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## Liability of Directors for Failure to Record Changes in Ownership of Inherited Shares

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Liability;  
Inheritance;  
Shares.

### Abstract

Shares are a form of ownership of a person who has voting rights, rights to dividends, and rights to a share of assets in the event of liquidation. In the event that the owner of the shares dies, the transfer of ownership of the shares cannot occur immediately, but must go through a procedure so that the deed of rights to the shares is renamed to belong to the heirs. Cassation decision Number 2845 K/Pdt/2017 has set a new precedent; it was stated that the failure to record the heirs in the change of DPS was the negligence of the Board of Directors. So this research analyzes whether the Board of Directors is legally liable for the non-registration of heirs in the change of ownership of inherited shares, especially through systematic interpretation of article 50 paragraph (3) of the Company Law. This article is a legal research that uses primary and secondary legal sources in analyzing legal issues. The results show that the Board of Directors is passively obliged in terms of changes in ownership of shares in the DPS. So that the new obligation arises if the deed of change has been submitted to the company.

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## Introduction

PT. Big Bird which was originally formed on December 15, 1978, under the name PT. Hotel Transport changed its name to PT. Big Bird on April 6, 1979, which at first the composition of the founders / shareholders included Surjo Wibowo who was also a director at PT. Big Bird.

Surjo Wibowo's share ownership in PT Big Bird amounted to 2,625 shares or equivalent to Rp. 2,625,000,000. However, on May 10, 2000, Surjo Wibowo passed away. There was no one to fill the position left behind and also he left a number of shares which had an inheritance distribution agreement on May 5, 2010, between the family of the late Surjo Wibowo, namely Lani Wibowo ("Lani") for 328 shares and Elliana Wibowo ("Elliana") for 1,148 shares.<sup>1</sup>

<sup>1</sup> Anggar Septiadi, 'Big Bird Kalah Dalam Kasasi Soal Perkara Ahli Waris Saham' (*Kontan.co.id*, 4 July 2018) <[https://nasional.kontan.co.id/news/big-bird-kalah-dalam-kasasi-soal-perkara-ahli-waris-saham#-google\\_vignette](https://nasional.kontan.co.id/news/big-bird-kalah-dalam-kasasi-soal-perkara-ahli-waris-saham#-google_vignette)> accessed 17 February 2025.

The late Surjo Wibowo (“the deceased Surjo”), who was a shareholder during his lifetime of PT Big Bird and its Board of Directors and Board of Commissioners. After the death of the late Surjo on May 10, 2000, two of the heirs who received the transfer of rights to the shares of the late Surjo, namely Lani and Elliana, felt aggrieved by the neglect committed by the Board of Directors and Board of Commissioners of PT Big Bird.<sup>2</sup> Lani and Elliana are not recognized as shareholders by the Company because their names are not listed in the Register of Shareholders (which is commonly referred to as “*Daftar Pemegang Saham*” hereinafter referred to as DPS). This made both of them never get a summons to carry out the General Meeting of Shareholders (which is commonly referred to as “*Rapat Umum Pemegang Saham*” hereinafter referred to as RUPS) which is the right of shareholders.

In the RUPS held by the founding family of PT Blue Bird, there was a decision to implement a “Joint Operational Management” system between several affiliated companies. This decision allegedly benefited their personal companies, while PT Blue Bird Taxi suffered significant losses. The RUPS decision at the Annual RUPS and Extraordinary RUPS held on May 11, 2015, was to increase capital by Rp 50 billion. Shareholders who do not participate in the capital increase will experience share dilution, which is considered an adverse action for existing shareholders.

There are allegations that the decisions in the RUPS were legally flawed because they were not transparent and did not involve all shareholders.<sup>3</sup> Shareholders were not given access to annual financial reports and other key information, raising questions about accountability and transparency in the management of the company. Shareholders raised critical questions regarding the consolidation of financial statements between PT Blue Bird TBK and its affiliated entities, as well as regarding the ownership of assets that should belong to PT Blue Bird TBK. They also questioned whether revenues from affiliates were directly recorded as revenues of PT Blue Bird TBK.

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<sup>2</sup> Haryanti Puspa Sari and Akhdi Martin Pratama, ‘Tak Terima Dividen Sejak 2013 Jadi Alasan Pemegang Saham Gugat Blue Bird’ (*Kompas.com*) <<https://money.kompas.com/read/2022/08/02/184500926/tak-terima-dividen-sejak-2013-jadi-alasan-pemegang-saham-gugat-blue-bird>> accessed 17 February 2025.

<sup>3</sup> Ade Miranti Karunia and Aprillia Ika, ‘Digugat Rp 11 Triliun, Blue Bird Bantah Elliana Wibowo Sebagai Pemegang Saham Dan Pendiri Perusahaan’ (*Kompas.com*, 19 August 2022) <<https://money.kompas.com/read/2022/08/19/124500626/digugat-rp-11-triliun-blue-bird-bantah-elliana-wibowo-sebagai-pemegang-saham>> accessed 17 February 2025.

On the other hand, the Company Law (*Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas jo. Undang-undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang*) does not clearly explain the role of both parties in the event of a transfer of rights to shares due to inheritance in the active or passive actions of the board of directors towards updating the data on the register of shareholders or the board of directors waiting for reporting from the heirs regarding the transfer of shareholder rights? Article 97 Paragraph (3) in conjunction with Article 114 Paragraph (3) of Company Law stipulates that the Board of Directors and the board of commissioners can be held personally liable if they commit errors and omissions in carrying out their obligations which result in losses to the company, but this article only protects the interests of the company and does not cover the interests of other parties who are directly harmed by the mistakes of the directors and Board of Commissioners. The legal vacuum in this Company Law is a question to the directors for their actions, so a solution is needed for directors and heirs to the transfer of shareholder rights.

On this issue, there have actually been 3 (three) judge's decisions, namely; South Jakarta District Court Decision Number 740/Pdt.G/2014/PN.Jkt.Sel which rejected the lawsuit of minority shareholders, which was then canceled by Jakarta High Court Decision Number 138/PDT/2016/PT.DKI and confirmed in the Supreme Court Decision Number 2845 K/Pdt/2017. However, in all of these decisions, none of them granted compensation to the plaintiff. So that this research will analyze the Directors' Liability for Negligence in Recording Changes in Ownership of Inherited Shares. This research is expected to complement two previous studies, namely "*Perlindungan Hukum Bagi Para Pemegang Saham Yang Belum Tercatat Pada Daftar Pemegang Saham Akibat Pengabaian Kewajiban Pemeliharaan Daftar Umum Pemegang Saham Oleh Organ Perseroan (Studi Kasus Putusan Mahkamah Agung Republik Indonesia Nomor 2845K/PDT/2017)*" by Intan Farhana (2022) and "*Status dan Peralihan Hak atas Saham Perseroan Terbatas Milik Pemegang Saham yang Meninggal Dunia*" by Nadhila Rianda Karissa and David Maruhum Lumban Tobing (2022).

## Research Method

As required by research in the field of law, this research uses legal research. Legal research is research that analyzes legal norms systematically.<sup>4</sup> This research uses normative applied law research, in order to draw legal principles in the formulation of norms that will be a reference in answering the formulation of this research problem. In addition, this research uses a statue approach, conceptual approach, and case approach.

The statue approach is to conduct a discussion by examining the existing provisions in the law relating to the liability of directors related to share ownership. The conceptual approach is a concept where the search for answers is based on existing problems based on legal concepts regarding the liability of directors related to share ownership.<sup>5</sup> The case approach is a case analysis by studying and applying the application of legal norms or rules.<sup>6</sup>

This research uses two legal source materials; primary legal materials and secondary legal materials. Primary legal materials as the Indonesian state which adheres to the Civil Law System; the main legal source is legislation.<sup>7</sup> Secondary legal materials are sources of reading about legal science in the form of textbooks, Law journals, legal articles, theses, and dissertations related to legal issues.<sup>8</sup>

## Analysis

### Shares

Shares are as a form of participation (capital) of a person against a legal entity.<sup>9</sup> So that a person or legal entity is responsible limited to the nominal amount of shares included in the company. Each share is issued to give the holder complete rights. This means that the rights to shares cannot be divided, so that ownership of joint shares does not give rise to multiple rights but is calculated as one right whose use is represented by the association of people.

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<sup>4</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Prenada Media 2017) 44.

<sup>5</sup> Peter Mahmud Marzuki (n 4) 133-135.

<sup>6</sup> Peter Mahmud Marzuki (n 4) 158-159.

<sup>7</sup> Peter Mahmud Marzuki (n 4) 181-194.

<sup>8</sup> Peter Mahmud Marzuki (n 4) 195-208.

<sup>9</sup> Jamin Ginting, *Hukum Perseroan Terbatas (UU No. 40 Tahun 2007)* (1st edn, PT Citra Aditya Bakti 2007) 49.

Based on Article 44 of Company Law, the ownership of shareholders is proven through a share certificate. In addition to the names of the shareholders, a Register of Shareholders (hereinafter referred to as DPS) is made by the company. Company Law does not mention what the use of this DPS is, but in the list information can be obtained about the data of shareholders and the amount of their share ownership.<sup>10</sup>

By owning a share, a person has the right to attend the General Meeting of Shareholders (RUPS).<sup>11</sup> In addition, other rights are also regulated, such as; 1) Voting Rights, namely the right to vote in company decisions through the RUPS; 2) Right to Dividends, which is the right to receive dividends distributed in accordance with the provisions set by the company, depending on the profits earned; 3) Right to Sue, which is the right to sue if you feel aggrieved by the decisions of the Board of Directors or Board of Commissioners through the provisions of Article 61 paragraph (1) Company Law.

In practice, not all shareholders get these rights. This is because company Law allows for various classifications of shares.<sup>12</sup> This classification results in the differentiation of rights owned by shareholders from one another depending on the share classification. The first classification is Ordinary Shares, which is the right to shares that can provide voting rights in the RUPS and the right to dividends and rights, Preferred Shares which have priority in dividend payments but generally do not have voting rights, and Non-Voting Shares which only have the right to dividend payments but are not counted in the RUPS quorum.<sup>13</sup>

### **Transfer of Limited Liability Company Shares to Heirs**

Shareholders who die will open an inheritance. This results in all inheritance assets left in the form of shares will transfer to all heirs. Based on Article 52 paragraph (5) of Company Law, an heir to shares cannot immediately become the owner of the shares if there is no deed of transfer of rights. Heirs must go through the procedures for

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<sup>10</sup> Gatot Supramono, *Hukum Perseroan Terbatas yang baru* (1996th edn, Djambatan) 50.

<sup>11</sup> Mandus Marpaung, 'Hak Suara Pemegang Saham Perseroan Terbatas' (2019) 3 Jurnal Yure Humano.

<sup>12</sup> Paolo Giudici, Peter Agstner and Antonio Capizzi, 'The Corporate Design of Investments in Startups: A European Experience' (2022) 23 European Business Organization Law Review 789-792.

<sup>13</sup> Gatot Supramono (n 10) 52.

transferring rights to shares that have been determined by Company Law and agreed upon in the company's articles of association.

Furthermore, Article 55 of Company Law stipulates that 'In the articles of association of the Company, the manner of transfer of rights over shares shall be determined in accordance with the provisions of laws and regulations'. However, the above requirement does not apply if the transfer of rights over shares is due to the transfer of rights by operation of law (Article 57 paragraph (2) of the Company Law). Furthermore, in the Elucidation of Article 57 paragraph (2) of Company Law, what is meant by 'transfer of rights due to law', among others, is the transfer of rights due to inheritance or transfer of rights as a result of merger, consolidation, or separation. And if the transfer of rights is caused by inheritance, it must still obtain prior approval from the authorized agency (Article 57 paragraph (2) jo., Article 57 paragraph (1) letter c of the Company Law).

The transfer of rights to shares is carried out with a deed of transfer of rights. The deed of transfer of rights or a copy thereof shall be submitted in writing to the company (Article 56 paragraph (1) and (2) of Company Law). Furthermore, the Elucidation of Article 56 paragraph (1) of Company Law stipulates that the deed can be in the form of a deed made before a notary or an underhand deed. According to notary Fessy Alwi, in practice, the heirs only need to submit a death certificate, inheritance certificate, and other evidence that they are heirs.<sup>14</sup> Previously, the internal heirs also made a power of attorney to one of the heirs to represent the shareholder; if the limited liability company shares are owned by more than one person (for example due to inheritance), then one of them must be appointed to represent the shareholder.<sup>15</sup> An agreement can also be made between the heirs to divide the shares, so that each share is registered in the name of each heir.<sup>16</sup>

Furthermore, based on Article 56 paragraph (3) of Company Law, the Board of Directors is obliged to record the transfer of rights to shares, the date and day of

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<sup>14</sup> Flora Dianti, 'Prosedur Pemindahan Hak atas Saham karena Pewarisan' (*Klinik Hukumonline*, 24 June 2020) <<https://www.hukumonline.com/klinik/a/prosedur-pemindahan-hak-atas-saham-karena-pewarisan-lt5eba2d84c21ed/>> accessed 30 November 2024.

<sup>15</sup> Irma Devita, *Kiat-Kiat Cerdas, Mudah, dan Bijak Memahami Masalah Hukum Waris* (Kaifa Publishing 2012) 1-2.

<sup>16</sup> Irma Devita (n 15).

the transfer of rights in the register of shareholders or special register. The Board of Directors shall also notify the Minister of Law and Human Rights of the change in the composition of shareholders to be recorded in the company register no later than 30 days from the date of recording the transfer of rights. Notification of changes in the composition of shareholders to the Minister of Law and Human Rights according to the Explanation of Article 56 paragraph (3) of Company Law, includes changes in the composition of shareholders caused by inheritance, acquisition, or separation. If the notification has not been made, according to Article 56 paragraph (4) of the Company Law, the Minister of Law and Human Rights shall reject the application for approval or notification that is carried out based on the composition and names of the shareholders that have not been notified.

As such, the steps that the heirs must take in order to become a registered shareholder are:<sup>17</sup>

1. Agree on one of the heirs as the shareholder representative.
2. Make a deed of transfer of rights or evidence as heir.
3. Submit the documents to the company.
4. The Board of Directors will then record the transfer of rights to shares, the date and day of the transfer of rights in the register of shareholders or special register.
5. The Board of Directors shall notify the Minister of Law and Human Rights of the change in the composition of shareholders to be recorded in the company register no later than 30 days from the date of recording the transfer of rights.

### **Loss Due to Non-Recording of Transfer of Shares**

Share ownership is a form of status and rights owned by a person or entity in the company. This share is a form of ownership of a person who has voting rights, rights to dividends, and rights to part of the assets in the event of liquidation. In an effort to ensure certainty, order, and legal protection for every citizen, a written deed is needed to ensure legal certainty. Based on Article 1868 BW, it determines that an authentic deed is required for proof; this is because an authentic deed is made before an authorized official.

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<sup>17</sup> Flora Dianti (n 14).



As explained earlier, the Board of Directors has an important role in recognizing or not recognizing the recipient of the inheritance rights to the shares as a legal shareholder in the company. If these shares are not legally recognized, it will cause several legal consequences including:

1. The unclear status of share ownership, if it is not registered, can lead to legal disputes.
2. The rights of shareholders are neglected, namely the actual shareholders will not be able to exercise their rights in the General Meeting of Shareholders (RUPS) or the right to receive dividends.
3. Legal problems in the company, namely the existence of legal uncertainty for shareholders so that they can be subject to administrative sanctions.
4. Financial losses, namely disputes or legal problems that will occur will incur costs that can be said to be large.

Thus, if the Board of Directors does not record the transfer of rights to shares, the heirs of the transferee of the shares cannot enjoy and benefit from the shares even though the ownership rights of the shares have legally transferred to them. This makes the heirs of the transferee of the shares as if they are 'empty rights owners' who do not have any share in the company.

### **Share Transfer Responsibility under Company Law**

Protection is defined by Black's Law Dictionary as 'the act of protecting'.<sup>18</sup> Or if we translate it freely, it is behavior to protect. According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that manifest in attitudes and actions in creating order in the association of life between fellow human beings.<sup>19</sup> Meanwhile, according to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating a Human Rights power to him to act in the context of his interests.<sup>20</sup> So it can be interpreted, legal protection is an effort made by the government or authorities to protect the rights, freedoms, and interests of individuals or groups in society. Legal protection aims to ensure that everyone gets fair treatment, has equal access to justice, and is guaranteed their rights by law.

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<sup>18</sup> Bryan A. Garner. *Black's Law Dictionary* (9<sup>th</sup> ed. West 2009) 1343.

<sup>19</sup> Muchsin, 'Perlindungan dan Kepastian Hukum bagi Investor di Indonesia' (Disertasi S2 Fakultas Hukum, Universitas Sebelas Maret, 2003) 14.

<sup>20</sup> Satjito Rahardjo., *Sisi-Sisi Lain dari Hukum di Indonesia* (Kompas 2003) 121.



Protection can be said to be legal protection if it fulfils the following elements.<sup>21</sup>

1. Protection from the government for the community.
2. Providing legal certainty from the government.
3. Relates to the rights of citizens.
4. There are sanctions or penalties for those who violate them.

The Company Law does not provide clarity on the protection for the heirs of the transferee of shares who suffer losses due to the neglect of recording the transfer of rights to shares with the DPS. Although Article 97 paragraph (3) in conjunction with Article 114 paragraph (3) Company Law regulates that the Board of Directors and the Board of Commissioners can be held liable if it is proven that they have caused losses due to their errors or omissions, this is not enough to make the court grant the claim for compensation from the aggrieved heirs because the Company Law does not regulate the right to sue the aggrieved heirs due to the negligence of members of the Board of Directors.

When referring to Article 1365 BW, which is related to unlawful acts, several elements can be drawn, namely:

1. The existence of an act;
2. The act is unlawful;
3. There is fault on the part of a person;
4. The existence of harm to another person;
5. The existence of a clausal relationship between the act and the loss.

Based on the elements that have been described, this article can be used by heirs to protect their rights and interests. The heirs can file an unlawful lawsuit if the heirs of the recipient of the transfer of rights to shares have not been registered by the directors of the company.

On the other hand, the provisions regarding the Transfer of Share Rights in Company Law are only limited to regulating how the rights to shares are transferred and through what the rights to shares are transferred, but it is not clearly stated who is burdened with the obligation to convey changes in the rights to shares to the company.<sup>22</sup>

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<sup>21</sup> Rikha Yullina Siagian, 'Perlindungan Hukum Terhadap Konsumen Penjualan Telephone Seluler (hp) di Toko Ferry Indo Cell' (Project Report Universitas Internasional Batam 2020).

<sup>22</sup> Kementerian Hukum dan HAM, *Naskah Akademik Rancangan Undang-Undang Perseroan Terbatas* (2017) 70.

**Liability of the Board of Directors and the Board of Commissioners of the Company for the Loss of the Heirs of the Recipient of the Transfer of Rights on Shares as a Result of Ignoring the Recording of the Transfer of Rights on Shares at the DPS**

The liability of directors and commissioners for the actions of the company is closely related to the conception of the Business Judgment Rule.<sup>23</sup> This is a principle that can protect directors in making business decisions quickly in response to dynamic changes.<sup>24</sup> in this case according to *Aronson v. Lewis* the concept of Business Judgment Rule is that directors who have the authority to control the company must carry out their duties with full responsibility, good faith, and earnestly with the aim of the company's interests,<sup>25</sup> and adhere to the Business Judgment Rule principle. Stephen M. Bainbridge explained that the Business Judgment Rule serves to reach a middle ground when there is a conflict between the authority of the Board of Directors in running the company and the demands of directors' accountability to shareholders.<sup>26</sup> This principle basically applies when the Board of Directors has carried out the management of the company in accordance with Article 97 paragraph (2), namely full responsibility and good faith, but if the Board of Directors has been negligent in carrying out the management of the company then paragraph (3) applies, which states that each member of the board of directors is fully personally liable for the losses of the company if the person concerned is guilty or negligent in carrying out his duties.

Basically, it functions as two things, namely justifying transactions carried out by the company and personal liability of the management. In terms of justifying the company's transactions, this rule will protect the action itself from the lawsuit of its shareholders, while, in terms of personal liability, it will protect the management to be personally responsible for losses incurred in running the company.<sup>27</sup>

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<sup>23</sup> R Franklin Balotti and Joseph Hinsey, 'Director Care, Conduct, and Liability: The Model Business Corporation Act Solution' (2000) 56 *The Business Lawyer* 36.

<sup>24</sup> Asep N. Mulyana, *Business Judgment Rule, Praktik Peradilan Terhadap Penyimpangan Dalam Pengelolaan BUMN/BUMD* (PT Gramedia Widiasarana Indonesia 2018) 10.

<sup>25</sup> Andrew S. Gold, 'A Decision Theory Approach to the Business Judgment Rule: Reflections on *Disney*, Good Faith, and Judicial Uncertainty' (2007) Vol 66 Issue 2 *Maryland Law Review* 398.

<sup>26</sup> Hendra Setiawan Boen, *Bianglala Business Judgment Rule* (Tatanusa 2008) 100.

<sup>27</sup> Balotti and Hinsey (n 23) 37.

This Business Judgment Rule doctrine teaches that the decision of the Board of Directors cannot be sued by anyone, even though in this case the decision of the Board of Directors is not beneficial to the company, then the decision of the Board of Directors must fulfil the following conditions, namely:<sup>28</sup>

1. The decision is in accordance with the applicable law;
2. The decision is in good faith;
3. The decision was made with the right intention;
4. There are rational grounds for the judgment;
5. The judgment was made in a manner worthy of trust.

The principle of the Business Judgment Rule is related to the ability of the Board of Directors to manage existing risks; this is because all decisions made by the Board of Directors have a big risk. The application of this principle has the aim of creating court inefficiency which is reduced by the reduction of lawsuits to the court.<sup>29</sup> Indonesia adheres to three standards that are used to justify a business decision, namely:

1. Business decisions taken in good faith;
2. Directors are personally responsible;
3. Directors have no conflict of interest in making decisions.

This standard is used to provide rules that become guidance in making good decisions.

In terms of good faith, it must be proven that the Board of Directors really wants to take a company action based on the motivation to benefit the company, not to obtain personal gain.<sup>30</sup> Thus, this rule does not apply if the Board of Directors does not take any action; this is because proof of this principle requires evidence that shows affirmative action in making the decision.<sup>31</sup>

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<sup>28</sup> Fuad Munir, *Doktrin-Doktrin Modern Dalam Corporate Law dan Eksistensi Dalam Hukum Indonesia* (Citra Aditya Bakti 2002).

<sup>29</sup> Elia Fransisco Silitonga, Sunarmi, Mahmul Siregal, 'Penerapan prinsip *business judgment rule* terhadap Pertanggungjawaban Perdata Direksi Perseroan (Analisis Putusan No.915 K/Pdt/2017 dan No.83/Pdt.G/2016/PN.Sby) (2022) Vol 2 No 2 Locus : Jurnal Konsep Ilmu Hukum 3. <DOI: <https://doi.org/10.56128/jkih.v2i2.25>>.

<sup>30</sup> Dennis J Block and H Adam Prussin, 'The Business Judgment Rule and Shareholder Derivative Actions: Viva Zapata?' (1981) 37 *The Business Lawyer* 34.

<sup>31</sup> Block and Prussin (n 30) 33.

### Interpretation of Article 50 paragraph (3) of Company Law

The board of directors of the company shall record and keep the register of shareholders and its amendments according to Article 50 of Company Law;

- (1) *"Direksi Perseroan wajib mengadakan dan menyimpan daftar pemegang saham, yang memuat sekurang-kurangnya:*
  - a. nama dan alamat pemegang saham;*
  - b. jumlah, nomor, tanggal perolehan saham yang dimiliki pemegang saham, dan klasifikasinya dalam hal dikeluarkan lebih dari satu klasifikasi saham;*
  - c. jumlah yang disetor atas setiap saham;*
  - d. nama dan alamat dari orang perseorangan atau badan hukum yang mempunyai hak gadai atas saham atau sebagai penerima jaminan fidusia saham dan tanggal perolehan hak gadai atau tanggal pendaftaran jaminan fidusia tersebut;*
  - e. keterangan penyetoran saham dalam bentuk lain sebagaimana dimaksud dalam Pasal 34 ayat (2).*
- (3) *Dalam daftar pemegang saham dan daftar khusus sebagaimana dimaksud pada ayat (1) dan ayat (2) dicatat juga setiap perubahan kepemilikan saham."*

However, this article does not regulate whether the directors act actively or passively in doing the things referred to in Article 50 paragraph (1) and paragraph (3) of the Company Law. In fact, this is important to prove the liability of the directors for negligence. In a company, the Board of Directors can take action both actively and passively. Active action is the action of the Board of Directors in making a decision in the company. This active action includes decision-making, operational management, supervision and control, and financial decision-making. Directors act passively, which refers to actions that the directors do not take active steps directly. This passive action includes the obligation to report finances, wait for the RUPS decision, implement policies set by the RUPS, implement policies, and conduct supervision.

Because there is vagueness in the regulation, a legal interpretation is needed. Interpreting, according to Arief Sidharta, is the activity of understanding.<sup>32</sup> The essence of understanding something is what is called hermeneutic philosophy or the method of understanding or the method of interpretation carried out on the text holistically in the frame of the relationship between text, context, and contextualization.<sup>33</sup> In other words,

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<sup>32</sup> Afif Khalid, 'Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan di Indonesia' (2014) Vol. 6 Al-Adl: Jurnal Hukum.

<sup>33</sup> B. Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Mandar Maju 1999) 94-103, dalam Jazim Hamidi, *Hermeneutika Hukum* (UII Press 2005) 11-15.

understanding something is interpreting something in order to understand it. It is a method to understand the meaning contained in legal texts to be used in resolving cases or making decisions on matters faced in a concrete manner.

Legal experts have described nine theories of interpretation that differ in their depiction from what Arief Sidharta stated. The nine theories of interpretation are; literal interpretation theory, grammatical interpretation theory, historical interpretation theory, sociological interpretation theory, socio-historical interpretation theory, philosophical interpretation theory, teleological interpretation theory, holistic interpretation theory, and thematic-systematic holistic interpretation theory. Meanwhile, according to Utrecht regarding the interpretation of laws there are four things; Interpretation according to the meaning of words or terms, Historical Interpretation, Systematic Interpretation, Sociological Interpretation, and Authentic or Official Interpretation.

Legal construction according to theory and practice can be done by four methods, namely; 1. Analogy or *argumentum per analogiam* method; 2. *Argumentum a contrario method*; 3. Legal narrowing method; 4. Legal fiction.<sup>34</sup>

This article is most appropriate if it is interpreted systematically, that is, according to the system that exists in the formulation of the law itself. Systematic interpretation is carried out by looking at one legal text and another legal text, where both regulate the same thing, connected and compared with each other. If, for example, what is interpreted is an article of a law, then the same provisions, let alone one principle in other regulations, must be used as a reference.<sup>35</sup>

Article 50 paragraph (3) regulates the director's obligation to record changes in share ownership in the DPS. Meanwhile, Article 56 paragraphs (1) and (2) of Company Law stipulates that the transfer of rights to shares must be carried out through a deed of transfer of rights and the deed or a copy of it is submitted to the company. From these two paragraphs, it can be interpreted that the obligation as stated in Article 50 paragraph (3) of Company Law only arises after the written submission to the company

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<sup>34</sup> Khalid (n 32).

<sup>35</sup> Elien Utrecht, *Pengantar Dalam Hukum Indonesia*, disadur dan direvisi oleh Moh. Saleh Djindang, cet. XI, (Ichtiar Baru 1983) 212-213.

of the deed of transfer of rights or a copy of it to the company. So the obligation of the Board of Directors here must be interpreted as the Board of Directors acting passively, namely the Board of Directors waiting for notification from the heirs regarding the transfer of rights to shares from the deceased (as a registered shareholder). As in the case of cassation decision Number 2845 K/Pdt/2017, where the plaintiffs never notified in writing about the transfer of rights to the shares, so that the board of directors could not register the names of the heirs of the deceased Suryo Wibowo as shareholders. Therefore, the board of directors should not be held liable because they have not been proven to have committed errors and negligence in carrying out their obligations under Article 97 paragraph (3) in conjunction with Article 114 Paragraph (3) of Company Law.

#### **Responsibility for Maintenance of Shareholder Register Update Data (DPS)**

In carrying out the management of the company, this cannot be separated from the required data collection and maintenance, especially in this case the data on the list of shareholders Article 50 paragraph (1) of the Company Law which states that the Board of Directors is obliged to hold and keep a register of shareholders which contains, among others: a. names and addresses of shareholders; b. the number, number, date of acquisition of shares owned by shareholders, and their classification in the event that more than one classification of shares is issued; c. the amount paid up for each share; d. the name and address of the individual or legal entity that has a lien on the shares or is the recipient of a fiduciary guarantee for the shares and the date of acquisition of the lien or the date of registration of the fiduciary guarantee; e. a statement of the deposit of shares in other forms. Among the many shareholders Article 50 paragraph (2) explains that in addition to the register of shareholders referred to in paragraph (1), the Board of Directors is also obliged to make a special register, what is meant by a special register is one source of information regarding the amount of ownership and interests of members of the Board of Directors and the Board of Commissioners in the company concerned or other companies so that conflicts of interest that may arise can be minimized as much as possible. Regarding the share ownership of the Board of Directors and the Board of

Commissioners and their families in the company and/or in other companies along with the date of acquisition of the shares, what is meant by 'family' is the wife or husband and their children.

In addition, Article 50 paragraph (3) states that all changes related to the register of shareholders and the special register of shareholders are recorded, which if interpreted then refers to paragraph (1), namely those who are obliged to record, namely the Board of Directors to record any changes that occur related to the register of shareholders and the special register of shareholders to record any changes to the register of shareholders and special shareholders.

Article 55 of Company Law stipulates that 'In the articles of association of the company, the method of transferring rights to shares shall be determined in accordance with the provisions of laws and regulations.' Furthermore, Article 56 states that the transfer of rights to shares must be carried out through a deed of transfer of rights, which deed must be submitted to the company either through a copy or in writing, the Board of Directors is obliged to record the transfer of rights to shares in the register of shareholders and special register and then notify the minister of changes to the register of shareholders no later than 30 days from the date of recording the rights. Based on this provision, the heirs must carry out the procedures for transferring rights to shares. The procedure for transferring rights to shares has been explained in Article 57 paragraph (1) of Company Law, namely:

- a. Shares must first be offered to other shareholders;
- b. Obtain prior approval from the organs within the company;
- c. Obtain approval from the authorized agency based on statutory provisions.

The provisions of this Article shall not apply if the transfer of shares is due to a transfer by operation of law. Referring to the articles of association of PT Big Bird in Article 9 paragraphs (1) and (2) these are as follows:

1. The transfer of rights to shares must be based on a deed of transfer signed by the transferor as well as the recipient of the shares.
2. The deed of transfer referred to in paragraph (1) or a copy thereof shall be delivered to the company.



Based on the Articles of Association, rights to shares in PT Big Bird must first comply with Article 9 paragraphs (1) and (2) of the Articles of Association, then it is required to make a record in the Register of Shareholders no later than 30 days from the date of recording the transfer of rights.

## **Conclusion**

By owning a share, a person has the right to attend the General Meeting of Shareholders (RUPS). In addition, other rights are also regulated, such as; 1) Voting Rights, namely the right to vote in company decisions through the RUPS; 2) The right to dividends, namely the right to receive dividends distributed in accordance with the provisions set by the company, depending on the profits earned; 3) The right to sue, namely the right to sue if you feel aggrieved by the decisions of the Board of Directors or the Board of Commissioners through the provisions of Article 61 paragraph (1) of Company Law. Shareholders who die will open an inheritance. This results in all inheritance property left in the form of shares will move to all heirs. In the event of inheritance of shares, the heirs or through their attorney must submit a deed of transfer of rights or a copy thereof, either in the form of a deed made before a notary or an underhand deed, in writing to the company.

This study reveals that the Board of Directors and the Board of Commissioners act passively in recording the transfer of shares at the DPS. Directors act passively, which refers to actions that directors do not take active steps directly. This passive action includes the obligation to report finances, wait for the RUPS decision, implement policies set by the RUPS, implement policies, and conduct supervision. This refers to the systemic interpretation of Article 50 paragraph (3) jo. and Article 56 paragraphs (1) and (2) of the Company Law. So the obligation of the Board of Directors here is to wait for notification from the heirs regarding the transfer of rights to shares from the deceased (as a registered shareholder). And this obligation only arises when the heirs have submitted in writing the deed of transfer of shares to the company but the Board of Directors does not immediately record the changes. Therefore, prior to the submission, the Board of Directors and the Board of Commissioners must be

considered protected by the Business Judgment Rule principle because they did not commit negligence (good faith).

So that in the case of Decision Number 2845 K/Pdt/2017 jo., Decision Number 138/PDT/2016/PT.DKI jo. and Decision Number 740/Pdt.G/2014/PN.Jkt.Sel, the panel of judges should have declared the lawsuit unacceptable or *niet ontvankelijke verklaard* (N.O.) or at least rejected the plaintiff's claim in its entirety. This is because the plaintiff has never submitted the deed of transfer of shares to the company, so that the directors have not yet assumed responsibility for registering it. On the other hand, changes need to be made in Company Law, especially in the provisions regarding the Transfer of Share Rights in Company Law, so that it is clearly stated who is burdened with the obligation to convey changes in share rights to the company.

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