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Legal review of share divestment in limited liability companies in Indonesia based on the principles of good corporate governance

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Abstract
Share divestment is a strategic corporate action aimed at enhancing business focus, liquidity, and capital efficiency. In Indonesia, this process is not merely a financial transaction but involves a series of legal and procedural obligations governed by the Company Law (UUPT) and company articles of association. Divestment in State-Owned Enterprises (BUMN) or private limited companies must align with Good Corporate Governance (GCG) principles and the Business Judgment Rule (BJR) to mitigate legal and financial risks. This study aims to explore the procedures, legal requirements, and consequences of share divestment within Indonesian limited liability companies. Emphasis is placed on the transfer of rights via authentic or private deeds, mandatory notifications to the Ministry of Law and Human Rights, and the impact of violating shareholder rights. The paper highlights the importance of transparency, proper documentation, and regulatory compliance throughout the divestment process. It concludes that strategic, well-documented divestment aligned with GCG and BJR can support corporate stability and long-term growth.

Keywords: Share divestment, Indonesia, limited liability company, UUPT, Good Corporate Governance

Introduction

Share divestment is part of a company's strategic management in responding to business and financial dynamics, especially for parent companies or holding companies that have subsidiaries in various sectors [1]. In the context of corporations in Indonesia, divestment is often considered as a long-term solution to improve a company's financial performance, increase focus on core business, or as part of a complex restructuring. According to the rules in force in Indonesia, as stated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and internal company regulations, share divestment must pay attention to legal provisions and principles of good corporate governance (GCG) to ensure sustainability and shareholder interests are maintained [2].

The phenomenon of stock divestment in Indonesia is not just an economic phenomenon, but also contains complex legal aspects. UUPT requires various procedures for the transfer of shares carried out by the parent company to its subsidiaries, especially when the divestment aims to improve financial conditions or support the restructuring of affiliated companies. In addition, in some cases, stock divestment can function as a company's effort to *refocus* its business, reduce risk, and obtain fresh capital that can be allocated to more potential strategic projects, such as factory construction projects, research, and product development [3].In Indonesia, the implementation of divestment is often influenced by the specific conditions of the company, such as the presence of debt or the need to increase positive equity, so that

[1]Latin Lawyer, Restructuring and How to Manage Threats to Solvency, https://latinlawyer.com/guide/the-guide-corporate-crisis-management/fifth-edition/article/restructuring-and-how-manage-threats-solvency, accessed November 1, 2024.
[2] Reza Nur Hidayah, "Analysis of the Implementation of Good Corporate Governance in an Effort to Protect Investors in the Capital Article" Jurnal Ekonomika45 Vol. 10 No. 2 (June 2023) E-ISSN: 2798-575X; P-ISSN: 2354-6581 277 – 289, p. 280.
[3]Tanaya, Putu E. "Divestment as an Alternative to Maintain the Viability of the Indonesian Economy (from the Perspective of Economic Analysis of Law)." Jurnal Advocacy, vol. 6, no. 2, 2016, p. 233.

divestment is not just a sale of shares, but a strategic step that requires careful planning. For example, in several State-Owned Enterprises (BUMN) or their subsidiaries, share divestment is carried out to optimize efficiency by transferring resources that are no longer in line withthe main focus of the parent company's business [4].

In the divestment process, companies need to pay attention to the principles stipulated in the company's articles of association and other legal documents relating to the rights and obligations of shareholders. Improper divestment procedures can result in legal consequences and financial risks, including the loss of shareholder rights, such as the right to dividends and voting rights at the General Meeting of Shareholders (GMS). Therefore, companies wishing to divest must conduct an in-depth evaluation, including a stock valuation study, risk analysis, and *cost-benefit study* to ensure that the decisions taken provide optimal benefits for the company as a whole [5].

On the other hand, the implementation of GCG principles and *Business Judgment Rule* (BJR) is an inseparable aspect of the divestment process. The GCG principle encourages transparency, accountability, and prudence in the divestment decision-making process so that the interests of the company and shareholders are guaranteed [6]. Meanwhile, BJR protects directors from legal risks in making business decisions based on professional and rational considerations [7].

By applying these principles, share divestment can be a strategic move that not only meets legal compliance but also supports the company's long-term growth and stability [8].

This study aims to identify and analyze the procedures, requirements, and impacts of share divestment in a limited liability company in Indonesia. Through this analysis, this article is expected to provide practical and academic guidance for legal and business practitioners in implementing share divestment in accordance with applicable regulations and good corporate governance standards.

Formulation of the problem

1. What are the procedures and legal provisions that must be fulfilled in implementing share divestment in limited companies in Indonesia?
2. What are the legal impacts and consequences for a company after implementing share divestment?

Discussion

1. **Procedures and legal provisions that must be fulfilled in implementing share divestment in limited companies in Indonesia**

   Share divestment is an important process carried out by a company when it wants to release its share ownership in an affiliated company or subsidiary. The purpose of divestment can be very diverse, such as for financial restructuring, concentration on core business, or increasing the company's efficiency and liquidity [9]. In Indonesia, the procedures and legal provisions regarding share divestment are regulated by several regulations, especially the UUPT, internal company guidelines, and special regulations for State-Owned Enterprises ("BUMN") if the company involved is a state-owned company.

The UUPT regulates that the process of transferring rights to shares or divestment must be in accordance with the provisions stated in the company's articles of association and must meet certain requirements, especially in Articles 55 to 57. Article 55 of the UUPT states that the transfer of rights to shares is permitted and the method of transfer must be stated in the company's Articles of Association, provided that it must comply with the provisions of applicable laws and regulations. The methods permitted according to the UUPT and can be stated in the Articles of Association are as follows:

a) **Done with a Deed of Transfer of Rights**

According to Article 56 paragraph (1) of the UUPT, the transfer of rights to shares must be carried out with a "deed of transfer of rights". This deed can be in the form of a notarial deed or a deed made privately. A deed is a written document that is deliberately prepared to be written evidence of a certain event and must be signed. Important elements in a deed are the intention to create written evidence and the presence of a signature [10].

The signature in the deed is a key element that shows the individual's responsibility for the truth of the contents of the deed. According to Sudikno Mertokusumo, a deed functions as evidence that contains events that form the basis of a right or obligation, made from the beginning for the purpose of proof [11]. In the Civil Code, although there is no specific definition of a deed, Articles 1867 to 1880 explain the types of deeds as written evidence. According to Article 1867 of the Civil Code, proof in writing is carried out with authentic writings or with private writings. According to its form, deeds can be divided into authentic deeds and private deeds.

1) Authentic deed

According to Article 1868 of the Civil Code, an authentic deed is an official document prepared in accordance with the provisions of the law and made by or before an authorized official such as a notary (Article 1 number 1 UUJN). This type of deed has the strongest evidentiary power among the parties involved in an agreement, including their heirs. However, even though it has perfect legal force, an authentic deed can still be refuted if there is other evidence that contradicts and

[4]Flickinger, The Institutionalization of Divestitures: A Meta-Analysis of Stock Market Performance, (Gabler Verlag Published: Germany, 2009), p. 22.
[5]Lea Krag Fogh et.al., The Value Creation, Motives and Drivers of Divestitures, (Copenhagen Business School : Denmark, 2009), p. 35.
[6]Teuku Syahrul Ansari, Appointment and Dismissal of BUMN Directors & Good Corporate Governance, (Rizki Putra Library: Semarang, 2020), p. 200.
[7]Ansari, Teuku Syahrul, Herdi Sahrasad, and Irfan Iryadi. "Indonesian State Owned Enterprises (BUMN or SOEs) and the Urgency of Implementation of Principle of 'Business Judgment Rule'." Jurnal Cita Hukum 8.1 (2020), p. 170.
[8] Ibid, p. 175.
[9] Mas Rahmah, Obligation to Divest Shares for Foreign Investors in the Mining Sector, (Surabaya: PT Revka Petra Media, 2013), p. 7.
[10]M. Yahya Harahap, Limited Liability Company Law, (Jakarta: Sinar Grafika Publisher, 2009), p. 268.
[11]Sudikno Mertokusumo, Indonesian Civil Procedure Law, (Yogyakarta, Liberty Publisher, 2006). P.149

can prove the untruth of the contents of the deed [12]. A third party can assess the evidence based on the judge's consideration, who can cancel the deed if there is other evidence that is strong enough [13].

In order to provide legal certainty for an action or legal act, a notary can make a release deed or a deed of minutes. This deed contains detailed notes regarding events witnessed directly by the notary at the request of the parties. Unlike deeds made before a notary which are more of an agreement, a release deed is more of a recording or reporting. This deed contains descriptions or information, as well as statements given or told by the parties when before the notary. The making of notarial deeds including release deeds or party deeds, depends on the wishes and requests of the parties. This is the main basis in the process of making notarial deeds [14].

2) Private deed

A private deed is a deed that is prepared by the parties themselves for the purpose of proof, without the intervention of a public official in determining its contents. Based on Article 1874 of the Civil Code, these private writings include deeds signed personally, letters, registers, household documents, and other documents made without the involvement of a public official.

In general, in notarial practice in Indonesia there are two types of private deeds: deeds that have been registered (waarmerking) and deeds that have been legalized (legalization). The Notary Law (UUJN) does not detail the procedures for writing a voor waarmerking and legalization or the strength of evidence from these two processes, and does not specifically override the provisions of Staatblad 1916 Number 46 in conjunction with Article 43 concerning " *Signing of Letters from Hand to Hand* " and Staatblad 1909 Number 291 which regulates the legalization of signatures. Therefore, the provisions of the staatblad are still valid and are the basis for notaries in the process of registering and legalizing private deeds.

According to Article 1875 in conjunction with Article 1867 of the Civil Code, proof of a private deed is based on the recognition of the parties who affixed their signatures to the deed. Article 1878 of the Civil Code adds that a private deed has special characteristics, namely that it must be written entirely by the hand of the party signing it. This allows the deed to be used as evidence in the event of a dispute in the future, although it still requires good faith from the parties who have signed the deed [15].

b) **The deed or a copy thereof shall be submitted in writing to the Company.**

According to Article 56 paragraph (2) of the 2007 UUPT, the second way to submit a deed of transfer of rights or a copy thereof to the company is in a "written" manner. Notification to the company can be made by the party transferring the rights or the party receiving the rights. The most important thing is that the deed of transfer of rights must be submitted to the company and the law does not mention who must submit it.

c) **The Board of Directors is obliged to record and notify the transfer of Share Rights.**

The obligations of the company's Board of Directors in following up on the transfer of rights to shares can be seen as follows:

1) The Board of Directors is obliged to record the transfer of rights to shares:

a) Recording is done in the Shareholders Register or a special register,

b) What is recorded includes important dates and days in the rights.

d) The Board of Directors is obliged to notify the Minister of changes in the composition of shareholders.

According to Article 56 paragraph (3) of the UUPT, notification of changes in the composition of shareholders to the Minister also includes changes that occur due to inheritance, takeover, or separation. Furthermore, the Minister will record the transfer of rights to shares in the company register no later than 30 days from the date of recording the transfer. If the Board of Directors has not submitted notification regarding the transfer of rights to shares, the Minister will reject the application for approval or notification submitted based on the list of composition and names of shareholders that has not been updated.

Then, in carrying out the transfer of rights to shares as explained above, there are requirements related to the transfer of rights as stated in Article 57 of the UUPT. Article 57 of the UUPT explains that it is determined in the Articles of Association that the requirements regarding the transfer of rights to shares can be regulated, namely as follows:

A) The requirement to offer first to shareholders with certain classifications or other shareholders

This means that there is an obligation to offer first to other shareholders before selling shares, which is one of the provisions regulated in the company's articles of association. In terms of transferring rights to shares, there are provisions that must be met by the parties as per Article 1457 of the Civil Code, namely the existence of a valid agreement between the two parties, where one party voluntarily transfers its share ownership rights to another party in exchange for a sum of money that has been mutually agreed upon. Then regarding the transfer, it is subject to the provisions of Article 48 paragraph (1) of the UUPT which states that the company's shares issued are "registered" shares. Then, to issue "registered" shares, it is done in the form of an authentic deed or underhand on the basis that the property is transferred to another person as stated in Article 613 of the Civil Code *in conjunction with* Article 56 paragraph (1) of the UUPT.

Then, regarding the obligation to offer first to shareholders, it is necessary to pay attention to the following two provisions:

1. Based on Article 58 paragraph (1) of the UUPT, the obligation to offer shares to other shareholders is

[12] Moh. Syahrul Hermawan et.al., "Legal Review of the Cancellation of Notarial Deeds", Qawanin Journal of Legal Studies Vol 1, No. 1 (August 2021), p. 12.

[13] Nadya Indah Ayuningthyas and Ahdiana Yuni Lestasi, "Legal Considerations of Judges in Deciding a Third Party as a Good and Correct Opponent", Media of Law and Sharia Vol. 4 No. 4 (2023), p. 333.

[14] Habib Adji, Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary, (Bandung, Refika Aditama, 2009), p. 128.

[15] Hirman, et.al., Limited Liability Company Law, (Solo: Pustaka Iltizam, 2017), p. 67.

terminated if within 30 (thirty) days of the offer being made, other shareholders are not interested in buying. In this situation, the selling shareholder is permitted to offer and sell his shares to a third party.
2. Based on Article 58 paragraph (2) of the UUPT, after 30 (thirty) days have passed without any other shareholders purchasing and after the offer has been withdrawn, the shareholder no longer has an obligation to offer shares to shareholders with a certain classification or other shareholders. This obligation to offer only applies once.

B) Requirement to obtain prior approval from the company's organs

According to Article 59 of the UUPT, the procedure for approving the transfer of rights to shares that requires permission from the company's organs is regulated as follows :

1. The company's organs are required to provide a written response to the application for transfer of share rights no later than 90 (ninety) days since the application is received. If there is no response within that period, it is considered as approval.
2. If within a period of 90 (ninety) days the company's organs do not provide a written rejection of the application for transfer of share rights, then it is automatically deemed to have approved the application.
3. After obtaining written approval from the company's organs, the transfer of rights to shares must be carried out immediately and stated in an official deed (authentic deed or private deed) no later than 90 (ninety) days from the date the approval is given.

C) Requirement to obtain prior approval from the relevant authorities

This provision is regulated in Article 57 paragraph (1) letter c of the UUPT, where the requirement does not always apply to every transfer of rights to shares. This requirement only applies if regulated by certain laws and regulations. This provision also does not apply if the transfer of rights to shares occurs through a transfer of rights based on law, as regulated in Article 57 paragraph (2) of the UUPT. The transfer of rights based on law includes, among other things, inheritance or transfer of rights that occurs as a result of a merger, amalgamation, or separation.

2. The legal impacts and consequences that arise for the company after the implementation of share divestment

a. Changes in rights and obligations in share ownership

Referring to the Great Dictionary of the Indonesian Language, what is meant by shares is a part, contribution, or right that a person has to a company thanks to the transfer of a portion of capital so that it is considered to share in ownership and supervision [16]. That in the UUPT, namely in Article 31 paragraph (1) it is explained that the company's basic capital consists of the entire nominal value of the shares. The UUPT has provided flexibility for companies in regulating their share ownership. Article 48 paragraph (1) of the UUPT stipulates that share ownership requirements can be stipulated in the company's articles of association. However, it is important to remember that the provisions in the articles of association must be in line with applicable laws and regulations, including regulations stipulated by the authorized agency. Furthermore, the UUPT in Article 53 paragraph (4) of the UUPT classifies shares into several types with different rights. This classification gives companies the option to design an ownership structure that suits their business needs and objectives. The following are the types of shares :

1. Shares with or without voting rights.
2. Shares with special rights to nominate members of the Board of Directors and/or members of the Board of Commissioners.
3. Shares that after a certain period of time are withdrawn or exchanged for another classification of shares.
4. Shares that give their holders the right to receive dividends before shareholders in other classifications in the distribution of dividends cumulatively or non-cumulatively.
5. Shares that give their holders the right to receive before other classifications of shareholders the distribution of the company's remaining assets in liquidation.

Shares are personal assets of shareholders that are classified as intangible movable objects. Although they cannot be touched, shares can still be transferred, either through a sale and purchase transaction, collateral in the form of share pledges, or fiduciary. Shares can also be transferred to another party, so that all rights attached to the shares are fully transferred to the recipient or new shareholder [17]. This allows a share to be transferred or transferred because it is a movable object as stipulated in Article 60 paragraph (1) of the UUPT. Thus, if a share is divested, all rights and obligations of the seller are transferred to the buyer or recipient of the share divestment. When there is a transfer of shareholder rights and obligations, one of the impacts that occurs is a reduction in influence in strategic decision-making [18]. This means that by divesting shares, a company will lose some of its influence in strategic decisions at the GMS.

b. Loss of right to dividends

One of the rights of common stockholders *to* receive a share of the company's profits is dividends as mandated in Article 52 paragraph (1) letter b. All common stockholders receive the same rights if the company decides to distribute profits in dividends [19]. Dividends are the distribution of company profits to shareholders. Shareholders will only receive dividends if the company generates sufficient profits to make the distribution, and if the board of directors decides that the distribution of dividends is appropriate for the

[16]Big Indonesian Dictionary, "Shares", accessed November 9, 2024, https://kbbi.kemdikbud.go.id/entri/saham/.

[17]Nadhila Rianda and David Maruhum Lumbang, "Status and Transfer of Rights to Shares of Limited Liability Companies Owned by Deceased Shareholders", Journal of Social Sciences and Education (JISIP) Vol. 6 No. 4 (November 2022), p. 2022.

[18]Agus Riyanto, "Share Dilution and the Consequences of Share Ownership", business-law.binus.ac.id, accessed on November 8, 2024, https://business-law.binus.ac.id/2018/01/25/dilusi-saham-dan-akibat-kepemilikan-sahamnya/.

[19]Jogiyanto, Portfolio Theory and Investment Analysis, (Yogyakarta: BPFE UGM, 2000), p. 87.

company [20]. The right to dividends is regulated in Article 71 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), which states that every shareholder has the right to receive a share of the company's profits as decided in the General Meeting of Shareholders (GMS). Dividends are a portion of the profits distributed to shareholders as a reward for their investment, which is taken from the company's profits after deducting taxes and allocations for the company's reserves [21].

The right to dividends is attached to the ownership of shares. Therefore, when the parent company sells its shares, the right to dividends from those shares also automatically transfers to the new buyer. As a result, the company that has divested loses the right to receive a share of the profits that may be generated by the company. The impact of losing the right to dividends is as follows:

1. **Decrease in operating income**
   Dividends are often one of the main sources of income for a company, especially when the company has stable financial performance and generates high profits. When the right to dividends is lost, the income from this subsidiary is also automatically reduced, which can reduce the overall operating income of the parent company [22].
2. **Impact on financial ratios**
   A decrease in dividends will reduce net income, which in turn may lower the value of these financial ratios, thereby possibly impacting market perception and the value of the company's shares [23].
3. **Limitations in short-term liquidity**
   When dividends are no longer received, the company may face short-term liquidity constraints, especially if cash flows from operating activities are insufficient to cover debt service needs, operating expenses, or allocations for investment projects [24].

c. Risks to Good Corporate Governance (GCG)
Good Corporate Governance (GCG) is an important principle that regulates how a company is managed transparently, accountably, responsibly, independently, and fairly for the benefit of all stakeholders [25]. Share divestment, as one of the company's strategic actions, has a major impact on the implementation of GCG because it changes the share ownership structure and often involves significant decision making [26]. The following are the impacts of share divestment on GCG principles and the consequences that may arise if these principles are not met.

1. Lack of transparency in divestment can create distrust among shareholders, especially if they feel that important information related to the divestment is being hidden or presented incompletely. This lack of transparency can create the perception that the divestment only benefits certain parties within the company, thereby reducing the credibility of management.
2. The obligation of the Board of Directors to propose divestment at the GMS, for example, is a form of accountability to ensure that all shareholders are aware of the decisions to be taken and their impact on the company's value. If the Board of Directors carries out divestment without adequate approval or consultation with the GMS, this can be considered a violation of the principle of accountability, which could potentially lead to lawsuits from minority shareholders or other stakeholders.
3. The principle of responsibility in GCG requires companies to pay attention to the long-term interests of all shareholders and stakeholders, including employees, suppliers, and the surrounding community. In the context of share divestment, companies must ensure that this decision does not harm the interests of minority shareholders or other parties who depend on the sustainability of the company.
4. The principle of fairness requires companies to treat all shareholders fairly, including minority shareholders. Before offering shares to third parties, companies are usually required by law to grant pre *-emptive rights* to existing shareholders [27]. If this right is ignored, minority shareholders may feel that their interests are not being taken into account, potentially giving rise to legal claims.

Closing

Conclusion

a. Share divestment is a strategic decision that can increase a company's liquidity and allow the company to focus more on its core business. However, to carry out a legal divestment, the company must comply with the legal provisions stipulated in the UUPT and the company's articles of association. A divestment process that does not comply with these provisions can create legal uncertainty, affect the validity of the transfer of share rights, and open up the opportunity for disputes between shareholders. Therefore, compliance with legal procedures, such as recording the transfer of rights in the Shareholders Register (DPS) and official notification to the Minister of Law and Human Rights, is very important to maintain the company's legal stability and prevent administrative or legal risks in the future.
b. Share divestment has an impact on the implementation of *Good Corporate Governance* (GCG) principles in the company, which include transparency,

[20]Agus Sartono, Financial Management: Theory and Application, (Yogyakarta: BPFE, 2003), p. 102.
[21]Sutrisno, Financial Management: Theory, Concept and Application (Yogyakarta: Ekonisia, 2000), p. 321
[22]Eka Yuliyanti and Anis Turmudhi, "Literature Review: Revealing Factors Affecting Corporate Dividend Policy", Menawan, Journal of Economic Research and Publication Vol. 2 No. 5 (September 2024), p. 16.
[23]Olivia Anastasia Rahman, Hasanuddin, and Julie Abdullah, "Analysis of Factors Affecting Dividend Policy", Gorontalo Accounting Journal Vol. 5, No. 2 (October 2022), p. 134.
[24]Mita Handayani, Anita Wijayanti, and Suhendro, "The Influence of Internal Company Factors on Dividend Policy in LQ45 Companies", Scientific Journal of Batanghari Jambi University Vol, 21, No. 1, (February 2021), p. 124.
[25]Teuku Syahrul Ansari, "Reminding State Owned Enterprises (BUMN) Management Using the Principle of 'Business Judgment Rule': A Preliminary Note", Budapest International Research and Critics Institute-Journal Vol. 2 No. 3 (August 2019), p. 29.
[26]Sahatatua, R.; Setiady, T.; Astawa, IK; Ansari, TS The Role of Investment Law in Indonesia's Economic Recovery Efforts. Journal of Multidisciplinary Academic and Practice Studies Vol 2, No. 2, (August 2024), 257.
[27]Abdur Rafik and Embun Arafah, "The Intra-Industry Spillovers of Indonesian Right Offerings", MIX: Jurnal Ilmiah Manajemen, Volume 9, No. 1, (February 2019), p. 192.

accountability, fairness, and responsibility. Divestment that is not carried out transparently or that ignores the pre-emptive rights of shareholders can create negative perceptions from shareholders and stakeholders, including investors. This has the potential to reduce trust in management and the company's reputation in the eyes of the public and increase the risk of lawsuits from minority shareholders who feel disadvantaged. Thus, the implementation of GCG principles in divestment is key to maintaining the integrity of the company, strengthening investor confidence, and ensuring that divestment is carried out fairly for all shareholders.

Suggestion

a. The Board of Directors needs to increase transparency in the entire divestment process, starting from decision-making at the GMS to reporting to shareholders and stakeholders. This step is important to ensure that all parties understand the reasons and impacts of the share divestment being carried out.
b. Companies should strictly implement GCG principles in every divestment process, including providing pre-emptive rights to shareholders, using independent consultants in stock valuation, and ensuring the accountability of the Board of Directors in decision-making. This step can minimize legal risks and maintain the stability and reputation of the company.

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