

## QUO VADIS EMPLOYEE PARTICIPATION CONCERNING SHARE OWNERSHIP IN COMPANIES IN INDONESIA

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### ABSTRACT

#### KEYWORDS

Quo Vadis; employee participation; share ownership; ESOP

In general, in various companies, workers are rarely considered company assets, so that in various company developments, the role of workers is not an important thing to consider. However, along with the times, workers are then considered as company assets and have even begun to develop in various companies that include workers in share ownership of the company concerned and by participating in company share ownership (ESOP: Employee Stock Ownership Program), thus workers feel become part of the company. Article 43 Paragraph (3) letter a Law no. 40 of 2007 concerning Limited Liability Companies ("UUPT") basically states that companies can offer shares to their own employees. The purpose of study is; (1) describe the problem of legal regulation regarding the legal problematic dilemma regarding the participation of workers in share ownership in companies in Indonesia, and (2) analyzing the normative regulation of workers' share ownership in the company if it is to be regulated in the sources of labor law, both autonomous and heteronomous. This research is a normative juridical research. The results of study show that legal problematic dilemma regarding workers' participation in share ownership in companies in Indonesia is because it has not been regulated normatively regarding the need for workers' participation in share ownership in companies in Indonesia. Normatively regulation of workers' share ownership in a company, if it is to be regulated in sources of employment law, both autonomous and heteronomous, cannot immediately be carried out.

### INTRODUCTION

Regulations that support employee ownership of the Company's shares are based on Article 43 Paragraph (3) letter a UU no. 40 of 2007 concerning Limited Liability Companies ("UUPT"). This article essentially allows the Company to offer shares to its own employees. Further in the elucidation of Article 43 Paragraph (3) letter a it is stated:

"What is meant by "shares addressed to the Company's employees", includes shares issued in the context of the Company's ESOP (employee stocks option program) with all the rights and obligations attached to them."

From these provisions it is clear that in the event that an employee already owns shares, the status will be equated as a Shareholder in accordance with their rights and obligations.

Under the provisions of UUPT, the rights of shareholders include:

- a) Have the right to receive proof of share ownership for the shares they own (Article 51 UUPT);
- b) The right to attend and vote at the GMS even though the shares are mortgaged or fiduciary, except for shareholders without voting rights (Article 52 Paragraph [1] letter a jis. Article 60 Paragraph [4], Article 85 UUPT);
- c) Entitled to receive payment of dividends and the remaining assets resulting from liquidation (Article 52 Paragraph [1] letter b UUPT);
- d) Has the right to file a lawsuit against the Company to a district court if it is harmed due to the Company's actions which are considered unfair and without reasonable reasons as a

result of the decisions of the GMS, the Directors and/or the Board of Commissioners (Article 61 paragraph [1] UUPT).

- e) Has the right to ask the Company to buy its shares at a fair price if the person concerned does not approve of the Company's actions which are detrimental to the shareholders or the Company (Article 62 paragraph [1] UUPT);
- f) Has the right to obtain information relating to the Company from the Board of Directors and/or the Board of Commissioners, as long as it relates to the meeting agenda and does not conflict with the interests of the Company (Article 75 paragraph [2] UUPT);
- g) Has the right to request the Board of Directors to hold a GMS if the shareholders individually or jointly represent 10% of the total shares with voting rights (Article 79 paragraph [2] UUPT).

In the event that an employee who is also a shareholder does not receive his rights, he can file a lawsuit with the district court according to the domicile of the Company based on Article 61 Paragraph (1) and Paragraph (2) of the Company Law:

- a) Each shareholder has the right to file a lawsuit against the Company to a district court if he is harmed by the Company's actions which are considered unfair and without reasonable reasons as a result of the decisions of the GMS, the Board of Directors and/or the Board of Commissioners.
- b) The lawsuit as referred to in Paragraph (1) shall be filed with the district court whose jurisdiction covers the domicile of the Company.

Not all employees can claim to own shares of the company where they work unless it is really possible/offered by the company. Indra Safitri, Deputy Chairperson for Research at the Capital Market Legal Consultants Association agrees that there is no obligation for companies to offer their shares to employees. However, in practice many companies offer their shares to employees, among others, as a form of appreciation for the employee concerned. This is generally done by companies that prioritize employee commitment for the long term, so that employees also feel they belong to the company. Study on the Application of ESOP (Employee Stock Ownership Plan) of Issuers or Public Companies in the Indonesian Capital Market, it was further explained that the ESOP was held to achieve several objectives, including the following:

- a) Giving rewards to all employees, directors, and certain parties for their contribution to improving company performance;
- b) Creating alignment of the interests and missions of employees and executive officers with the interests and missions of the shareholders, so that there is no conflict of interest between the shareholders and the parties carrying out the company's business activities;
- c) Increasing the motivation and commitment of employees to the company because they are also the owners of the company, so that it is hoped that this will increase the productivity and performance of the company;
- d) Attract, retain, and motivate key employees of the company in order to increase shareholders' value.
- e) As a human resource program tool to support the success of the company's long-term business strategy, because ESOP is basically a form of compensation based on the principle of incentives, which is aimed at giving employees an award the amount of which is related to the size of the company's performance or shareholders' value.

Basically, employees are allowed to own shares of the company where they work if they are offered by the company (for private companies) or buy shares of public companies on the stock exchange. And employees can file a lawsuit when their rights as shareholders are not fulfilled.

The Manpower Law, both Law Number 13 of 2003 concerning Employment, and Law Number 11 of 2020 concerning Job Creation, do not regulate explicitly regarding the right of workers to have share ownership in the company as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies.

The Labor Law in general regulates workers' rights as a result of the shift in worker status in the company due to corporate actions carried out by the company. The change in worker status is basically regulated in Article 81 Number 42 of Law Number 11 of 2020 concerning Job Creation, an amendment to Article 154A Paragraph (1) letter a of the Manpower Law that the work agreement between a company and workers or laborers does not end automatically due to the transfer of rights over the company unless if agreed otherwise in the company acquisition agreement (Sarhini, 2021).

It should be the obligation of workers/labourers' representatives to fight for share ownership in the company. Furthermore, based on the provisions of Article 102 Paragraph (3), Law Number 13 of 2003 concerning Manpower does not explicitly describe workers' rights, only states that the functions of workers/laborers and trade unions/labor unions as referred to in Article 102 Paragraph (2) of Law Number 13 of 2003 are to carry out work in accordance with their obligations, to maintain order for the continuity of production, to channel aspirations democratically, to develop skills ("Law Number 13 of 2003," 2003).

In practice in Indonesia, only a few companies have included their workers in company share ownership, one of which is PT Astra International Tbk. Based on the foregoing, the researcher intends to conduct research on The Urgency of Legal Arrangements regarding Employee Participation in Company Shares in Indonesia.

Employee Stock Ownership Program (ESOP) is an employee ownership program in the shares of the company where the employee works. In its development, there are several approaches available to companies within the framework of ESOP. Some of these approaches include (1) Stock Grants, (2) Employee Stock Purchase Program, (3) Stock Option Plans, (4) ESOPs, and (5) SARs. More detail information is discussed in the following paragraph.

Stock Grants, the easiest and simplest approach a company can take is to grant company shares to selected employees. Often, this is done as a form of bonus compensation to reward employees for high performance, to introduce the importance of a key employee, or a new payroll system in an organization.

Employee Stock Purchase Program (Direct Employee Stock Purchase Plans), with this program, employees can pay for their shares through salary deductions. Because employees are required to pay "up front" for the stock they buy, an employee share purchase plan generally does not result in high participation rates, nor will it convert large amounts of company equity into its workforce when compared to a stock ownership plan.

Stock Option Plans, under a stock option plan, a corporation grants individual employees the contractual right, or option to purchase a specified number of company shares over a specified period of time, paying a price fixed on the grant date. The specified time period is usually between five and ten years commencing on the date of grant and the price is usually equal to the fair market price of the shares at the time of grant. The concept behind this option is that if the price of the company's stock increases in the years following the grant, the employee benefits by buying the stock at the lower price that was at the time of grant and then selling it at the higher price, after the price has increased.

Employee Stock Ownership Plans (ESOPs), ESOPs are a type of pension plan designed to accept company contributions to a fund that will invest in company shares for the benefit of employees. This approach is an employee share ownership program formulated by Kelso.

Phantom Stock and Stock Appreciation Rights (SARs), SARs and Phantom Stock are specific suspension of compensation and incentive compensation tools designed to provide employees with the economic benefits of owning stock without the actual transfer of shares occurring. A SARs program is a grant to an employee that entitles him or her at a specified time in the future to receive a cash award equal to the increase in value of a specified number of shares of the company's stock. Phantom Shares are parts of the value associated with the number of equivalent shares. As with SARs, the value of a Phantom Stock award is usually paid to employees in cash, although the award may also be in the form of shares (Bapepam, 2002).

Moreover, the purpose of study is; (1) describe the problem of legal regulation regarding the legal problematic dilemma regarding the participation of workers in share ownership in companies in Indonesia, and (2) analyzing the normative regulation of workers' share ownership in the company if it is to be regulated in the sources of labor law, both autonomous and heteronomous.

## RESEARCH METHOD

This research is a normative juridical research. Normative juridical research is research that refers to legal norms contained in laws and regulations and court decisions (Soekanto & Mamudji, 2014). This study also includes the results of bipartite negotiations, recommendations from the mediator and decisions of the Industrial Relations Court. The normative juridical approach is also used to find out the problems of striking in accordance with the applicable legal provisions and their implementation practices, both as administrative decisions and court decisions.

This research is qualitative in nature, meaning that a legal change is not based on the number of court regulations and decisions, but on the quality or substance. In this study, primary data and secondary data will be used. The data in this study were obtained through library research. Based on the qualitative research design, the researcher will use an interpretive approach to documents related to the success of trade unions that have participated in the ownership of company shares and their problems. The document study was carried out in full, considering that the availability of materials since the initial research was sufficient and not difficult for researchers to carry out.

Based on the type of data used, researchers will use secondary data, namely data obtained from the literature by reading laws and regulations, books, magazines, articles, or other materials related to research that can assist researchers in conducting research. . Legal research materials that will be used by researchers include:

- a) Primary legal materials, namely materials whose contents have binding power to the community. At this writing, the primary materials that the author uses are Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 13 of 2003 concerning Trade Unions and Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021.
- b) Secondary legal materials, namely legal materials that provide an explanation of what is written from primary legal materials (Soekanto & Mamudji, 2014). At this writing the secondary legal materials used are books, articles, journals and the internet related to this research topic.

Primary data obtained by researchers from interviews with several informants. Interviews were also conducted in order to obtain information data that was as accurate as possible from research informants, namely experts on issues and how to handle employee participation in share ownership in companies.

This research is qualitative in nature, meaning that a legal change is not based on the number of court regulations and decisions, but on the quality or substance. In this study, primary data and secondary data will be used. The data in this study were obtained through library research. Based on the qualitative research design, the researcher will use an interpretive approach to the documents of workers' participation in share ownership in the company.

The data analysis used is a qualitative juridical analysis, namely the data obtained or collected in the manner described above, arranged systematically for further qualitative analysis. Positive norms which are the purpose of general certainty are analyzed whether they have beneficial effects. This value is experimented through empirical experiences. This experience can finally show whether good laws really benefit as many people as possible. This method is expected to deliver to researchers the results of an in-depth study of employee participation in share ownership in companies in the future.

## RESULT AND DISCUSSION

The purpose of implementing the Employee Stock Ownership Program (ESOP) by companies is closely related to the desire to motivate workers to increase their productivity because if workers feel they own the company, they will also work with high quality and be oriented towards increasing company value which will also provide benefits for them.

The development and phenomenon of the Employee Stock Ownership Program (ESOP) which is still relatively new in Indonesia still requires proof of the application of ESOP in Indonesia to financial performance. The phenomenon in Indonesia shows that the shareholders of several companies have implemented ESOP, including: PT Astra Internasional. Tbk implementing a share ownership program for employees worth more than Rp. 4 billion with the aim of developing a work compensation pattern that can better unite the interests of employees and the interests of shareholders.

Research conducted by Herdinata (2012) stated the results of the study that ESOP announcements had no effect on market reactions, and also research conducted by Letlora (2012) and Firmansyah (2014) also showed that ESOP had no effect on a company's financial performance. However, research conducted by D'arcimoles and Trebucq (2002) stated the results of their research that ESOP affects the performance of companies and workers. This research states that ESOP can increase the company's average profit from 3% to 6% per year.

Company owners (shareholders), investors or creditors (debtholders) and management (managers) are parties who have different perspectives on firm's value. In general, company owners (shareholders) will tend to act to maximize their shares, encouraging managers to act in their interests. Meanwhile, on the other hand, debtholders or creditors will try to protect their investments that have been invested in the company through an agreement or covenant and strictly monitor the policies carried out by management (tight monitoring policy) (Suteja, 2015).

Workers' welfare can be improved by optimizing the function of trade unions to obtain company shares (Article 4. f. Law 21 of 2000 concerning Trade Unions/Labor Unions), but this provision can only be made for companies that have gone public. Socialization of the regulation of share ownership by unions is not optimal, the attitude of employers who do not want their shares to be owned by unions also narrows this government's efforts, moreover the unions also internally have several fundamental problems in obtaining share ownership by

unions, especially the unavailability of funds to purchase shares (Gunarto, 2023). Based on the mechanism contained in Law Number 21 of 2000 concerning Worker Unions, actually every trade union or worker has the right to own company shares, especially companies that have gone public. However, in practice there have been no companies in Indonesia where part of the share ownership is allocated to workers' unions. This can happen because there is legal discrimination in the enforcement of labor law. Donald Black said that there are five aspects that cause legal discrimination (Ali, 2002). The five aspects are stratification, morphology, culture, organization and social control.

Cooperative relations between workers and employers can only occur if they have equal bargaining power (Parmitasari, 2019). Therefore, the recognition of the existence of trade unions as a right of workers is a tool to balance the position of entrepreneurs who are socio-economically higher than workers. In an industrial relationship, the existence of a trade union itself is a force that drives the operationalization of collective bargaining (Cox et al., 1996). Through this collective bargaining workers and employers can mutually give concessions which in turn will be a driving factor for effective cooperative relations between workers and employers (Herrnstadt, 1992). Thus democratization in the workplace that places worker participation as a pillar of the cooperative relationship between workers and employers occupies an important position in creating partnerships in cooperative relations between workers and employers. This is because the relationship between workers and employers is basically a relationship of interdependence (mutual symbiosis).

This cooperative relationship between workers and employers can be seen factually in the form of participation by workers (worker participation) (Uwiyono, 2020). In order to realize harmonious industrial relations and improve worker welfare, in this case there are several forms of worker participation at the company level, namely: First, worker participation which is reflected in the participation of workers in determining wages, working conditions and other working conditions through collective bargaining. labor agreement). Second, employee participation which is reflected in the participation of workers in determining company policies that are managerial in nature through the Work Council or the Board of Directors. Third, employee participation which is reflected in employee participation in company share ownership through the Share Ownership Program for employees or ESOP (Employee Stock Ownership Programmes).

Through the employee share ownership program, it is truly an internal factor of the company, so that every effort will be made by the workers to increase the company's progress so that the company can get the maximum profit. In other words, workers will have a greater sense of belonging and responsibility towards the company, because they are one of the owners of the company where the workers work (Holley et al., 2011; Sloane & Witney, 2007). This employee stock ownership program (Employee Stock Ownership Plan) will foster a sense of belonging to the company (sense of belonging) and a sense of responsibility for the running of the company (sense of responsibility) which in turn will increase work productivity which will further increase company progress. The ultimate goal of this share ownership program is not merely to own the company, but to supervise workers over the running of the company, democratize the production process and eliminate the unequal position of workers and employers (Kaufman, 1989).

Article 4 paragraph 2 of Law no. 21 of 2000 concerning Labor Unions, but Law No: 40 of 2007 concerning Limited Liability Companies, in fact, does not state the right for workers to buy shares at the time the company where he works for the need for additional capital (Chendra, 2020). The right of workers to buy shares as stipulated in Article 48 paragraph 2 of Law no. 40 of 2007 concerning Limited Liability Companies is formulated in such a way that

employees have very little opportunity to obtain share ownership where they work. Until now, workers have been able to exercise their right to buy shares as stipulated in Article 48 paragraph 2 of Law Number 40 of 2007 which reads as follows: "The requirements for share ownership can be stipulated in the articles of association by taking into account the requirements set by the competent authority in accordance with the provisions of the legislation". Based on Bapepam regulations, workers can own company shares only in companies that have gone public, this is in accordance with BAPEPAM Decree No: IX/DA/2008.

Actually, based on Investopedia, there are two types of shares that companies generally offer to employees, namely as follows:

a) Incentive stock options

Incentive stock options are also known as qualifying options. Generally this option is only offered to employees who hold managerial positions.

b) Stock options that do not qualify

Non-qualified stock options can be granted to employees at all levels of the company. The rules regarding the ownership of stock options are in accordance with company rules and applicable laws.

The company also has three stock type offered to employees, namely: Limited Share Grants, namely by giving employees the right to obtain or receive shares once certain criteria are met, such as working for a certain number of years or meeting performance targets; Share Appreciation Rights, by granting the right to increase the value of the designated number of shares. The value increases are paid to employees in cash or company stock as well as Employee Stock Purchase Plans, which are plans that give employees the right to buy company stock, usually at a special price.

In the world of economy, labor plays an important role because labor is the cog of the production of goods and services. Workers' right to live a prosperous life from work has not been fulfilled because workers do not have the authority to participate in determining a policy within a company. To overcome the imbalance in the bargaining position between workers and employers, a regulation or policy is needed that provides access to share ownership in companies. By owning shares, workers have the right to express ideas in determining company policy (Wahyudi, 2017).

Trade union officials hope that there will be a government policy requiring employers to allocate CSR (company social responsibility) funds intended for the purchase of company shares owned by the union in that company. Another demand from the unions is the need to amend the Labor Union Law which requires employers to own company shares with the help of the State Budget or Regional Budget or foreign assistance. However, the two things above are not expressly regulated in laws and regulations, so according to the author, companies cannot be forced to give some of their shares to be owned by workers even though they still buy, because regulations are needed in advance in the laws and regulations that there are indeed arrangements on how workers become part of the company's shareholders whether through CSR or through arrangements on how to own and Buy it through an autonomous legal source on the company.

## CONCLUSION

The legal problematic dilemma regarding workers' participation in share ownership in companies in Indonesia is because it has not been regulated normatively regarding the need for

workers' participation in share ownership in companies in Indonesia. Law Number 40 of 2007 concerning Limited Liability Companies itself only regulates how to own shares in a company (especially what is meant by going public shares) so that there is no obligation for companies to involve their employees in owning shares in the company. Several methods have been implemented by other countries, which can be applied later in the ownership of company shares for workers in Indonesia, such as ESOP, namely Employee Stock Option Plan which is a scheme of company share ownership by employees which is generally used as an appreciation for employee performance. The advantage is that in an ESOP, the share price for employees when realizing the share ownership option is that it can be cheaper than during a public offering.

Normatively regulation of workers' share ownership in a company, if it is to be regulated in sources of employment law, both autonomous and heteronomous, cannot immediately be carried out. This is due to the fact that it requires a comprehensive assessment beforehand by examining several methods and methods of company share ownership for existing workers including a review of related laws and regulations as well as a study of several companies that have implemented share ownership for their workers in Indonesia.

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**Devotion - Journal of Research and Community Service**



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