

CORPORATE SERIES
SHARES OWNERSHIP IN PRIVATE COMPANIES:
RIGHTS, LIMITS, AND REGULATIONS

A. INTRODUCTION

One of the most common paths to building wealth in Indonesia is through entrepreneurship. Whether undertaken by individuals or groups, running a business requires legal certainty. This legal foundation is most commonly achieved by establishing a Limited Liability Company known in Indonesia as *Perseroan Terbatas* (“PT”).

A PT is recognized as a legal entity with its own rights and obligations, distinct from its founders or managers. Under Indonesian law, a PT must be established by at least 2 (two) individuals through a notarial deed, with each founder required to subscribe to shares in the company. These founders, by holding shares, become shareholders of the PT.

As a legal subject, a PT stands independently and has the authority to act on its own behalf. This includes the ability to enter into legally binding agreements, such as incurring debt or establishing contractual obligations with third parties.

As shareholders, they are granted specific legal rights under Indonesian corporate law. However, these rights are also accompanied by responsibilities and limitations that every shareholder must understand and respect.

In this article, we highlight the key rights, obligations, and regulatory frameworks that govern shareholders in Indonesia essential knowledge for anyone involved in business ownership or corporate structuring in the country.

B. GOVERNING LAWS

In Indonesia, share ownership is governed by various prevailing laws and regulations. The following are some of the key legal instruments that regulate share ownership:

- i. Law No. 40 of 2007 on Company Law (“**Company Law**”);
- ii. Law No. 25 of 2007 on Investment (“**Investment Law**”);
- iii. Law No. 6 of 2023 on Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as Law;
- iv. President Regulation No. 49 of 2021 on Investment Business Fields (“**PR 49/2021**”); and
- v. Investment Coordinating Board Regulation No. 4 of 2021 on Guidelines And Procedures For Risk-Based Business Licensing Services And Investment Facilities (“**ICB Reg. 4/2021**”).

C. SHARE OWNERSHIP RIGHTS AND OBLIGATIONS

I. Share Ownership Rights

Shareholders, as partial owners of the company, are entitled to various rights, including:

- (i) right to attend and vote at General Meetings of Shareholders (“GMS”), shareholders have the right to participate in the decision-making process, including approving annual reports, dividend distribution, and major corporate actions;¹
- (ii) right to receive dividends and distribution of remaining assets, when the company declares profits, shareholders are entitled to a portion of the dividends in accordance with the number and class of shares they hold;²
- (iii) shareholder shall have the right to file a suit against the Company to the District Court if they suffer losses due the action of the Company which is considered to be unfair and unreasonable as a result of a resolution of the GMS, the Board of Directors, and/or the Board of Commissioners;³
- (iv) In case of new share issuance, existing shareholders generally have the right of first refusal to maintain their ownership percentage.⁴

II. Share Ownership Obligations

In addition to rights, shareholders also have legal obligations, such as:

- (i) shareholders must pay the nominal value of their subscribed shares. Failure to fulfil this obligation may result in the loss of rights associated with the unpaid shares;⁵
- (ii) compliance with the Article of Association (“AoA”), shareholders are bound by the company’s internal governance rules and resolutions adopted during GMS; and
- (iii) although the liability of shareholders is generally limited to the value of their shares, they may be held personally liable if: (i) the requirements for the Company as a legal entity has not been or are not fulfilled; (ii) the relevant shareholders, either directly or indirectly, with bad faith, exploits the company for their personal interest; (iii) the relevant shareholders are involved in illegal actions committed by the company; or (iv) the relevant Shareholders, either directly or indirectly, illegally utilizes the assets of the company, which result in the Company’s assets become insufficient to settle the Company’s debt.⁶

D. TYPE OF SHARES

In Indonesia, Company Law allows companies to issue various classes of shares with different rights. Classes of shares mentioned, can be regulated with the provisions such as:⁷

- (i) shares with voting rights or without voting rights;
- (ii) shares with special rights to nominated the Board of Directors and/or the Board of Commissioners;

¹ Art. 75 – 84 Company Law.

² Art. 71 Company Law.

³ Art. 61 Company Law.

⁴ Art. 43 Company Law.

⁵ Art. 33 Company Law.

⁶ Art. 3 Company Law.

⁷ Art. 53 Company Law.

- (iii) shares with after certain period of time will be withdrawn or exchanged with other classifications of shares;
- (iv) shares which provide rights to its owner to receive dividends firstly over the other shareholders from different shares classification for the distribution of dividend cumulatively or non-cumulatively; and
- (v) shares which provide rights to its owner to receive allocation of the remainder of the Company's assets in liquidation firstly over the other shareholders with different shares classification.

These type of shares with specific rights and obligations attached to each class must be detailed in the AoA and approved by the shareholders. In addition, type of shares also must be stated in a shareholders' agreement and/or joint venture agreement.

Regardless of the type of shares issued by a company, the right to receive dividends is fundamental and cannot be denied or changed by either the shareholder or the company, provided the company declares profits and the dividend distribution is approved.

Despite the various types of shares that may be held by shareholders or issued by a company, Indonesia recognizes a special type of share owned by the state known as *Saham Merah Putih* or *Saham Dwiwarna*.

The primary purpose of the state holding *Saham Merah Putih* or *Saham Dwiwarna* is to retain full control over key corporate decisions and ensure that the company operates in alignment with national policies and strategic interests.

E. SHARE OWNERSHIP LIMITS

Under the Company Law, as amended, there are generally no explicit maximum limits imposed on share ownership for domestic investors in a PT. The shareholders, whether its individuals or legal entities, are free to own shares in any proportion, subject to the provisions of the company's AoA, Shareholder's Agreement, or applicable sectoral regulations.

Other than that, for a foreign share ownership that ruled under the Investment Law and its implementing regulation such as PR 49/2021 and ICB Reg. 4/2021. Under these regulations, foreign investors may generally own up to 100% (one hundred percent) of shares in most business sectors, unless otherwise restricted by the PR 49/2021.

PR 49/2021 regulates the investment business fields commonly known as Positive Investment List. The list outlines specific sectors that are: (i) closed to investment or entirely prohibited; or (ii) open with conditions.

Open with conditions mentioned above means several business lines are open with some conditions, such as:

- (i) maximum foreign ownership limits;
- (ii) requirement for partnership with local micro, small, or medium enterprises (“**MSMEs**”);
- (iii) licensing restrictions; or

(iv) location-based limitations.

F. DIVIDEND DISTRIBUTION

Under the Company Law, dividends may only be distributed if the company records a positive net profit after fulfilling its legal reserve obligations. One of the obligations must be abide by a company is that a company must allocate at least 20% (twenty percent) of its net profit as a statutory reserve until that reserve reaches the required threshold, unless otherwise regulated by the AoA. After meeting this reserve requirement, the remaining profits may be distributed as dividends, subject to the approval of the GMS.

Dividends must be distributed proportionally to the number and class of shares held by each shareholder, unless otherwise stipulated in the company's AoA. In the case of interim dividends, distribution is allowed if the AoA permit it and provided that the company's net assets are sufficient.

Failure to follow these procedures, such as distributing dividends when the company is not in profit, may lead to personal liability for the Board of Directors.

Taxation on dividend distribution must be borne by all shareholders, as regulated under Law No. 7 of 2021 on Harmonization of Tax Regulations (“**Tax Law**”) and its implementing regulations. The Tax Law governs the taxation of dividends distributed to both domestic and foreign shareholders.

For domestic shareholders, dividends received are subject to final income tax at a rate of 10% (ten percent), unless certain reinvestment criteria are met. However, under the Tax Law, dividends received by individual and corporate domestic taxpayers are exempt from income tax if: (i) the dividends are distributed by Indonesian companies; and (ii) the dividends are reinvested in Indonesia within a specified time frame.

For foreign shareholders, dividends paid to them are subject to withholding tax at a rate of 20% (twenty percent) based on Article 26 Income Tax Law, unless the rate is reduced under a double taxation avoidance agreement between Indonesia and the shareholder's country of residence.

G. CONCLUSION

Understanding the legal framework of share ownership in Indonesia is essential for anyone involved in building or managing a company. The Company Law, Investment Law, and their implementing regulations collectively establish the rights, obligations, and limitations that shareholders must observe, whether domestic or foreign. From determining the type and structure of shares to navigating ownership limits and dividend entitlements, including applicable tax obligations, shareholders must be well-informed to ensure compliance and protect their interests. By adhering to these legal provisions, companies and investors alike can foster a more secure, transparent, and accountable corporate environment aligned with Indonesia's business and regulatory landscape.

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