Universitas Internasional Batam
Fakultas Hukum
Jl. Gadjah Mada, Batam, 29442, Indonesia
Phone : (0778) 743 7111 Ext, 140.
Email: admin_jlpt@gmail.com

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

HARMONIZATION OF PROCEDURE: CHANGES IN THE COMPOSITION OF SHAREHOLDERS IN LIMITED LIABILITY COMPANY

Christino Deseka*
Universitas Pelita Harapan

Abstract

A limited liability company is one of the legal entities in recognized in Indonesia. As a legal entity, limited liability company will continue to exist even if there are changes in its shareholders. When there are changes in the composition of company's shareholders, it must be notified/reported to the Minister of Law and Human Rights to be listed in the Company Register. If such notification has not been carried out, according to the prevailing provision, the Minister will reject any application for approval or notification based on the composition or names of shareholders who have not been notified. Regarding the reporting to the Minister regarding the changes of the composition of company's shareholders, it is regulated in UUPT and Permenkumham 21/2021. This study analyzes the consistency of both regulation in regulating the procedure in reporting the changes in the composition of company's shareholders within limited liability companies to the Minister. This research used normative legal research. The results of the research show that there is significant difference in reporting procedure, which may lead to various legal and implementation issues. These findings suggest the need to revise existing regulations to ensure consistency, clarity and legal certainty in reporting changes in shareholder composition in Indonesian companies.

Keywords: *inheritance, ownership, hierarchy, consistency, shares*

A. Background

The Republic of Indonesia is a constitutional state (*Rechtsstaat*)[1]. As a legal state, the state must carry out national legal development in a planned, integrated, and sustainable manner within the national legal system to guarantee the protection of the rights and obligations of all Indonesian people.[2] In order to formulate good legislation, precise and standardized methods must be executed that bind all authorized institutions responsible for forming legislation.[3] The provision regarding the formation of statutory regulations in Indonesia is regulated through Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations, which law has been amended by Law Number 15 of 2019 (hereinafter referred to as the "Law on the Formation of Legislation").

* christinodeseka@gmail.com

[1] Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (1945), n. Article 1 paragraph 3.

[2] Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan" (n.d.), n. Consideration letter a.

[3] Republik Indonesia, n. Consideretion letter b.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

A limited liability company as a legal entity in Indonesia is recognized based on the provisions of article 1 paragraph 1 of Law Number 40 of 2007, which the Republic of Indonesia has amended by Law Number 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as Law (hereinafter referred to as "UUPT").

The word "*perseroan*" in a limited liability company refers to capital consisting of *sero* or shares.[4] Article 31 of UUPT states that the authorized capital of a limited liability company consists of the entire nominal value of the shares. Shares represent the participation of capital and serve as evidence of ownership of capital in the limited liability company.[5] A limited liability company will continue to exist even if there are changes in its management and shareholders or their shares. This is a consequence of the company being an independent and separate legal personality.[6]

At the beginning of the company's establishment, share ownership by the company's founders begins with a taking of the shares based on a participation agreement (*deelnemingsovereenkomst*) with the company.[7] Each company founder must take part in the shares in establishing a limited liability company. Meanwhile, after the establishment of limited liability company, a person can become a shareholder in two ways: 1) transfer of shares such as buying and selling, granting, or exchanging shares, namely a transfer based on a unique title (*onderbijzondere titel*); and 2) inheritance events, namely the transfer of share ownership based on general title (*onderalgemene titel*).[8]

In the event of changes in the composition of shareholders, the transfer of rights deed or it's duplicate must be delivered in writing to the company.[9] The board of directors must notify the Minister of Law and Human Rights (hereinafter referred to as "Minister") regarding such changes to be listed in the Company Register.[10] If such notification has not been carried out, Minister will reject any application for approval or notification based on the composition or names of shareholders who have not been notified.[11]

[4] Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia* (Yogyakarta: FH UII Press, 2013), 63.

[5] Republik Indonesia, "Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas" (2007), n. Article 48 paragraph (1).

[6] Eilís Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (United Kingdom: Oxford University Press, 2014), 363.

[7] Hasbullah F Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenada Media, 2017), 79.

[8] Hasbullah F Sjawie, 79.

[9] Republik Indonesia, Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, n. Article 7 paragraph (2).

[10] Republik Indonesia, n. Article 56 paragraph (3).

[11] Republik Indonesia, n. Article 56 ayat (4).

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

Regarding notification or reporting to the Minister in the event of changes in shareholders, other than UUPT, it also further regulated in Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 21 of 2021 concerning the Requirements and Procedures for the Registration of Establishment, Changes, and Dissolution of Limited Liability Companies (hereinafter referred to as the "Permenkumham 21/2021").

The provisions for the formation of statutory regulations as intended in Law on the Formation of Legislation also apply to the UUPT and Permenkumham 21/2021. This provision applies to ensure the realization of legal synchronization in the regulation of limited liability companies. These two laws and regulations must support each other and be integrated to create a solid and consistent legal framework in regulations to achieve legal certainty. Legal synchronization is essential to ensure harmony between one regulation and another, both vertically with higher regulations and horizontally with parallel regulations, avoiding overlap, ensuring complementarity, and adapting rules at various levels.[12]

Suppose there is disharmony between UUPT and Permenkumham 21/2021, it will give rise to differences in interpretation in the implementation of regulations, which can result in confusion and uncertainty. Legal uncertainty will surely cause the implementation of rules effectively and efficiently challenging because of the overlaps and conflicts between existing regulations. As a result, the objectives of establishing these regulations will not be achieved properly.[13]

B. Identified Problems

The identified problem is that the provisions in the UUPT and Permenkumham 21/2021 outline differing procedures for notification or reporting when there is a change in shareholder composition in a limited liability company. Consequently, this analysis aims to examine the legal synchronization between these two regulations by elaborating on and describing the key differences and the resulting legal issues.

C. Research Methods

Joaedi Efendi explains that legal research is research that studies law, either as a science or dogmatic rules or regulations regarding the behaviour

[12] Badan Pengkajian MPR, "Strategi Perampingan Dan Harmonisasi Regulasi Pusat Dan Daerah" (Jakarta: Badan Pengkajian MPR RI, 2017), 49, https://www.mpr.go.id/img/jurnal/file/250322_2017 _ Strategi Perampingan & Harmonisasi Regulasi Pusat & Daerah.pdf.

[13] Firman Freaddy Busroh, Fatria Khairo, and Putri Difa Zhafirah, "Harmonisasi Regulasi Di Indonesia: Simplikasi Dan Sinkronisasi Untuk Peningkatan Efektivitas Hukum," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 710, https://doi.org/https://doi.org/10.55637/juinhum.5.1.7997.699-711.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

and life of society.[14] Normative legal research is the type of research used in this research. The research looks at the laws and regulations that apply or are applied to a legal problem in this writing.[15] A legislative approach examines all legal rules/norms discussing the studied issues.

D. Research Findings and Discussions

Hans Kelsen explains that in the hierarchical theory of legal norms (*Stufentheorie*) in a hierarchical structure, legal norms are structured and organized in tiers and layers. Lower norms apply, originate from, and are based on higher norms, up to Basic Norms (*Grundnorms*), which cannot be traced further and are hypothetical.[16] In line with mentioned theory, the tiered system of legal norms also applies in the Republic of Indonesia where a norm is based, applies, and originates from a higher level, and so on up to Pancasila which is the basic of the state norm (*Staatsfundamentalnorm*) of the Republic of Indonesia.[17]

The tier or hierarchy of laws in the Indonesia refers to the provisions of article 7 of the Law on the Formation of Legislation. Apart from it, there are also other recognized statutory regulations, one of which is ministerial regulations. [18] Ministerial regulations are regulations determined by the minister based on content material used to carry out specific government affairs. [19] The formation of ministerial regulations is motivated by government policies that need to be formalized into regulations that implement higher-level regulations.[20]

Ministerial regulations are central-level statutory regulations at the lowest level in the sequence of Indonesian statutory regulations currently in force. The presidential regulations are almost the same as ministerial regulations, only the position of the ministerial regulations is below presidential regulations.[21] Based on this, a ministerial regulation must not

[14] Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, 2nd ed. (Depok: Prenadamedia Group, 2018), 16.

[15] Peter Mahmud Marzuki, *Penelitian Hukum*, 1st ed. (Jakarta: Kencana Prenada Media Group, 2005), 89.

[16] Maria Farida Indrati Soeprapto and A Hamid S Attamimi, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya* (Yogyakarta: Kanisius, 1998), 25.

[17] Soeprapto and Attamimi, 39.

[18] Republik Indonesia, "Undang-Undang Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan" (n.d.), n. Article 8 paragraph (1).

[19] Republik Indonesia, n. Explanation of article 8 paragraph (1).

[20] Ridwan Ridwan, "Eksistensi Dan Urgensi Peraturan Menteri Dalam Penyelenggaraan Pemerintahan Sistem Presidensial," *Jurnal Konstitusi* 18, no. 4 (February 17, 2022): 837, https://doi.org/10.31078/jk1845.

[21] Sofyan Apendi, "Ketiadaan Peraturan Menteri Dalam Hierarki Peraturan Perundang-Undangan Nasional Dan Implikasinya Terhadap Penataan Regulasi Dalam Sistem Hukum Nasional," *PALAR (Pakuan Law Review)* 07, no. 01 (2021): 111–26.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

conflict with the Law because, in a hierarchical order, the position of a ministerial regulation is lower than Law. In line with that, according to Ni'matul Huda and R. Nazriyah, one of the limitations on the content of ministerial regulations is that they must not conflict with higher statutory regulations and fundamental principles of effective governance (*algemene beginselen van behoorlijk bestuur*).[22]

1. Procedures for Reporting Changes in Shareholder Composition

Shares are defined in article 60 paragraph (1) of UUPT as movable objects. In principle, the transfer of movable objects is carried out by actual delivery.[23] However, transferring ownership rights to shares is stated in article 56 paragraph (1) UUPT, which requires using a transfer deed.

In the event of changes in the shareholder composition of a limited liability company, whether due to a unique title (*onderbijzondere titel*) or general title (*onderalgemene titel*),[24] based on the provisions of article 56 paragraph (2) UUPT, the deed of transfer of rights as the basis for the transfer of rights of shares must be submitted in writing to the limited liability company. Article 56 paragraph (3) UUPT further regulates that by such submitting of the deed of transfer of rights, the board of directors must then record the date and time of the transfer of shares and rights in the company register of shareholders. As soon as the shareholder's name is recorded in the shareholder register, then the shareholder shall entitle to exercise the rights attached to the share.[25]

Article 56 paragraph (3) UUPT then further requires board of directors to notify the Minister of any change in the shareholder composition so that it may be recorded in the Company Register no later than 30 (thirty) days following the day the transfer of rights was recorded in the company's shareholders' register. The legal consequences of not implementing the notification to the Minister regarding the changes to the composition of limited liability company shareholders, article 56 paragraph (4) of UUPT states that the Minister shall reject any application for approval or notification submitted based on the list and names of shareholders who have not been notified.

---

[22] Ni'matul Huda and Riri Nazriyah, *Teori Dan Pengujian Peraturan Perundang-Undangan*, II (Bandung: Nusamedia, 2019), 117.

[23] "Kitab Undang-Undang Hukum Perdata" (n.d.), n. Article 612.

[24] Hasbullah F Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi*, 79.

[25] Nadhila Rianda Karissa and David Maruhum Lumbang Tobing, "Status Dan Peralihan Hak Atas Saham Perseroan Terbatas Milik Pemegang Saham Yang Meninggal Dunia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 4 (2022): 605, https://doi.org/http://dx.doi.org/10.58258/jisip.v6i4.3537.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

Referring to the provisions in the UUPT, the order in which shares are transferred up until the notification to the Minister can be broadly described as follows:

a. If the company's articles of association specify the requirements for the transfer of rights to shares, then before the transfer of shares is carried out, it is necessary to fulfill these requirements prior (articles 57, 58, 59 of UUPT);
b. The execution of the transfer of the right through a deed of transfer of rights (article 56 paragraph [1] of UUPT);
c. The transfer of rights deed, or a duplicate of it, must be delivered in writing to the company (article 56 paragraph [2] of UUPT);
d. The board of directors records the transfer of rights to shares, the date and day of the transfer of rights in the company's shareholder register or a special register (Article 56 paragraph [3] of UUPT);
e. The board of directors notifies the change in the list of shareholders to the Minister so that it can be recorded in the Company Register (Article 56 paragraph [3] of UUPT).

Regarding shareholder composition changes and its reporting procedures is further regulated in Permenkumham 21/2021. Article 8 paragraph (1) Permenkumham 21/2021 also regulate that change of company data must be registered to the Minister. The mentioned term "changes in company data" include changes in the composition of shareholders due to share transfers and/or changes in the amount of share ownership held.[26]

Regarding notification or reporting of changes in shareholders to the Minister, article 9 of Permenkumham 21/ 2021 regulates those changes must be determined through a General Meeting of Shareholders (hereinafter referred to as the "GMS"). The GMS must be stated or declared in an Indonesian notarial deed.[27] Within 30 days of the notary deed date, the notification to the Minister must have already been proceeded.[28] If it exceeds 30 days, it can no longer be processed by the minister.[29]

Different from before, in this case if referring to both provisions (UUPT and Permenkumham 21/2021), the sequence of share transfers up to the notification to the Minister can be broadly described as follows:

a. If the company's articles of association contain requirements for the transfer of rights to shares, then before the transfer of shares

[26] Republik Indonesia, "Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 21 Tahun 2021" (n.d.), n. Article 8 paragraph 4.
[27] Republik Indonesia, n. Article 9 paragraph (2).
[28] Republik Indonesia, n. Article 9 paragraph (6).
[29] Republik Indonesia, n. Article 9 paragraph (7).

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

is carried out, it is necessary to fulfill these requirements prior (Article 57, 58, 59 of UUPT);

b. Implementation of GMS to determine changes in shareholder composition (Article 9 paragraph [1] of Permenkumham 21/2021);
c. State the GMS in the notarial deed (Article 9 paragraphs [2] and [3] of Permenkumham 21/2021);
d. The execution of the transfer of the right through a deed of transfer of rights (Article 56 paragraph [1] of UUPT);
e. The transfer of rights deed, or a duplicate, must be delivered in writing to the company (Article 56 paragraph [2] of UUPT);
f. The board of directors records the transfer of rights to shares, the date and day of the transfer of rights in the company's shareholder register or a special register (Article 56 paragraph [3] of UUPT);
g. Submit notification for changes in the composition of shareholders to the Minister within no more than 30 (thirty) days from the date of the notarial deed of the GMS containing such changes (Article 9 paragraph [6] of Permenkumham 21/2021).

According to article 56 paragraph (3) UUPT, change in the composition of shareholders must be notified to the Minister by the company's board of directors. However, in Permenkumham 21/2021, there is no provision for the company's board of directors to notify the Minister. Instead, article 9 Permenkumham 21/2021 formulates different provisions regarding the procedure, namely requiring changes in the composition of shareholders to be determined through a GMS. Reporting changes in the composition of shareholders can only be done based on a notarial deed containing the resolution of the GMS regarding the changes in the composition of shareholders of the company. As a result, the obligation of the board of directors to make such reports will depend on another organ of the company, namely the GMS.

As seen in the differences procedure between UUPT and Permenkumham 21/2021, there are inconsistencies between the two regulations. Permenkumham 21/2021, as a ministerial regulation that is lower in the hierarchy, it should not conflict with UUPT as a statutory regulations at a higher level.[30]

2. Inconsistency of Change of Shareholder Composition Reporting Duty: Responsibility of the Board of Directors or the GMS?

Article 9 of Permenkumham 21/2021 only allow for reporting changes in the shareholder composition based on a notarial deed containing the resolutions of the GMS. Consequently, the obligation of the board of directors to make such a report will depend on another company organ, namely the GMS. Problem arises, who will be legally responsible if there is negligence in reporting such changes to the

[30] Huda and Nazriyah, *Teori Dan Pengujian Peraturan Perundang-Undangan*, 117.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

Minister? On one hand, UUPT considers this to be the responsibility of the board of directors. But on the other hand, board of directors can only report if the shareholders indeed hold a GMS. By requiring such notification to be determined with a GMS, the consequence will be the possibility that approval for the GMS will fail to be obtained, and consequently, notification of changes to the composition with the Minister cannot be done.

Article 86 UUPT regulates that a GMS can only proceed if a quorum of more than 1/2 (one-half) of the total voting shares is present or represented unless the law and/or the company's articles of association specify a larger quorum. A second GMS summons can be called if first GMS quorum is not reached. If the quorum for the second GMS is also not met, the company may petition to the district court at the company's domicile to establish the quorum for the third GMS.

Based on article 52 of UUPT, shares give shareholders the right to attend and vote at GMS meetings. According to the Bahasa Indonesia dictionary (KBBI), "rights" or "*hak*" means authority or the power to do something.[31] Based on this definition, shareholders will have the authority to do something, including choosing to attend or not attend, voting or not voting at the GMS. Therefore, no party can force or require the company's shareholders to attend the GMS to determine changes to the composition of shareholders. If the GMS quorum fails to be achieved, the GMS cannot make resolutions that will result in changes in the composition of shareholders because inheritance cannot be further notified to the Minister. Furthermore, even if the quorum at the GMS is achieved, it still cannot be guaranteed that the GMS will be able to make a valid resolution according to article 87 UUPT.

As "rights" based on article 52 of UUPT, nobody can force the company's shareholders to vote and agree at the GMS. Suppose the resolution of the GMS regarding the changes in the shareholder structure is not approved by more than 1/2 (one-half) of the total votes cast. In that case, the GMS cannot make the needed resolution, which will result in the required GMS determining the changes in the composition of shareholders cannot be notified to the Minister.

Based on the provisions of article 9 of Permenkumham 21/2021, the obligation to determine changes in the composition of shareholders at the GMS can potentially create legal uncertainty for parties interested in the changes of company shareholders. With the obstruction of reporting changes in the composition of shareholder to the Minister, the shareholders who have not been notified cannot exercise some of their rights as shareholders, namely according to article 56 paragraph (4) of UUPT, that the Minister will reject requests for approval or notification

[31] Departemen Pendidikan dan Departemen Kebudayaan, "Hak," Kamus Besar Bahasa Indonesia, accessed February 5, 2024, https://kbbi.kemdikbud.go.id/entri/Hak.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

based on the GMS decision by the composition and names of shareholders who have not been notified.

For the losses caused to interested shareholders, who are legally obliged to be responsible? On the one hand, the UUPT determines this as the responsibility of the board of directors, but on the other hand, the board of directors can only report if the shareholders hold the GMS. The inconsistency provision of Permenkumham 21/2021, which adds an additional procedure for reporting changes in the composition of shareholders with determination through the GMS, will create legal uncertainty for interested shareholders and responsible parties in the event of negligence in reporting changes in shareholders to the Minister.

3. Problems with the Reporting Period for Changes in Shareholder Composition by the Board of Directors

Another problem that will arise from requiring changes to the composition of shareholders to be determined through the GMS is related to the period for directors to carry out their legal reporting obligations based on the provisions of article 56 paragraph (3) UUPT. Following article 56 paragraph (3), board of directors must notify the Minister of any changes to the shareholder structure within 30 (thirty) days of the date the transfer of rights was recorded.

However, because article 9 of Permenkumham 21/2021 requires changes to the composition of shareholders to be determined through GMS so that it can be reported to the Minister, board of director must hold a GMS. In order to hold the GMS, the Board of Directors needs to send a GMS invitation prior to the shareholders.[32] The invitation for the GMS must be made no later than 14 (fourteen) days before the first GMS is held, excluding the date of invitation and the date of the GMS.[33] Then, according to UUPT article 86 paragraph (9), if quorum is not reached at the first GMS, the second and third GMS may only be held within a minimum of 10 (ten) days of the before GMS.

If assumed that the GMS for some reason must be held until the third GMS, then it can be sure that the total time required from the summons to the implementation of the GMS will take more than 30 (thirty) days, even excluding the time needed to complete the district court application to determine the third GMS quorum. As a result, board of directors would exceed the 30 (thirty) day period specified in article 56 paragraph (3) of the UUPT. However, such a delay occurs due to other organs outside of the board of directors and because of the obligation to conduct the GMS properly as specified in the UUPT. If any parties suffer losses due to the delay in notifying changes in the shareholder composition to the Minister according to the provisions of

[32] Republik Indonesia, Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, n. Article 79 paragraph (1).

[33] Republik Indonesia, n. Article 82 paragraph (1).

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

article 56 paragraph (3) of UUPT, it is unclear who should be said to have committed an unlawful act and bear the responsibility.

4. **In Synchronization Related to the Requirement to Obtain Approval in the Transfer of Rights to Shares**

Article 9 of Permenkumham 21/2021 which requires changes to the composition of shareholders to be determined through GMS, will also have the potential to conflict with the provisions of article 57 paragraph (1) UUPT. The formulation of article 57 paragraph (1) of UUPT states that the company's articles of association "can" regulate requirements regarding the transfer of rights to shares, namely:

a. The obligation to offer it to other shareholders or shareholders with specific categories prior;
b. The requirement to have the company organs' prior permission; and/or
c. The requirement to obtain prior approval from the relevant authority.

Appendix II number 267 of the Law on the Formation of Legislation, the word "*can*" is a selection of phrases or concepts to express the discretionary nature of an authority given to a person or institution. According to the KBBI, discretion is defined as the freedom to make one's own decisions in every situation faced.[34] According to Aristoni, discretion, or *freies ermessen*, includes all actions that involve making policies, making decisions, or acting on one's own initiative. That determination isn't based on the provisions of rules or laws but on various well-considered, contextual, and accountable considerations. Regarding policy-making or decision-making, what is most important is achieving goals rather than sticking to the law.[35]

The above explanation shows that word "can" in article 57 paragraph (1) UUPT refers to the founders' discretion over whether they include provisions in the limited liability company's articles of association regulating the transfer of rights to shares. This authority is discretionary, meaning that the founders of the company are not bound by the provisions of the regulations or other statutory regulations in determining this authority. This provision gives freedom to company founders to arrange the transfer of rights to limited liability company shares according to their needs and objectives.

With the provisions of article 9 of Permenkumham 21/2021 which requires changes to the composition of shareholders to be determined through GMS, indirectly, Permenkumham 21/2021 has imposed and required the implementation of requirements regarding the

[34] Departemen Pendidikan dan Departemen Kebudayaan, "Diskresi," Kamus Besar Bahasa Indonesia, accessed January 30, 2024, https://kbbi.kemdikbud.go.id/entri/diskresi.

[35] Aristoni Aristoni, "Tindakan Hukum Diskresi Dalam Konsep Welfare State Perspektif Hukum Administrasi Negara Dan Hukum Islam," *Jurnal Penelitian* 8, no. 2 (2014): 244.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

transfer of rights to shares to obtain prior approval from the company organ, which is GMS approval. This is due to the GMS become a mandatory process to facilitate the transfer of rights of shares, so the changes in the shareholder composition can be reported to the Minister by the board of directors. On the other hand, without holding GMS resolution prior to the transfer of rights, the board of directors cannot report changes in the composition of shareholders. This description shows a lack of synchronization between the UUPT and Permenkumham 21/2021.

5. Reporting Issues of Changes in Shareholder Composition through GMS in the Case of Inheritance

As stated in the explanation of article 56 paragraph (3) of UUPT, inheritance that results in a change in the composition of shareholders will need to be notified to the Minister. Similarly, article 8 of Permenkumham 21/2021 also states that any changes in the composition of shareholders due to inheritance are to be notified to the Minister.

The legal position of heirs regarding the transfer of share ownership rights based on inheritance rights in a limited liability company follows the *saisine* rights as intended in article 833 paragraph (1) of the Civil Code. [36] The right of *saisine* means that heirs automatically, by law, acquire ownership rights to all assets, rights, and debts of the deceased without requiring any specific action, even if the heirs are unaware of the existence of the inheritance.[37] Even so, the heirs still need to convey the inheritance in writing to the company to be recorded in the company's shareholder register.[38] Only then can the heirs exercise their rights as shareholders. [39] Based on article 52 paragraphs (1) and (2) of UUPT, heirs can exercise their rights as shareholders (including to attend and vote at the GMS) after being recorded in the company's shareholder register.

The process up to notifying the Minister must follow the provisions of article 56 UUPT and article 9 Permenkumham 21/2021 in the event of an inheritance-related change in the composition of shareholders. The process can be described as follows:

[36] Gita Utami, "Tinjauan Yuridis Pemindahan Hak Kepemilikan Saham Berdasarkan Hak Waris Dalam Perseroan Terbatas" (Kota Mataram: Universitas Mataram, 2019), xiii, http://eprints.unram.ac.id/12555/.

[37] Utami, vi.

[38] Republik Indonesia, Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, n. Article 56 paragraph (3).

[39] Republik Indonesia, n. Article 52 paragraph (2).

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

a. Approve one of the heirs as the shareholder representative if there are 2 (two) or more heirs based on the provisions of article 52 paragraph (4) of UUPT[40];
b. Make a deed of transfer of rights or evidence as an heir following the provisions of article 56 paragraph (1) of UUPT[41];
c. The transfer of rights deed, or it's duplicate, must be delivered in writing to the company (Article 56 paragraph [2] of UUPT);
d. The board of directors records the transfer of rights to shares, the date and day of the transfer of rights in the company's shareholder register or a special register (Article 56 paragraph [3] of UUPT);
e. Implementation of GMS to determine changes in shareholder composition (Article 9 paragraph [1] of Permenkumham 21/2021);
f. Declare changes to company data in notarial deed if the GMS is not produced in a notarial deed of GMS minutes (Article 9 paragraphs [2] and [3] of Permenkumham 21/2021);
g. Submit a notification to the Minister for changes of shareholder composition no later than 30 (thirty) days after the date of the GMS notarial deed (Article 9 paragraph [6] of Permenkumham 21/2021).

To report the change in shareholder composition resulting from an event of inheritance, it can only follow provisions article 9 of Permenkumham 21/2021, which is to determine it through the GMS, and then it can be reported to the Minister. The legal issue arises here is regarding who will attend and cast votes at the GMS held to determine changes in the composition of shareholders due to inheritance.

Even though the implementation of the GMS in which the heirs attend and cast votes is carried out based on their *saisine* rights and based on their names being recorded in the company's shareholder register,[42] but because the particular heir's name has not been notified to the Minister, this will result in the rejection of this notification by Minister. This rejection is based on article 56 paragraph 4 UUPT, which states that if such notice is not provided, the Minister will reject any requests for approval or notification based on the identity and composition of the unnotified shareholders. In fact, the implementation of the GMS itself is to notify the Minister regarding changes in shareholders caused by the event of inheritance. On the other hand, it is

[40] Karissa and Tobing, "Status Dan Peralihan Hak Atas Saham Perseroan Terbatas Milik Pemegang Saham Yang Meninggal Dunia," 2025.
[41] Karissa and Tobing, 2023.
[42] Republik Indonesia, Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, n. Article 56 paragraph (3).

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

impossible for the GMS to be attended and resolution taken by deceased shareholder.

Based on the description above, the non-synchronization of the provisions of article 9 of Permenkumham 21/2021 regarding the UUPT with the requirement to determine changes to the composition of shareholders at the GMS will give rise to legal substance problems because they cannot be implemented.

Based on the above explanation, the inconsistency between the provisions of article 9 of Permenkumham 21/2021 and the provisions of UUPT, which require the determination of changes in shareholder composition in a GMS in the context of inheritance has the potential to create complex legal issues. As a result, there is legal uncertainty for the parties involved, especially heirs who have interests in the shares of the company.

From these discussions, it can be seen that the formulation of the provisions of article 9 of Permenkumham 21/2021, which requires reporting to the Minister to be carried out through determination through a GMS, will give rise to various legal problems due to conflicting norms. A situation where a norm has been created but it contradicts or is not in line with other legal norms is known as a norm conflict.[43] If the reporting of shareholder changes can be done based on the UUPT (where only board of directors action is required to notify the Minister), then the above-mentioned legal issues would not arise.

E. Conclusions

The results of the analysis of the provisions of UUPT and Permenkumham 21/2021 regarding reporting changes in the composition of shareholders in companies show that there is inconsistency in legal regulations, which can give rise to legal uncertainty in procedures for reporting changes in shareholders to the Minister. UUPT regulates that directors only need to report to the Minister, but Permenkumham 21/2021 requires reporting changes to the composition of shareholders by determination through the GMS. The inconsistency of Permenkumham 21/2021 with the UUPT, apart from violating the hierarchy of statutory regulations based on article 7 of the Law on the Establishment of Legislative Regulations, also gives rise to several legal problems, including legal uncertainty for parties with an interest in shares, and the company's organ responsible for reporting such changes to the Minister.

The Ministry of Law and Human Rights should revise the provisions in Permenkumham 21/2021, significantly the articles that regulate procedures for reporting changes in shareholder composition. This revision needs to be aligned with the principles regulated in the UUPT, where reporting on

[43] Akbar R Abbas, "Tinjauan Yuridis Kewajiban Penggunaan Bahasa Indonesia Bagi Tenaga Kerja Asing Di Indonesia," *Novum: Jurnal Hukum* 4, no. 1 (2017): 12, https://ejournal.unesa.ac.id/index.php/novum/article/view/20830.

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

changes in shareholders should be able to be carried out by the board of directors without the need for a resolution at the GMS.

This step aims to harmonize the relevant regulations and laws into harmony and consistency, particularly concerning reporting any changes in the composition of shareholders to the Minister. In this way, it can minimize the risk of legal disputes and provide the legal certainty needed in Indonesia.

REFERENCES

Abbas, Akbar R. "Tinjauan Yuridis Kewajiban Penggunaan Bahasa Indonesia Bagi Tenaga Kerja Asing Di Indonesia." *Novum: Jurnal Hukum* 4, no. 1 (2017): 8–21. https://ejournal.unesa.ac.id/index.php/novum/article/view/20830.

Aristoni, Aristoni. "Tindakan Hukum Diskresi Dalam Konsep Welfare State Perspektif Hukum Administrasi Negara Dan Hukum Islam." *Jurnal Penelitian* 8, no. 2 (2014).

Badan Pengkajian MPR. "Strategi Perampingan Dan Harmonisasi Regulasi Pusat Dan Daerah." Jakarta: Badan Pengkajian MPR RI, 2017. https://www.mpr.go.id/img/jurnal/file/250322_2017 _ Strategi Perampingan & Harmonisasi Regulasi Pusat & Daerah.pdf.

Busroh, Firman Freaddy, Fatria Khairo, and Putri Difa Zhafirah. "Harmonisasi Regulasi Di Indonesia: Simplikasi Dan Sinkronisasi Untuk Peningkatan Efektivitas Hukum." *Jurnal Interpretasi Hukum* 5, no. 1 (2024). https://doi.org/https://doi.org/10.55637/juinhum.5.1.7997.699-711.

Departemen Pendidikan dan Departemen Kebudayaan. "Diskresi." Kamus Besar Bahasa Indonesia. Accessed January 30, 2024. https://kbbi.kemdikbud.go.id/entri/diskresi.

———. "Hak." Kamus Besar Bahasa Indonesia. Accessed February 5, 2024. https://kbbi.kemdikbud.go.id/entri/Hak.

Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum: Normatif Dan Empiris*. 2nd ed. Depok: Prenadamedia Group, 2018.

Ferran, Eilís, and Look Chan Ho. *Principles of Corporate Finance Law*. United Kingdom: Oxford University Press, 2014.

Hasbullah F Sjawie. *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi*. Jakarta: Prenada Media, 2017.

Huda, Ni'matul, and Riri Nazriyah. *Teori Dan Pengujian Peraturan Perundang-Undangan*. II. Bandung: Nusamedia, 2019.

Karissa, Nadhila Rianda, and David Maruhum Lumbang Tobing. "Status Dan Peralihan Hak Atas Saham Perseroan Terbatas Milik Pemegang Saham Yang Meninggal Dunia." *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 4 (2022). https://doi.org/http://dx.doi.org/10.58258/jisip.v6i4.3537.

Khairandy, Ridwan. *Pokok-Pokok Hukum Dagang Indonesia*. Yogyakarta: FH UII Press, 2013.

Kitab Undang-undang Hukum Perdata (n.d.).

Marzuki, Peter Mahmud. *Penelitian Hukum*. 1st ed. Jakarta: Kencana Prenada Media Group, 2005.

Republik Indonesia. Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 21 Tahun 2021 (n.d.).

———. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945).

———. Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (n.d.).

———. Undang-undang Nomor 15 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (n.d.).

———. Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas

Journal of Law and Policy Transformation
Website : https://journal.uib.ac.id/index.php/jlpt | E-ISSN : 2541-3139
JLPT Vol 9, No. 2-December 2024

(2007).

Ridwan, Ridwan. "Eksistensi Dan Urgensi Peraturan Menteri Dalam Penyelenggaraan Pemerintahan Sistem Presidensial." *Jurnal Konstitusi* 18, no. 4 (February 17, 2022): 828. https://doi.org/10.31078/jk1845.

Soeprapto, Maria Farida Indrati, and A Hamid S Attamimi. *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya*. Yogyakarta: Kanisius, 1998.

Sofyan Apendi. "Ketiadaan Peraturan Menteri Dalam Hierarki Peraturan Perundang-Undangan Nasional Dan Implikasinya Terhadap Penataan Regulasi Dalam Sistem Hukum Nasional." *PALAR (Pakuan Law Review)* 07, no. 01 (2021): 111–26.

Utami, Gita. "Tinjauan Yuridis Pemindahan Hak Kepemilikan Saham Berdasarkan Hak Waris Dalam Perseroan Terbatas." Kota Mataram: Universitas Mataram, 2019. http://eprints.unram.ac.id/12555/.