

Share Trading in Limited Liability Companies According to Law Number 40 of 2007 and DSN-MUI Fatwa Number 40/DSN-MUI/X/2003

¹Muhammad Irkham Firdaus*, ²Theo Aditya Pradhana

¹ Universitas Darussalam Gontor, Indonesia-² UIN Kiai Ageng Muhammad Besari Ponorogo, Indonesia

¹irkham.firdaus@unida.gontor.ac.id ²theo1@iainponorogo.ac.id

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Abstract:

A Limited Liability Company (Perseroan Terbatas/PT) is a legal entity whose assets are separate from the personal wealth of its shareholders, thereby limiting the shareholders' liability to the amount of shares they own. The share instrument in a PT functions not only as proof of ownership but also as an object of trading regulated by specific legal provisions. This research aims to analyze and compare the regulations regarding the practice of share trading in a PT, particularly concerning pre-emptive rights (*hak preferensi*), as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies, with the Sharia law perspective contained in the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 40/DSN-MUI/X/2003 on the Capital Market and General Guidelines for the Application of Sharia Principles in the Capital Market Sector. The research method employed is normative-comparative, which involves reviewing and comparing statutory regulations (the PT Law) with Sharia edicts (the DSN-MUI Fatwa). The findings indicate that Article 58 paragraph (1) of the PT Law regulates the pre-emptive rights of other shareholders when shares are transferred, a provision aimed at protecting the ownership structure. Although the DSN-MUI Fatwa focuses on the principles of permissible share transactions free from *gharar* (uncertainty) and *maisir* (gambling), no substantive conflict was found regarding the mechanism of share trading, provided that the transaction object (the shares) meets the Sharia criteria. The main difference lies in the philosophical foundation, where the PT Law focuses on legal and corporate protection, while the DSN-MUI Fatwa emphasizes compliance with Islamic *muamalah* (transactional) principles. This research contributes to the harmonization of corporate regulation in Indonesia with Sharia economic principles.

Kata Kunci:

Jual Beli Saham,
Perseroan Terbatas,
UU Nomor 40 Tahun
2007, Fatwa DSN-
MUI, Hukum
Syariah

Abstrak:

Perseroan Terbatas (PT) merupakan badan hukum yang memiliki kekayaan terpisah dari kekayaan para pemegang sahamnya, sehingga tanggung jawab pemegang saham hanya terbatas pada jumlah saham yang dimiliki. Instrumen saham dalam PT tidak hanya berfungsi sebagai bukti kepemilikan, tetapi juga menjadi objek jual beli yang diatur secara spesifik. Penelitian ini bertujuan untuk menganalisis dan membandingkan ketentuan mengenai praktik jual beli saham PT, khususnya terkait dengan hak preferensi, sebagaimana diatur dalam Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas dengan perspektif hukum syariah yang tertuang dalam Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) Nomor 40/DSN-MUI/X/2003 tentang Pasar Modal dan Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal. Metode penelitian yang digunakan adalah normatif-komparatif, yaitu mengkaji dan membandingkan peraturan perundang-undangan (UU PT) dengan fatwa syariah (Fatwa DSN-MUI). Hasil penelitian menunjukkan bahwa



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UU PT Pasal 58 ayat (1) mengatur hak preferensi bagi pemegang saham lain ketika terjadi pemindahtanganan saham, sebuah ketentuan yang bertujuan melindungi struktur kepemilikan. Meskipun Fatwa DSN-MUI fokus pada prinsip-prinsip transaksi saham yang halal dan bebas dari *gharar* (ketidakjelasan) dan *maisir* (judi), tidak ditemukan konflik substantif terkait mekanisme jual beli saham, asalkan objek transaksi (saham) tersebut telah memenuhi kriteria syariah. Perbedaan utama terletak pada landasan filosofis, di mana UU PT berfokus pada perlindungan hukum dan korporasi, sementara Fatwa DSN-MUI menekankan kepatuhan terhadap prinsip muamalah Islam. Penelitian ini memberikan kontribusi dalam harmonisasi regulasi korporasi di Indonesia dengan prinsip-prinsip ekonomi syariah.

Introduction

Among all forms of companies existing in Indonesia, such as Firms (*Firma*), Cooperatives (*Koperasi*), Limited Partnerships (*Persekutuan Komanditer*), and others, the form of a Limited Liability Company (Perseroan Terbatas/PT) is the most common, and is often considered the most dominant. The dominance of the PT occurs not only in Indonesia but also in the United States and other countries, primarily due to its fundamental advantages in asset separation and the limited liability of its shareholders.(Rifda, 2024)

A Limited Liability Company is a legal entity whose capital consists of shares, with each owner holding shares in proportion to their contribution. A key characteristic of a PT is that its capital is composed of a number of transferable shares. Because the capital consists of tradable shares, the transfer of share ownership can be carried out without the need to liquidate the company. Share trading is a core activity in the capital market and private transactions, generally governed by Article 1457 of the Civil Code (KUHPerdara)(Firdaus, 2022), which defines it as an agreement between two parties where one party transfers goods and the other receives goods according to a previously established agreement, and is also subject to the provisions of Article 613 of the Civil Code concerning the transfer of claims in the name and other intangible property. This is also aligned with the provisions of Article 48 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies regarding shares issued by the company.(Harahap, 2009)

To maintain ownership stability and corporate structure, Law Number 40 of 2007 on Limited Liability Companies specifically regulates pre-emptive rights in the transfer of shares. As stipulated in Article 58 paragraph (1) of the PT Law No. 40 of 2007, it is regulated that "if a shareholder wants to sell their shares, the shares must first be offered to the other shareholders." Nevertheless, there is an exception where a limited liability company is not obligated at all to offer its shares to other people if otherwise stipulated in the Articles of Association.(Emilia & Utami, t.t.)

On the other hand, the practice of share trading, especially in Indonesia, is subject not only to positive law regulations but also to the principles of Sharia economics. Given that the majority of Indonesia's population is Muslim and the rapid development of the Sharia capital market, it is crucial to ensure that the share trading mechanism, including the provisions of Article 58 paragraph (1) of the PT Law, is in line with Islamic *muamalah* (Ash-Shiddiey, 1989) (transactional) principles.

The National Sharia Council of the Indonesian Ulema Council (DSN-MUI), through Fatwa Number 40/DSN-MUI/X/2003 concerning the Capital Market and General Guidelines for the Application of Sharia Principles in the Capital Market Sector, serves as the Sharia legal basis for all transactions occurring in the capital market, including share trading. This Fatwa sets criteria for tradable shares (Sharia shares) and requires that transactions must be free from elements of *gharar* (uncertainty), *maisir* (gambling), and *riba* (usury/interest). (FATWA DEWAN SYARI'AH NASIONAL NO: 40/DSN-MUI/X/2003, 2003)

Therefore, this research is highly relevant for analyzing the compliance and alignment between the provisions of positive law regarding pre-emptive rights in share trading under Law Number 40 of 2007 and the principles of valid (halal) share transactions based on DSN-MUI Fatwa Number 40/DSN-MUI/X/2003. This comparison is necessary to provide a comprehensive understanding and legal certainty for business actors who wish to conduct share trading practices that are valid both legally under the state and valid under Sharia.

Methodology

This research employs the Normative Legal Research (Mukti Fajar & Yulianto Achmad, 2010) Method (Yuridis Normatif), as its subject of study focuses on legal norms, specifically the principles contained within statutory regulations and religious edicts. The approach used is Comparative, aimed at thoroughly analyzing and contrasting the provisions for Share Trading in Limited Liability Companies as regulated in Law Number 40 of 2007 (Positive Law) with the Sharia principles established in DSN-MUI Fatwa Number 40/DSN-MUI/X/2003 (Sharia Law). The primary data acquisition is conducted through Library Research, where the collected data is secondary, encompassing Primary Legal Materials (the relevant Law and Fatwa) and Secondary Legal Materials (journals, books, and relevant research findings).

Data analysis is carried out using a Qualitative Descriptive Analysis. All collected data and legal materials are inventoried, interpreted, and then described to elaborate on the differences and alignment between the two legal frameworks. The goal is to draw deductive conclusions regarding the harmonization and implementation of PT

share trading practices that comply with both national legal provisions and Sharia stipulations.

Results and Discussion

A. Definition of Shares

The word "Share" in the Indonesian dictionary encompasses several meanings: stake (andil), portion (bagian), certificate (surat), shareholder (pemegang saham), proof of participation in a corporation (tanda serta dalam perseroan), a certificate proving ownership of part of the capital of a Limited Liability Company (PT) that grants the right to dividends and others according to the size of the capital deposited. The right possessed by a shareholder represents the contribution of capital and is therefore considered part of the company's ownership and oversight.(Anwar, 2003)

Shares are issued immediately after the Limited Liability Company obtains legal entity status, which is immediately after the PT is ratified by the Minister of Law and Human Rights.(*UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 40 TAHUN 2007 TENTANG PERSEROAN TERBATAS*, t.t.) Before submitting the application for approval to the Minister of Law and Human Rights, the founders of the company must fully pay the company's cash for every share purchased. Each share has a nominal value, the amount of which is determined based on the agreement of the founders of the limited liability company, which is then stipulated in the company's Articles of Association. The total number of shares taken by the shareholders, multiplied by the nominal value of the shares, must equal the issued or fully paid-up capital of the limited liability company. (Widjaja, 2008)

Law Number 40 of 2007 permits the issuance of more than one class or type of shares, allowing each class or type of share to have different characteristics, provided that some of these classes constitute common stock (*saham biasa*). The classification of common stock implies that these shares carry all rights and obligations, just as if the company issued only one class or type of share. These rights typically include the right to attend and cast a limited number of votes in General Meetings of Shareholders (GMS), as well as to make, accept, and reject proposals concerning matters discussed in the meeting, the right to receive dividends or company profits, and the rights related to the assignment, encumbrance, transfer, sale, alienation, pledging, or hypothecation of shares.

Each share held by individual shareholders represents a form of ownership within the limited liability company. For every share issued by the limited liability company that grants voting rights, each share further entitles its holder to one vote at every General Meeting of Shareholders. Every issuance of shares, whether new shares created through founder purchases, or subsequent issuance of shares after the limited

liability company has obtained legal entity status each aimed at increasing the authorized capital must be fully paid-up.

B. Share Transfer

Share transfer is defined as a legal act undertaken to acquire shares in a company, which can be executed through various methods, one of which is Acquisition (*Pengambilalihan*). (Darnadji & Fakruddin, 2011) Acquisition itself is a legal act carried out by a legal entity or an individual to obtain shares of a company, which ultimately may result in the transfer of control over that company. In its development, Limited Liability Companies (PT) can be classified into several types. The primary characteristic of a Private Limited Liability Company (PT Tertutup) is the limitation of shareholders, generally consisting only of people who know each other or have family ties (*besloten*). Furthermore, the company's Articles of Association (AD) clearly list the shares and their holders, and the shares are often in the form of registered shares (*aandeel op naam*). (Darnadji & Fakruddin, 2011)

The classification of PT is further distinguished into: (Harahap, 2009) Purely Private (where shares are entirely restricted from outsiders and transfer is limited only among shareholders); Partially Private and Partially Public (where shares are divided into two groups, one held by specific individuals, and the other freely tradable); Public Companies (Perseroan Publik) (which meet the criteria for shareholders and paid-up capital as per the UUPT 2007 and Capital Market Law); and Publicly Listed Companies (Perseroan Terbuka/Tbk), which are PTs that conduct a public offering according to capital market regulations. (Sinaga, 2014)

Shareholders, regardless of the type of PT, possess a series of rights generally categorized into Individual Rights and Derivative Claims. The Individual Rights granted to shareholders include, but are not limited to: the right to obtain shares from subsequent issuances (pre-emptive rights according to Article 43 UUPT 2007); the right to sell or transfer shares (Article 56 UUPT 2007); the right to attend and exercise voting rights in the General Meeting of Shareholders (GMS); the right to dividends; and the right to file a lawsuit against the Company if harmed (Article 61 UUPT 2007). Meanwhile, the Derivative Claim is the right possessed by shareholders (representing at least one-tenth of the shares with voting rights) to file a lawsuit on behalf of the Company against the Directors or the Board of Commissioners in the District Court for losses caused by their fault or negligence. These rights are regulated in detail in the UUPT 2007. (Mumpuni, melvin; Dharmawan, 2017)

The General Meeting of Shareholders (GMS) is the supreme legal body that represents the interests of all shareholders and exercises all powers not delegated to the Directors and the Board of Commissioners. The GMS is held at least once a year

(Annual GMS) or as an Extraordinary GMS if necessary, preceded by a summons issued by the Directors, or in certain cases by the Board of Commissioners or based on a decree by the District Court Chairman. Each share generally carries one voting right, except for shares controlled by the Company itself or in the context of cross-ownership. The GMS is only authorized to discuss the predetermined agenda, and approval for additional agenda items requires the attendance of all shareholders and unanimous consent. (Ridwan & Heliyany, 2021)

The basis for the share transfer is the Share Sale and Purchase Agreement. According to Article 1457 of the Civil Code (KUH Perdata), sale and purchase is defined as an agreement where one party promises to deliver an item and the other party agrees to pay the agreed-upon price. Based on the principle of consensualism (Article 1458 KUH Perdata), the sale and purchase agreement is deemed complete upon reaching an agreement on the item (shares) and the price, even if the item has not been delivered or the price has not been paid. However, specifically for the transfer of shares, the sale and purchase agreement must be followed by an act of transfer of rights in the form of a written deed (authentic or underhand instrument) in accordance with Article 613 of the Civil Code and the provisions of the UUPT, which confirms that a share sale is a consensually completed contract, but the legal validity of the transfer requires written representation.

C. Comparative Analysis: Alignment and Implications of Share Trading

Comparative analysis reveals the existence of functional synchronization between the provisions of positive law and Sharia principles in the context of share trading in Limited Liability Companies (PT). Law Number 40 of 2007 (UU PT), through Article 58 paragraph (1), regulates the Right of First Refusal (Hak Preferensi), which aims to protect the PT's ownership structure by mandating that shares must first be offered to internal shareholders. This protective provision was found to be not substantively conflicting with DSN-MUI Fatwa Number 40/DSN-MUI/X/2003. (Saputra, 2014) The DSN-MUI Fatwa, which focuses on the principles of *muamalah* (transactions) that are lawful (*halal*), just, and free from *gharar* (uncertainty), can accommodate the mechanism of the Right of First Refusal. Provided that the process of price determination and the share sale and purchase agreement are conducted transparently, voluntarily, and without elements of fraud, the procedures regulated by the PT Law are deemed valid from a Sharia perspective.

Although the transaction mechanism is harmonious, the main difference lies in the philosophical foundation and regulatory scope. The PT Law operates within a Business and Corporate Law framework that emphasizes the protection of minority shareholder rights, legal certainty, and the continuity of the business entity.

Meanwhile, the DSN-MUI Fatwa is based on Islamic Sharia Law, which focuses on the validity of the transaction object. Alignment can only be fully achieved if the transaction object, which is the PT share itself, meets Sharia criteria (avoiding businesses that are non-Sharia compliant, such as gambling or excessive *riba*). Thus, the PT Law regulates *how* shares are transferred, whereas the DSN-MUI Fatwa determines *which* shares can be transferred (a qualitative filter) for investors bound by Sharia principles. (Marzuki, 2025)

In practical terms, this finding has high relevance for Private Limited Liability Companies (PT Tertutup), which are generally managed based on personal or family proximity and often impose strict restrictions in the Articles of Association (AD) regarding share transfer. The obligation of the Right of First Refusal in the PT Law reinforces the *besloten* (closed) characteristic of such companies. For shareholders of Private PTs who wish to ensure their transactions are not only legally valid but also Sharia-compliant, the integration of Sharia criteria (such as a clause stating that share trading transactions must meet *halal* and *tayyib* criteria) into the Share Sale and Purchase Agreement is a recommended practice. This indicates that regulation and fatwa are mutually supportive in maintaining financial integrity and ethics in private companies. (Yuniar dkk., 2024)

This research makes a significant contribution to the effort of harmonizing corporate regulation and Sharia economics in Indonesia. The conclusion that there is no fundamental conflict between the pre-emptive rights provisions of the PT Law and the DSN-MUI Fatwa demonstrates that positive law and Sharia principles can be implemented in a complementary manner. This finding provides dual legal certainty for business actors and investors who wish to conduct share trading practices that are lawful under state law as well as valid under Sharia. This harmonization is vital to support the development of the Sharia Capital Market, where transaction mechanisms must be integrated and recognized by the national corporate legal framework.

Conclusion

Overall, the comparative analysis indicates that no substantive conflict was found between the share trading mechanism of Limited Liability Companies (PT) as regulated in Law Number 40 of 2007 (PT Law) and the Sharia principles contained in DSN-MUI Fatwa Number 40/DSN-MUI/X/2003. The provision for the Right of First Refusal (*Hak Preferensi*) in Article 58 paragraph (1) of the PT Law, which aims to protect the corporate ownership structure, can be accommodated by Sharia Law provided that the share transaction process is conducted fairly, transparently, voluntarily, and is free from elements of *gharar* (uncertainty) and *maisir* (gambling). Although functionally aligned, the fundamental difference lies in the philosophical foundations, where the

PT Law focuses on the Corporate Law framework for legal certainty, while the DSN-MUI Fatwa focuses on Islamic *Muamalah* Law to ensure the ethical and qualitative validity of the transaction object (the shares being traded).

This functional alignment has important implications for legal harmonization efforts in Indonesia, providing dual legal certainty for business actors and investors who wish to transact both legally and Sharia-compliantly. This finding confirms that positive law and Sharia principles can be implemented in a complementary manner, particularly in the context of Private PTs that require strict clauses regarding share transfer. Therefore, this research contributes to strengthening the integration of national corporate regulations with Sharia economic principles to support the growth of an integrated Sharia capital market.

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