



Shares with different nominal values based on the company law and capital market law

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ABSTRACT

The Indonesian monetary crisis has significantly affected the capital market and investment stability. To improve performance, Indonesian companies seek to raise capital but face the challenge of issuing shares at the same par value stated in their articles of association. This research lie in offering guidance to Indonesian companies on issuing new shares, ensuring equitable treatment of shareholders, and informing legal practitioners and policymakers about the implications of shares with different face values on corporate governance and investor protection. The formulation of the problem in this study is: which shares can be categorized as a classification of shares as stipulated in the Company Law? and How are voting rights and profit sharing in Company to shareholders who own shares with a different face value? This study uses a normative juridical method by collecting data from literature studies. Based on the results of the research, it is found that both listed and foreign companies need to issue new shares with different values than those specified in the articles of association. Despite the varying par values, these new shares grant shareholders equal rights, including voting rights, dividend distribution, and asset distribution in case of liquidation.

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1. INTRODUCTION

Limited Liability Companies with Open status besides being subject to the Limited Liability Company Law are also subject to regulations in the capital market sector. The existence of the capital market in Indonesia itself has started since the Dutch colonial era, one of its historical legacies is the name Stock Exchange which comes from the Dutch Effecten Beurs, the word effect becomes effect and the word beurs becomes exchange (Pangestu et al., 2017). Then the capital market developed and experienced difficult years due to the many regulations that did not support it, until finally in 1995 the government issued Law number 8 of 1995 concerning Capital Markets (Capital Market Law), followed by Government Regulation number 45 of 1995 concerning the Implementation of Activities in the Capital Market Sector and Government Regulation number 46 of 1995 concerning Procedures for Examination in the Capital Market Sector as well as regulations from the Capital Market Supervisory Agency (Bapepam). In addition to these regulations, Bapepam has established a clearing and guarantee institution under the name PT. Indonesian Securities

Clearing and Guarantee (KPMI) and a depository and settlement institution under the name PT. Kustodian Sentral Efek Indonesia (KSEI) in December 1997 (Wijaya, 2022).

Capital market trading activities are centered on the stock exchange. Therefore, the demand to create a trading system that is fast and inexpensive is the obligation of the stock exchange. (Saputra et al., 2020) This is in line with the wishes of Article 7 paragraph (1) and (2) of the Capital Market Law which requires that the stock able to conduct trades in an orderly, fair and efficient manner. In May 1995, the Jakarta Stock Exchange began operating a transaction settlement system through JATS (Jakarta Automated Trading System), namely computer-based netting transaction settlement which is the basic technology for scriptless trading. JATS is objectively capable of complete transactions faster, namely 500,000 (five hundred thousand) transactions per day, far more effective than the manual system which is only able to handle 3,800 (three thousand eight hundred) transactions per day (Njatrijani et al., 2019).

The Indonesian capital market already has a clear direction towards settlement of transactions in an orderly, fair and efficient manner as stipulated in the Capital Market Law and the Indonesian Capital Market Blueprint (Larasati et al., 2022). With this clear direction and observing international practice, particularly in Asia, that transaction settlements are carried out by book-entry or scripless stock trading, KSEI as the Central Depository in Indonesia in 2000 began implementing the Central Depository Bookentry Settlement System (C-Best). The presence of KSEI, KPEI and JATS supports the less trading script (Marianto et al., 2020).

Even though it has implemented a less trading script in order to realize an orderly, fair and efficient transaction settlement which in turn will increase investor confidence, so that investors can increase their investment through the Indonesian capital market, but the unresolved economic crisis coupled with the unresolved political situation in Indonesia steady, greatly affect stock trading on the floor of the stock exchange (Siswanto, 2019). Stock trading on the stock exchange floor became sluggish, many investors took the safe step of not buying shares on a large scale or buying shares from public companies which, according to their analysis, were classified as safe, this resulted in many shares of public companies (issuers) falling until they reached the price level per share. Rp.25.00 shares, which means far below the nominal price per share stated in the articles of association, especially experienced by medium-scale public companies and banking shares (Lengkong et al., 2021).

To maintain the continuity of trading on the stock exchange, Bapepam and the Stock Exchange then allow potential issuers to determine the nominal value of shares at Rp. 100.00 and for issuers that have been listed on the stock exchange, they can change the nominal value of the remaining shares that have not been issued in accordance with the condition of the stock prices on the stock exchange for the issuer concerned, this is understandable because the issuance of shares below the nominal price is not permitted by law (Samosir et al., 2023). Thus there are shares with different nominal values circulating on the stock exchange. In the practice of trading shares on the stock exchange, it is not distinguished from the shares being traded, namely series A shares with a nominal value of how many rupiahs or series B shares with a nominal value of how many rupiahs, all shares are considered the same, thus whether the shares with different nominal values are treated the same when the Company Limited Public conducts corporate action (Nastiti et al., 2021).

Based on the above background, the issues to be examined are as follows: 1. Can shares with a different nominal value in a Limited Liability Company be categorized as a classification of shares as regulated in the Limited Liability Company Law and Capital Market Law? 2. how are the voting rights and profit sharing in a Limited Liability Company to shareholders who have shares with different nominal values?

This study aims to understanding whether shares with different nominal values in a Limited Liability Company can be categorized as a classification of shares as stipulated in the Limited Liability Company Law, and understanding how voting rights and profit sharing in a Limited Liability Company are to shareholders who have shares with different nominal values. The current work differs from previous research in that it specifically addresses the challenges faced by Indonesian companies in raising capital during the monetary crisis and explores the classification of shares and the implications of different face values on shareholder rights.

2. RESEARCH METHOD

To analyze materials or data relevant to the topic, a normative legal research approach was employed in this paper. The research utilized a normative legal research methodology, focusing on legal principles, with distinct stages of problem-finding, problem-identification, and problem-solution, as proposed by (Budianto, 2020). A thorough examination of primary legal materials, including relevant provisions in the Company Law and Capital Market Law, was conducted. Secondary legal materials such as legal books, scientific journals, and other scholarly works were also consulted, as suggested by (Benuf et al., 2020). These materials were carefully scrutinized to analyze the legal framework surrounding shares with different nominal values, comprehend the rights and obligations of shareholders, and ascertain the implications for corporate governance and investor protection. The findings and interpretations derived from this analysis contributed to a deeper understanding of the topic and offered valuable insights for practitioners, policymakers, and researchers in the field.

3. RESULTS AND DISCUSSIONS

Share Classification

Neither the Law on Limited Liability Companies nor the Law on Capital Markets specifically regulates these shares with different nominal values. Shares with different nominal values occur in practice in the business world, so to answer legal issues arising from shares with different nominal values, it is necessary to see how shares with different nominal values are implemented in practice in addition to existing regulations.

Corporate actions carried out by Public Limited Liability Companies (issuers) in the context of increasing capital through Pre-emptive Rights (HMETD) or Rights Issues where the shares to be issued have a different nominal value from the nominal value of shares that have been outstanding so that the corporate actions carried out by the issuer will affect the number of outstanding shares, the composition of share ownership, the number of shares to be held by shareholders, as well as its influence on stock price movements (Pratama et al., 2020).

Of course, shareholders who do not exercise their rights to obtain Right which will then be converted into shares will be taken by other shareholders who place orders larger than their portion of share ownership in the Public Limited Liability Company or to new investors, the consequence is that there are shareholders whose percentage of share ownership is experience dilution and there is also an increase in the percentage of their share ownership or new shareholders appear in the Public Limited Liability Company (Gunadi et al., 2021).

Shares with different nominal values issued by the Public Limited Liability Company and taken part by both shareholders and investors are not classified as shares as stipulated in Article 46 of the Limited Liability Company Law because these shares have the same and equal rights and are ordinary shares. whereas in the classification of shares, the rights attached to one share are different from the rights attached to other shares, in which a Limited Liability Company must determine one classification as ordinary shares. (Yanuar, 2021) Usually the mention of shares with different nominal values is in terms of cent shares, for example series A shares with a nominal value of how many rupiahs and series B shares with a nominal value of how many rupiahs. For example, PT. Asuransi Bina Dana Arta Tbk, which operates in the insurance sector, has two series of shares, namely series A shares with a nominal value of Rp. 500.00 and series B shares with a nominal value of Rp. 300.00, where in the Prospectus that is any written regarding the public offering with the aim of getting other parties to buy the securities, the Rights Issue of PT. Asuransi Bina Dana Arta Tbk stated clearly that the rights attached to the penny B shares are the same and equal in all respects to the rights attached to the penny A shares.

The rights attached to shares with different nominal values are the same as the rights attached to general shares, including the rights to dividends, rights to bonus shares, rights to attend the General Meeting of Shareholders, rights to take part if the Limited Liability Company conducts a limited public offering (Kalesaran, 2022).

In a Closed Limited Liability Company with a PMA facility that issues shares with different nominal values due to differences in the exchange rate of the rupiah against the United States

dollar, shares with different nominal values are also not included in the classification of shares as stipulated in Article 46 of the Limited Liability Company Law because the shares are the shares have the same rights and are equal to the shares that have been issued/issued previously.

Like an open limited company, in a closed limited company with PMA facilities, the mention of shares with different nominal values in the company is in terms of series of shares, for example series A shares with a nominal value of how many dollars equivalent to how many rupiahs and series B shares with a nominal value of how many dollars equivalent how much. For example, PT. Ron Jaya Mandiri Indonesia, which is engaged in the vermicelli industry, has two series of shares, namely series A shares and series B shares.

Voting Rights and Profit Sharing

Talking about voting rights is of course related to the General Meeting of Shareholders, both the Annual General Meeting of Shareholders and the Extraordinary General Meeting of Shareholders. In Public Limited Liability Companies, those who are entitled to attend the General Meeting of Shareholders are those whose names are registered in the Register of Shareholders issued by the Indonesian Central Securities Depository for shareholders who have deposited their shares in collective custody (scriptless) and the Register of Shareholders issued by the Bureau Securities administration for shareholders who still hold share certificates (scripts) (Setiawan et al., 2019).

In a Closed Limited Liability Company with PMA/PMDN facilities or non-facilities, those who are entitled to attend the General Meeting of Shareholders are those whose names are recorded in the Register of Shareholders made by the Directors of the company or in accordance with the shareholders listed in the company deed (Nurnaningsih et al., 2020).

Voting rights owned by shareholders who hold shares with a nominal value different from the nominal value of shares that have been circulated/issued at the General Meeting of Shareholders are the same and equal, namely one share one vote in accordance with Article 72 paragraph 1 of the Limited Liability Company Law and in voting , the shareholder concerned does not need to state how many series A shares he owns and how many series B shares he owns, but it is sufficient to write down the total number of shares he owns in accordance with the Register of Shareholders.

Profits or also called dividends are the remaining net profit of the company which will be distributed to shareholders with the approval of the General Meeting of Shareholders, this is in accordance with article 62 of the Limited Liability Company Law. Dividends are divided into cash dividends and stock dividends (Soeprijanto, 2021). Since the rights attached to shares with different nominal values are the same and equal to the rights attached to shares previously issued, the distribution of profits is also the same and equal, namely in accordance with the decision of the Annual General Meeting of Shareholders which determines how much dividend each share will receive. In an open limited company, there are several things that need to be known in connection with the distribution of profits, namely (Silalahi et al., 2014): 1. cum dividend, namely the date indicating that up to that date the trading of a share still carries the right to dividends; 2. ex dividend, which is a date indicating that from that date, stock trading no longer contains/without rights to dividends; 3. the date of the Register of Shareholders (DPS) who are entitled to dividends shows the date of the shareholders who are entitled to dividends; 4. the date of distribution of dividends shows the date of distribution of dividends in real terms. With the implementation of scriptless trading, C-BEST will automatically and electronically distribute dividends to each customer's/shareholder's sub-account.

In general, shareholders prefer dividends in cash whereby cash dividends mean that shareholders directly enjoy the investment that has been invested in the Limited Liability Company concerned by receiving cash, which they can then use for other purposes. (Mario et al., 2020) And if the General Meeting of Shareholders has decided to distribute stock dividends, the share dividends will be taken from shares in the portfolio, which means shares in the Company's portfolio. The limited number concerned must be sufficient.

Liquidation is a follow-up to the dissolution of a Limited Liability Company, in this case what is being discussed is dissolution due to the decision of the General Meeting of Shareholders. (Munawarah, 2017) The liquidation action carried out by the liquidator appointed by the dissolved

Limited Liability Company has the main obligation, namely the settlement of the assets of the dissolved Limited Liability Company. With the decision to dissolve the Limited Liability Company, all activities of the Limited Liability Company may no longer be carried out except for liquidation actions, specifically for an Open Limited Liability Company, the trading of the shares of the Public Limited Liability Company concerned on the stock exchange will be stopped.

Of course, in this settlement action, after recording all assets, the liquidator must determine the procedure for distributing assets, making payments to creditors by prioritizing paying debts to the state, such as taxes (Marpaung, 2022). After being paid to all creditors, if there is any remaining wealth resulting from the liquidation, it must be distributed to the shareholders of the dissolved Limited Liability Company as stipulated in Article 124 paragraph 2 of the Limited Liability Company Law, for an Open Limited Liability Company, the shareholders are entitled to the remaining liquidated assets. are shareholders whose names are registered in the Register of Shareholders issued by the Indonesian Central Securities Depository and the Register of Shareholders issued by the Securities Administration Bureau, whereas in a Closed Limited Liability Company, the shareholders who are entitled to the remaining assets resulting from liquidation are the shareholders who are registered in List of Shareholders issued by the Board of Directors or in accordance with the Deed of the Closed Limited Liability Company.

Payment of the remaining assets resulting from liquidation to shareholders who own shares with different nominal values is the same and equal to shareholders who own shares previously issued, namely proportionally according to the number of shares owned by the relevant shareholders (Aliandu, 2016).

At a public limited company, at first glance, the existence of equal rights between shares with a different nominal value than previously outstanding shares is felt to be unfair, especially for shareholders who have shares with a higher nominal value than other shares, which means paying more for these shares to the Company (Chairunnisa et al., 2018). But keep in mind that shareholders obtain/buy shares through the mechanism of buying and selling shares on the exchange, where the price of shares on the exchange depends on the supply and demand that occurs on the trading floor, supply and demand itself is influenced by the performance of the Public Limited Liability Company concerned, macro conditions economic factors, including inflation rates, interest rates and domestic political conditions and market forces. Thus it is possible for the relevant shareholder to acquire shares at a lower price than the nominal value of the shares stated in the articles of association or vice versa at a higher price than the nominal value of the shares stated in the articles of association, therefore equal rights are given to shareholders. Shareholders who own shares with a different nominal value from shareholders who own previously issued shares.

Just like in an open limited company, in a closed limited company with PMA facilities, the existence of equal rights between shares with a different nominal value from the previously outstanding shares is felt to be unfair, especially for shareholders who pay more for the shares they buy to the limited liability company (Karissa et al., 2022). But in fact if it is calculated in United States dollars the value is the same, this nominal difference occurs because there is a difference in the rupiah exchange rate against the United States dollar at the time the shares are issued for the first time and when new shares are issued later (increase in capital) and there is a requirement to include the nominal value of shares in rupiah as stipulated in article 42 of the Limited Liability Company Law, thus if Indonesia's economic conditions have recovered this will not happen, where the rupiah exchange rate against the United States dollar becomes stable or it can also be the Investment Coordinating Board fixing the rupiah exchange rate against the dollar or the Investment Coordinating Board allows using the old exchange rate according to the exchange rate at the time the shares were first issued.

4. CONCLUSION

Shares with different nominal values are not specifically regulated in the Law on Limited Liability Companies or the Law on Capital Markets. These shares with different nominal values appear in line with the needs of the business world due to the sluggish Indonesian economy where in order to

maintain viability and improve company performance, both Open Limited Liability Companies and Closed Limited Liability Companies need to increase their capital.

The voting rights owned by shareholders who hold shares with a nominal value different from the nominal value of shares that have been circulated at the GMS are the same and equal, namely one share, one vote in accordance with Article 72 paragraph 1 of the Limited Liability Company Law. In terms of distribution of profits, both stock dividends and cash dividends are the same and equal, namely in accordance with the resolution of the Annual General Meeting of Shareholders which determines how much dividend each share will receive. In the event that the Limited Liability Company is dissolved, then the payment of the remaining assets resulting from liquidation to shareholders who have shares with different nominal values is the same and equal to the shareholders who own shares previously issued, namely proportionally according to the number of shares owned by the relevant shareholders.

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