organ must give prior approval for the transfer of rights to shares. This is because Article 57 paragraph (1) letter b of the 2007 Company Law does not specify which Company Organ ideally gives approval. The procedure for granting approval for the transfer of rights over shares is regulated in Article 59 of the 2007 Company Law, namely: (1) approval or refusal must be given by the Company Organ in writing within a maximum period of 90 (ninety) days as from the date on which the Company Organ receives the request for approval of the transfer of rights; (2) if the said period is exceeded, it shall be deemed to have approved the transfer of rights over the shares; and (3) if within 90 (ninety) days the Company Organ gives approval in writing, then the transfer of rights over the shares must be made in the form of a Deed of transfer of rights over the shares in accordance with the provisions of Article 56 of the Company Law 2007 where the Deed of transfer can take the form of an authentic Deed (Notarial Deed) or an underhand Deed.
- c. The transfer of rights to shares must be approved by the competent authority in accordance with the provisions of laws and regulations, in this case the ratification of the Ministry of Law and Human Rights of the Republic of Indonesia.

The transfer of rights to shares described above is the transfer of rights to shares through sale and purchase based on the provisions of the 2007 Company Law, where shareholders who wish to sell their rights to shares, have the right to ask the company to buy their shares at a fair price (fair value).²² Because the sale and purchase of shares involves other parties, the transfer of shares must be based on the agreement of the parties as stipulated in Article 1457 of the Civil Code, namely the owner of the shares surrenders his shares and the buyer pays the agreed share price. Furthermore, the transfer of shares must be based on the provisions of Article 613 BW, namely, carried out based on a deed of transfer either in the form of an authentic or underhand deed²³ and after the agreement on the transfer of shares, it must be stipulated in the GMS in accordance with the provisions of laws and regulations.

Proses pengalihan saham PT dalam UUPT 2007 maupun dalam KUHPperdata mengatur tentang proses pengalihan saham berdasarkan adanya kesepakatan atau perjanjian. Akan tetapi dalam prakteknya terdapat pemegang saham yang tidak lagi ditemukan

¹⁶ Pasal 55 UUPT 2007, menyebutkan: “*Dalam anggaran dasar Perseroan ditentukan cara pemindahan hak atas saham sesuai dengan ketentuan peraturan perundang-undangan.*”

¹⁷ Pasal 56 ayat (1) UUPT 2007, menyebutkan: “*Pemindahan hak atas saham dilakukan dengan akta pemindahan hak.*”

¹⁸ Pasal 57 UUPT 2007 terdapat dua Ayat: “(1) *Dalam anggaran dasar dapat diatur persyaratan mengenai pemindahan hak atas saham, yaitu: a. keharusan menawarkan terlebih dahulu kepada pemegang saham dengan klasifikasi tertentu atau pemegang saham lainnya; b. keharusan mendapatkan persetujuan terlebih dahulu dari Organ Perseroan; dan/atau c. keharusan mendapatkan persetujuan terlebih dahulu dari instansi yang berwenang sesuai dengan ketentuan peraturan perundang-undangan. (2) Persyaratan sebagaimana dimaksud pada ayat (1) tidak berlaku dalam hal pemindahan hak atas saham disebabkan peralihan hak karena hukum, kecuali keharusan sebagaimana dimaksud pada ayat (1) huruf c berkenaan dengan kewarisan.*”

¹⁹ Pasal 1457 KUHPperdata, menyebutkan: “*perjanjian jual beli adalah perjanjian antara penjual dan pembeli di mana penjual mengikatkan dirinya untuk menyerahkan hak miliknya atas suatu barang kepada pembeli, dan pembeli mengikatkan dirinya untuk membayar harga barang itu*”

²⁰ Pasal 613 KUHPperdata, menyebutkan: “*Penyerahan piutang-piutang atas nama dan barang-barang lain yang tidak bertubuh, dilakukan dengan jalan membuat akta otentik atau di bawah tangan yang melimpahkan hak-hak atas barang-barang itu kepada orang lain*”

²¹ Pasal 1 angka 2 UUPT 2007.

²² Pasal 62 ayat (1) UUPT 2007, menyebutkan: “*Setiap pemegang saham berhak meminta kepada Perseroan agar sahamnya dibeli dengan harga yang wajar.....*”

²³ M. Yahya harahap, 2009, *Hukum Perseroan Terbatas*, Jakarta: Penerbit Sinar Grafika, hlm. 270.

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

keberadaannya, hal ini terjadi karena pemegang saham telah berpindah alamat dan tidak pernah memberitahukan kepada perseroan serta nomor handpone, e-mail yang didaftarkan sudah tidak aktif, terhadap kasus ini penulis menggunakan istilah “Pemegang Saham Yang Tidak Diketahui Keberadaannya”. Seperti dialami oleh PT Asri Pembangunan Catur Karya Cipta (selanjutnya disingkat “PT APCKP”) di Medan dimana pemegang saham bernama Pintaro Adijanto dan Adijanto sudah tidak diketahui keberadaannya dan juga dialami oleh PT Sun Toy di Surabaya dimana pemegang saham bernama Goeiy Carliana juga sudah tidak diketahui keberadaannya.

The process of transferring PT shares in the 2007 Company Law and the Civil Code regulates the process of transferring shares based on an agreement or agreement. However, in practice there are shareholders whose whereabouts are no longer found, this happens because the shareholder has changed address and has never notified the company and the registered cellphone number, e-mail is no longer active, for this case the author uses the term “Unknown Shareholders”. As experienced by PT Asri Pembangunan Catur Karya Cipta (hereinafter abbreviated as “PT APCKP”) in Medan where the shareholders named Pintaro Adijanto and Adijanto are no longer known and also experienced by PT Sun Toy in Surabaya where the shareholder named Goeiy Carliana is also no longer known.

Regarding legal subjects whose whereabouts are unknown, it has actually been regulated in the provisions of the Civil Code, namely regarding absence (*afwezigheid*) which is defined as a legal subject who leaves his place of residence without giving power to represent him in his affairs and interests where his whereabouts are unknown or difficult to find.²⁴ Based on this legal basis, PT APCKP filed a request for a court order with case register Number: 2020/Pdt.P/2012/PN.Mdn dated June 11, 2012 at the Medan District Court and the court determined that the shareholder was in a state of *afwezigheid* and his shares in PT APCKP were managed by the Balai Harta Peninggalan (BHP) Medan. The same thing was also done by PT Sun Toy by applying for a court order with case register Number: 123/Pdt.P/2021/PN.Sby at the Surabaya District Court and the court determined that the shareholder was in a state of *afwezigheid* and his shares in PT Sun Toy were managed by BHP Surabaya.

That the legal efforts made by PT APCKP and PT Sun Toy were due to the absence of provisions in the 2007 Company Law governing the unknown whereabouts of shareholders so that the only effort made was to request a court order. According to the author, the provision of absence (*afwezigheid*) if used as a basis for transferring shares if the shareholder's whereabouts are unknown actually does not provide legal certainty because after 3 (three) years BHP manages absent assets, the assets will be temporarily controlled by the state.²⁵ Based on this, the use of the provisions of absence (*afwezigheid*) as stipulated in the Civil Code for the transfer of shares if the shareholder's whereabouts are unknown will cause legal uncertainty because company law should be a specialty in civil law that specifically regulates business.

The transfer of shares when the shareholder's whereabouts are unknown should provide legal certainty and be more effective and efficient when using the expiration concept approach. Assuming that the shareholder is deemed to have relinquished all his rights to shares in the PT if the PT management has made a proper summons either through print media or online media within a certain period of time but the shareholder has never attended or responded. Regarding expiration in the provisions of UUPT, it has actually been adopted in terms of dividend collection, with a period of 5 (five) years if the shareholder does not take dividends, the dividend collection is considered expired and will be included in the special reserve of the PT. So it is very relevant if the concept of expiration is used as a basis for transferring shares of shareholders whose whereabouts are unknown.

Given that the pattern of human life continues to develop from time to time, the law needs to be streamlined as stated by Richard Posner in his book "Frontiers of Legal Theory". Likewise, the problem of shareholders whose whereabouts are unknown, which in the author's opinion is for the sake of legal certainty for the sustainability and management of the company, then with the approach of the concept of expiration is a solution for the company to transfer shares if the shareholder's whereabouts are unknown.

Based on the above background, the problem formulation in this study is how is the legal status of shares in a limited liability company if the shareholder's whereabouts are unknown in the case of PT APCKP and PT Sun Toy?

RESEARCH METHODS

This research uses descriptive research, which is research that is explanatory in nature, and aims to obtain a complete picture (description) of the state of the law that applies in a particular place, or regarding existing juridical symptoms, or a certain legal event that occurs in society.²⁶

²⁴ Pasal 463 KUHPerdara, menyebutkan: “*bila seseorang meninggalkan tempat tinggalnya tanpa memberi kuasa untuk mewakilinya dalam urusan-urusan dan kepentingan-kepentingannya, atau untuk mengatur pengelolaannya mengenai hal itu, ataupun bila kuasa yang diberikannya tidak berlaku lagi, sedangkan keadaan sangat memerlukan mengatur pengelolaan itu seluruhnya atau sebagian, atau untuk mengusahakan wakil baginya,.....*”

²⁵ Pasal 1129 KUHPerdara, menyebutkan: “*bila setelah lampaunya waktu tiga tahun terhitung dari saat terbukanya warisan itu, tidak ada ahli waris yang muncul, maka perhitungan penutupnya harus dibuat untuk negara.....*”

²⁶ Muhaimin, *Op. Cit.*, hlm. 38.

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

Based on the formulation of the problem, the appropriate form of research is prescriptive. Prescriptive research is research that aims to provide a description or formulate problems in accordance with existing circumstances/facts.²⁷ Legal science is characterized as a prescriptive and applied science. As a prescriptive science, legal science studies legal objectives, values of justice, validity of legal rules, legal concepts and legal norms.²⁸ To discuss the subject matter in this study, prescriptive research specifications will be used, namely a study intended to obtain suggestions regarding what should be done to overcome certain problems.²⁹

RESULT AND DISCUSSION

Legal Status of Shares in a Limited Liability Company if the Shareholder's Whereabouts are Unknown

The nature of the establishment of a PT based on the provisions of Article 7 paragraph (1) and paragraph (2) UUPT 2007 is basically based on an agreement that is set forth in the form of a declaration of establishment before a notary or known as the Deed of Establishment. The agreement in question is the existence of 2 (two) or more people who declare themselves to establish a PT with the parties each taking part in the distribution of PT shares and depositing authorized capital as the initial capital of the PT either in the form of depositing money or in the form of other assets. From the shares that have been taken, according to the provisions of Article 50 paragraph (1) and Article 51 of the 2007 Company Law, the PT must record the shareholders in the shareholders register book and issue proof of share ownership given to each shareholder.

Shareholders who have taken part in PT's shares automatically attach rights to them including: the right to attend and vote in the GMS, the right to obtain profits (dividends) and the remaining liquidation proceeds, the right to obtain information, and the right to sue the PT in court. In addition to these inherent rights, shareholders also have obligations including: the obligation to deposit capital in the amount of shares taken, the obligation to elect or appoint PT management, the obligation to support any sustainable PT business strategy and although not always required, shareholders are expected to participate in the GMS procurement.

When looking at the rights and obligations of shareholders, the PT management cannot manage or run the company beyond the authority attached to it without the approval and knowledge of shareholders because every PT policy must be accounted for before the shareholders.

Therefore, shareholders play an important role and have a direct interest in the performance and success of PT. If PT performs well, shareholders will benefit through profit sharing (dividends) or an increase in the nominal value of shares. In addition, shareholders also play a role in determining the strategic decisions of the PT through their participation in the GMS such as the election of directors and commissioners as well as the approval of business plans and are entitled to obtain business information carried out by the PT. Thus, shareholders play an important role in the structure, performance and decision making of the PT. The interests of shareholders in the PT make it the main stakeholder that must be considered by the PT management.

Basically, UUPT 2007 adheres to the philosophy of economic democracy which is a manifestation of the fourth principle of Pancasila, namely the spirit of togetherness in order to reach an agreement for the common interest. This is reflected by requiring the founders of PT to be at least 2 (two) people and PT is established based on an agreement, so that PT is managed together to achieve a goal. This is in line with Soekarno's view of "democracy with welfare and gotong royong" where economic democracy produces social democracy. Which means that the establishment of a PT must be based on social and sustainable development. This was also emphasized by Mohammad Hatta who stated, "The sovereignty of the people created by Indonesia must be rooted in its own association of life which is characterized by collectivism". From this view, the author argues that economic democracy is not only seen as something that requires a PT to be established based on the agreement of the founders but must also be seen as a form of collectivity in order to create social development and achieve sustainable companies. To achieve this, the founders/shareholders must have the same business vision in establishing a PT.

But in fact, the establishment of a PT is often done not because of the same business vision but only as a formal requirement that the Company Law requires a PT to be established by at least 2 (two) people. Establishing a PT without the same business vision ultimately makes the founders not really involve themselves in the management of the PT or in the event that the shareholders actually only lend their names as shareholders in the PT (known as fictitious shareholders) tend not to be involved in the management of the PT.

Since the shareholder is only an auxiliary in establishing the PT, the PT does not provide proof of share ownership to him/her and does not properly record the identity of the shareholder. In addition, these shareholders do not consider that they have an obligation to notify the PT if they have moved, there is a change in identity, a change in cellphone number or email. Maybe in a certain period of time the PT will not be disturbed by this, but if the PT progresses and will develop its business field, problems will arise because to develop the business field requires the approval of all shareholders.

²⁷ *Ibid.*

²⁸ Peter Mahmud Marzuki, 2007, *Penelitian Hukum*, Jakarta: Kencana, hlm. 22.

²⁹ Soerjono Soekanto, 2007, *Pengantar Penelitian Hukum*, Jakarta: UI Press, hlm. 10.

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

It should be noted that until now there are no regulations governing the existence of unknown shareholders in PTs in Indonesia, nor are there even scientific studies on this matter. However, the author sees that the existence of unknown shareholders in a PT with a fairly large number of shares will have implications for the existence and validity of the PT. In this case, we will describe several implications, as follows:

1. **Quorum and GMS Decision Making:** in the event that there are shareholders whose whereabouts are unknown, it can disrupt the agenda of the GMS because there is no quorum. Even though the 2007 Company Law has regulated that if the quorum of the GMS is not fulfilled after 2 (two) times, the company can request a court order to carry out the GMS, but still the company will be disadvantaged because it first requests a court order and of course it takes quite a long time.
2. **Transfer of Shares:** with the existence of unknown shareholders, the company cannot take over (buy back) or transfer the shares in question, because to transfer shares must comply with the provisions of Article 1457 of the Civil Code, namely the consent of the parties. The transfer of shares based on an agreement is because shares are the property of the owner so that only the owner has the right to transfer to another party. This is also confirmed in Article 57 of the 2007 Company Law which regulates the conditions for transferring shares of shareholders in PT, namely: Shareholders first offer to other shareholders; Obtain approval from the PT organ; and authorized by the authorized agency in this case the Ministry of Law and Human Rights of the Republic of Indonesia. Thus, abandoned shares cannot be bought back by the PT or transferred by the PT to other / new shareholders.
3. **Dissolution of the Company:** in the event that a PT is no longer in business, it may be dissolved by resolution of the GMS³⁰ provided that one or more shareholders submit a proposal for dissolution where the GMS is held with at least $\frac{3}{4}$ (three quarters) of the total number of shares with voting rights present and the GMS resolution is valid if approved by at least $\frac{3}{4}$ (three quarters) of the total number of paid-up shares.³¹ If the shareholders whose whereabouts are unknown have a large number of shares, it can result in the nullification of the dissolution of the PT because the number of those present and who approve the decision is not quorum. This results in the PT will continue to carry out its legal obligations in terms of tax reporting and so on even though the PT is no longer running.
4. **Ownership and Control Structure:** As explained earlier, if an unknown shareholder owns a large number of shares, it can affect the ownership and control structure of the company, which in turn affects the company's performance in achieving the company's goal of maximizing company value. This is due to the control of the shareholders.

That the case of unknown shareholders has been experienced by PT APCKP in Medan³² where the shareholders named Pintaro Adijanto and Adijanto's whereabouts are unknown and also experienced by PT Sun Toy in Surabaya³³ where the shareholder named Goeiy Carliana is also unknown. The absence of shareholders experienced by PT APCK and PT Sun Toy has disrupted the existence and validity of the companies they run, and because the 2007 Company Law has not regulated the unknown existence of shareholders, for the sake of the existence and validity of their companies, PT APCKP and PT Sun Toy filed an application to the district court so that shareholders whose whereabouts are unknown are determined as absent legal subjects or known as absence (afwezigheid) as regulated in Article 463 of the Civil Code. Whereas the request for stipulation with case register Number: 2020/Pdt.P/2012/PN.Mdn at the Medan District Court filed by PT APCK and the court stipulation with case register Number: 123/Pdt.P/2021/PN.Sby at the Surabaya District Court filed by PT Sun Toy, both were accepted by the court by determining that the shareholders whose whereabouts are unknown are determined to be in a state of absence (afwezigheid) and their respective shares are determined to be managed by the Balai Harta Peninggalan (BHP) Medan and Surabaya.

That as stipulated in Article 1129 of the Civil Code, the Balai Harta Peninggalan in carrying out the task of managing assets that have been determined in a state of absence (afwezigheid) has a maximum period of 3 (three) years, after that period the Balai Harta Peninggalan does not find or the party who has been determined in a state of absence (afwezigheid) or his heirs do not submit a claim for the assets managed, then the state will temporarily control it, as stipulated in Article 1129 of the Civil Code as follows:

Based on the above provisions, shares owned by shareholders in PT APCKP and PT Sun Toy that have been determined in a state of absence (afwezigheid), which are managed by the Balai Harta Peninggalan if no one claims within a period of 3 (three) years, then the state will temporarily control the shares. In this case, it will cause legal uncertainty, because shares will basically only give rights to shareholders who are registered in the register of shareholders, meaning that in order for the state to obtain the

³⁰ Pasal 142 ayat (1) huruf a UUPT 2007

³¹ Pasal 144 UUPT 2007

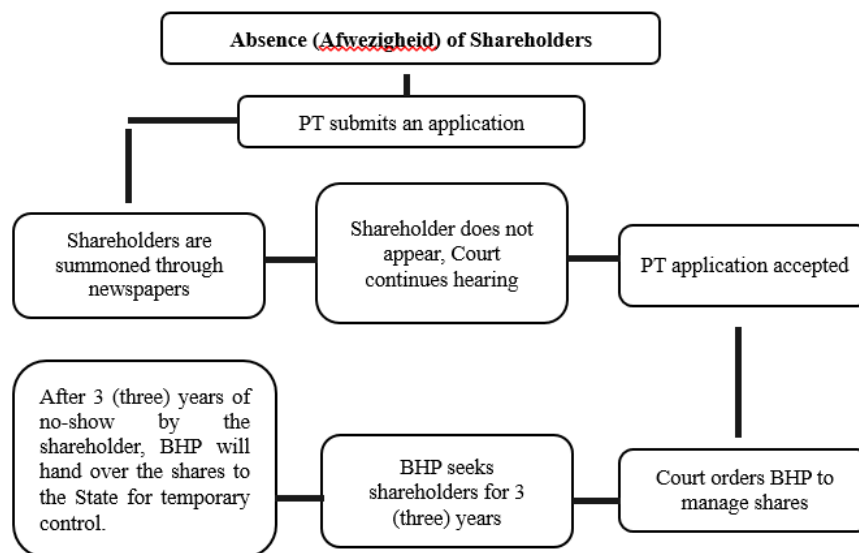
³² Putusan No: 2020/Pdt.P/2012/PN.Mdn diambil dari jurnal "Akibat Hukum Seseorang yang Ditetapkan dalam Keadaan Tidak Hadir (Afwezigheid) dalam Jual-Beli Saham" ditulis oleh Dhimmas Nur Muhammad Ruata dan Wiwin Yulianingsih, Jurnal Pendidikan Tambusai, Volume 7 Nomor 2 Tahun 2023, Fakultas Hukum, Ilmu Hukum, Universitas Pembangunan Nasional "Veteran" Jawa Timur.

³³ Putusan No. 123/Pdt. P/2021/PN. Sby diambil dari jurnal "Pengurusan Penjualan Saham Sebagai Objek Harta Kekayaan dalam Boedel Afwezigheid" ditulis oleh Shela Natasha dan M. Taufik Rahman, Jurnal Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam Vol. 4, 2 Tahun 2022.

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

right to control shares, first the shares owned by shareholders who have been determined to be in a state of absence (afwezigheid) are transferred to the name of the state. Thus, the state will own as many shares in PT APCKP and PT Sun Toy as the number of shares owned by the previous shareholders.

Meanwhile, based on the provisions of Law Number 1 Year 2004 concerning State Treasury, it has regulated the mechanism of the state in acquiring or purchasing shares in PT but does not regulate the state acquiring shares from the transfer of shares due to law. In the context of the state controlling the shares of shareholders determined in a state of absence (afwezigheid) does not have a legal basis so that the provisions of absence (afwezigheid) when applied in the transfer of shares of shareholders whose whereabouts are unknown do not provide legal certainty. The following author describes the process of submitting an application for absence (afwezigheid) below:



Van Apeldoorn states that legal certainty is a condition where the law must provide clear and predictable guidance on how the rules will be applied. Legal certainty includes the principle that legal rules must be clearly formulated, published, and consistently enforced. In the context of shares owned by shareholders whose whereabouts are unknown to be controlled by the state temporarily after the lapse of 3 (three) years since the Balai Harta Peninggalan was appointed as the party managing the shares by the court, this is legal uncertainty because the provisions in the Civil Code and Law No. 1 of 2004 concerning State Treasury do not regulate how the state controls property in the form of shares owned by people who have been determined in a state of absence (afwezigheid), thus creating ambiguity and potential legal conflicts.

So that the provision of absence (afwezigheid) which is used as a basis for resolving the problem of unknown shareholders does not provide legal certainty. The resolution of legal problems is not merely the existence of legal rules or legal norms but more importantly whether they can be implemented or not. The legal action taken by PT APCK and PT Sun Toy by requesting a District Court determination to determine shareholders whose whereabouts are unknown in a state of absence (afwezigheid) clearly does not solve the problem but raises new legal issues, in terms of shares owned by shareholders whose whereabouts are unknown will be controlled by the state temporarily but not based on a definite legal basis.

CONCLUSION

The existence of unknown shareholders in a PT has implications for the existence and validity of the PT, in this case disrupting the quorum at the GMS which has the potential to delay important decisions for the PT, the transfer of shares becomes difficult because the approval of unknown shareholders cannot be obtained, can hamper the process of dissolving the PT because the quorum requirements are not met and can affect the ownership and control structure of the PT and will have an impact on company performance. Unknown shareholders have been experienced by PT APCKP and PT Sun Toy, but because the 2007 Company Law and the Civil Code do not provide a legal basis for the transfer of shares owned by unknown shareholders, these two companies applied through the court for the shareholders to be declared in a state of absence (afwezigheid). However, the regulation of absence (afwezigheid) has not been able to solve the problem of unknown shareholders because it does not provide certainty to whom the shares will be given so that it creates ambiguity and is prone to causing new legal problems.

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Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

- 3) Pasal 1 angka 2 UUPt 2007.
- 4) Pasal 1 ayat (1) UUPt 2007, menyebutkan: “badan hukum yang merupakan persekutuan modal, didirikan berdasar perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham dan memenuhi persyaratan yang ditetapkan dalam undang-undang ini serta peraturan pelaksanaannya”.
- 5) Pasal 1 KUHD, menyatakan: “Kitab undang-undang Hukum Perdata berlaku juga bagi hal-hal yang diatur kitab undang-undang ini, sekedar di dalam kitab undang-undang ini tidak diatur secara khusus menyimpang.”
- 6) Pasal 1129 KUHPperdata, menyebutkan: “bila setelah lampaunya waktu tiga tahun terhitung dari saat terbukanya warisan itu, tidak ada ahli waris yang muncul, maka perhitungan penutupnya harus dibuat untuk negara.....”
- 7) Pasal 142 ayat (1) huruf a UUPt 2007
- 8) Pasal 144 UUPt 2007
- 9) Pasal 1457 KUHPperdata, menyebutkan: “perjanjian jual beli adalah perjanjian antara penjual dan pembeli di mana penjual mengikatkan dirinya untuk menyerahkan hak miliknya atas suatu barang kepada pembeli, dan pembeli mengikatkan dirinya untuk membayar harga barang itu”
- 10) Pasal 18 UUPt 2007, menyebutkan: “Perseroan harus mempunyai maksud dan tujuan serta kegiatan usaha yang dicantumkan dalam anggaran dasar Perseroan sesuai dengan ketentuan peraturan perundang-undangan.”
- 11) Pasal 2 UUPt 2007, menyebutkan: “Perseroan harus mempunyai maksud dan tujuan serta kegiatan usaha yang tidak bertentangan dengan ketentuan peraturan perundang-undangan, ketertiban umum, dan/atau kesucilaan.”
- 12) Pasal 3 ayat (1) UUPt 2007, menyebutkan: “Pemegang saham Perseroan tidak bertanggung jawab secara pribadi atas perikatan yang dibuat atas nama Perseroan dan tidak bertanggung jawab atas kerugian Perseroan melebihi saham yang dimiliki.”
- 13) Pasal 31 ayat (1) UUPt 2007, menyebutkan: “Modal dasar Perseroan terdiri atas seluruh nilai nominal saham.” Dan Pasal 32 ayat (2) UUPt, menyebutkan: “Modal dasar Perseroan paling sedikit Rp 50.000.000,00 (lima puluh juta rupiah).”
- 14) Pasal 463 KUHPperdata, menyebutkan: “bila seseorang meninggalkan tempat tinggalnya tanpa memberi kuasa untuk mewakilinya dalam urusan-urusan dan kepentingan-kepentingannya, atau untuk mengatur pengelolannya mengenai hal itu, ataupun bila kuasa yang diberikannya tidak berlaku lagi, sedangkan keadaan sangat memerlukan mengatur pengelolaan itu seluruhnya atau sebagian, atau untuk mengusahakan wakil baginya,.....”
- 15) Pasal 55 UUPt 2007, menyebutkan: “Dalam anggaran dasar Perseroan ditentukan cara pemindahan hak atas saham sesuai dengan ketentuan peraturan perundang-undangan.”
- 16) Pasal 56 ayat (1) UUPt 2007, menyebutkan: “Pemindahan hak atas saham dilakukan dengan akta pemindahan hak.”
- 17) Pasal 57 UUPt 2007 terdapat dua Ayat: “(1) Dalam anggaran dasar dapat diatur persyaratan mengenai pemindahan hak atas saham, yaitu: a. keharusan menawarkan terlebih dahulu kepada pemegang saham dengan klasifikasi tertentu atau pemegang saham lainnya; b. keharusan mendapatkan persetujuan terlebih dahulu dari Organ Perseroan; dan/atau c. keharusan mendapatkan persetujuan terlebih dahulu dari instansi yang berwenang sesuai dengan ketentuan peraturan perundang-undangan. (2) Persyaratan sebagaimana dimaksud pada ayat (1) tidak berlaku dalam hal pemindahan hak atas saham disebabkan peralihan hak karena hukum, kecuali keharusan sebagaimana dimaksud pada ayat (1) huruf c berkenaan dengan kewarisan.”
- 18) Pasal 60 ayat (1) dan ayat (2) UUPt 2007, menyebutkan: “(1) Saham merupakan benda bergerak dan memberikan hak sebagaimana dimaksud dalam Pasal 52 kepada pemiliknya. (2) Saham dapat diagunkan dengan gadai atau jaminan fidusia sepanjang tidak ditentukan lain dalam anggaran dasar.”
- 19) Pasal 61 ayat (1) UUPt 2007, menyebutkan: “Setiap pemegang saham berhak mengajukan gugatan terhadap Perseroan ke pengadilan negeri apabila dirugikan karena tindakan Perseroan yang dianggap tidak adil dan tanpa alasan wajar sebagai akibat keputusan RUPS, Direksi, dan/atau Dewan Komisaris.”
- 20) Pasal 613 KUHPperdata, menyebutkan: “Penyerahan piutang-piutang atas nama dan barang-barang lain yang tidak bertubuh, dilakukan dengan jalan membuat akta otentik atau di bawah tangan yang melimpahkan hak-hak atas barang-barang itu kepada orang lain”
- 21) Pasal 62 ayat (1) UUPt 2007, menyebutkan: “Setiap pemegang saham berhak meminta kepada Perseroan agar sahamnya dibeli dengan harga yang wajar.....”
- 22) Pasal 7 ayat (4) UUPt 2007, menyebutkan: “Perseroan memperoleh status badan hukum pada tanggal diterbitkannya Keputusan Menteri mengenai pengesahan badan hukum Perseroan.”
- 23) Pasal 7 UUPt 2007, menyebutkan: “Perseroan didirikan oleh 2 (dua) orang atau lebih dengan akta notaris yang dibuat dalam bahasa Indonesia.”
- 24) Penjelasan UUPt 2007 paragraf I, menyebutkan: “Pembangunan perekonomian nasional yang diselenggarakan berdasarkan demokrasi ekonomi dengan prinsip kebersamaan, efisiensi yang berkeadilan, berkelanjutan, berwawasan

Transfer Shares of Shareholders Whereabouts Are Unknown to a Limited Liability Company: (Study Approach the Concept of Expiration)

lingkungan, kemandirian, serta menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional bertujuan untuk mewujudkan kesejahteraan masyarakat.”

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