LEGAL ANALYSIS OF FAMILY-OWNED COMPANIES IN INDONESIA: INSIGHTS FROM COURT DECISIONS

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Abstract

Family-owned companies have a significant role in enhancing national competitiveness. However, conflicts that lead to court disputes threaten the sustainability of family-owned companies. It has happened because some decisions still need to provide legal certainty. This research analyzes the legal aspect of family-owned companies in Indonesia, as reflected in several court decisions in Indonesia. The research method employs a qualitative case study approach. The research findings identify the existence of family-owned companies in court decisions; however, there are some difficulties, such as in determining the legal standing of disputing parties, potentially detrimental provisional decisions, and complexities in understanding corporate law, especially regarding General Meetings of Shareholders (GMS), dividends, and inter-organizational relationships as well as internal family disputes. The findings highlight the need for courts to consider the unique characteristics of family-owned companies, which could improve the consistency of court decisions, enhance legal certainty in the business sector, and promote sustainable economic activities.

Keywords: Decisions; Dividends; GMS; Family Company; Provision

Introduction

Family-owned companies control more than 95% of Indonesia's business.[1] Approximately 0.2% of the entire population in Indonesia is involved in family businesses, which account for around 25% of the gross domestic product (GDP). In 2017-2019, 28 public companies were listed as family-owned companies in the Kompas 100 index.[2] The data proves that family-owned companies are key players in strengthening national competitiveness in Indonesia.

Interestingly, the terminology of family-owned companies is not explicitly found in Indonesian Law. Despite having a particular place or position in the management and finance literature, the term family-owned companies is hardly seen in the regulations. Generally, a family-owned company is defined as a company controlled by a family. In a narrow sense, "family" is defined as a household, children, or wife, while in a broad sense, it means a relative or a member of a close relative.[3]

Two factors can help identify a family company: control and its attribution to a specific family.[4] In best practice, many entrepreneurs choose Limited Liability Companies as a form for their business.[5] Therefore, the definition of family-owned companies in this paper is limited to a Limited Liability Company where at least one family representative is actively involved or has active family control in the company's management.

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[1] Claudia Lauw, "Only 13% of Indonesian Family Businesses Survive until Third Generation: Deloitte," 2019, https://www.thejakartapost.com/news/2019/12/06/only-13-of-indonesian-family-businesses-survive-until-third-generation-deloitte.html#:~:text=%22More than 95 percent of, Leader Claudia Lauw on Wednesday.

[2] Kusmawati Kusmawati, "Biaya Keagenan, GCG, dan Kinerja Perusahaan Keluarga," *Mbia* 19, no. 3 (2021): 331–42, https://doi.org/10.33557/mbia.v19i3.1208.

[3] Zaeni Asyhadie et al., *Hukum Keluarga Menurut Hukum Positif di Indonesia*, 1st ed. (Depok: Rajagrafindo Persada, 2022).

[4] Eli Bukspan and Eylon Yadin, "Marrying Corporate Law and Family Businesses.," *Drake Law Review* 66, no. 3 (2018): 549–84, http://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=131746260&amp%0Alang=pt-pt&site=eds-live&authtype=sso.

[5] J Satrio, *Perseroan Terbatas (Yang Tertutup) Berdasarkan UU NO. 40 Tahun 2007 Bagian Pertama*, 1st ed. (Depok: PT Rajagrafindo Persada, 2020).

The involvement of the family in running the company results in effective control. Each strategy can be executed faster and smoother.[6] It is driven by relationships between family members, which significantly influence the performance of the family company. [7] These relationships include trust, communication, commitment, loyalty, and shared values and traditions. [8] On the other hand, the relationship also includes the chaos that arises in the family turmoil, sibling rivalry, jealousy or resentment, and conflict.[9]

Trust in family members is a competitive advantage that sets family companies apart from other companies.[10] The results of the Price Waterhouse Cooper survey of family companies in Indonesia revealed that trust in banks and investors is prioritized over trust in family members. Only 60% of family companies believe that they have earned the complete trust of family members; this data is lower than the global average of trust.

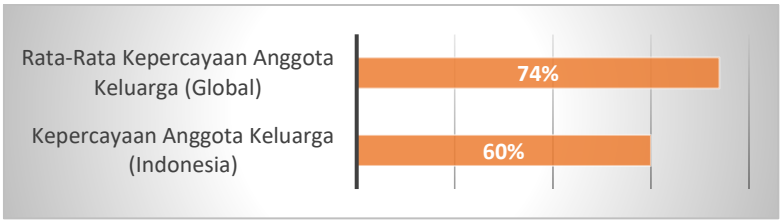

Figure 1. The level of trust of family members in the family company

A decrease in the level of trust can result in conflicts that lead to *disputes*. Directly or indirectly, these conflicts and disputes have an

[6] Alvi Rahmania Putri and Erma Setiawati, "Kepemilikan Keluarga, Hubungan Politik, dan Family Aligned Board terhadap Implementasi Tata Kelola Perusahaan," *Improvement: Jurnal Manajemen dan Bisnis* 2, no. 1 (2022): 16, https://doi.org/10.30651/imp.v2i1.11710.

[7] Wahyudi Henky Soeparto, "Pencapaian Kinerja Perusahaan Keluarga Melalui Tingkat Kesiapan Suksesor dan Hubungan Antar Anggota Keluarga dan Bisnis," *Accounting and Management Journal* 3, no. 2 (2019): 95–104, https://doi.org/10.33086/amj.v3i2.1412.

[8] Mozhdeh Mokhber et al., "Succession Planning and Family Business Performance in SMEs," *Journal of Management Development* 36, no. 3 (2017).

[9] Mokhber et al.

[10] Price Waterhouse Cooper, "Kunci Agar Bisnis Keluarga Dapat Tumbuh Berkelanjutan," *Www.Pwc.Com*, 2023, 1–4, https://www.pwc.com/id/en/media-centre/pwc-in-news/2023/indonesian/kunci-agar-bisnis-keluarga-dapat-tumbuh-berkelanjutan.html.

impact on the sustainability of family-owned companies in Indonesia. As evident in the following court decisions:

a. The dispute at PT Sinar Dunia in the Semarang District Court Decision 527/Pdt.G/2022/PN Smg, between Tony Damitrias against Wong Chin Moi and Lie Irwan Damitrias.
b. Dispute with PT Fatma in the Decision of the Sidoarjo District Court 68/Pdt.G/2019/PN SDA, Decision of the Surabaya High Court with Decision Number 140/PDT/2020/PT SBY, Supreme Court Decision 3742 K/Pdt/2020, between Erry Dewanto, against Yudi Yudewo, Angelia Dewanti and Endang Merkaningsih.
c. The dispute at PT Sumber Prima Lestari in the Tanjung Pinang District Court Decision Number 06/Pdt.G/2022/PN.Tpg between Exsan Fensury and Tjong Alexleo Fensury.
d. The application of the heirs of the owner of Sinarmas Group as stated in the Central Jakarta District Court Decision Number 36/Pdt.P/2020/PN Jkt.Pst. Supreme Court Decision Number 3561 K/Pdt/2020 between Freddy Widjaja against Indra Widjaja, Muktar Widjaja, and Franky Oesman Widjaja.

The court rulings show that disputes do not only occur in small and medium-sized companies but also threaten large companies and even conglomerates. Interestingly, these decisions have not provided legal certainty in various aspects. For this reason, a study is needed on how challenges are in court decisions related to the practice of family companies in Indonesia.

In recent years, research on family-owned companies in Indonesia has shown a variety of significant findings. Previous research has highlighted how family structure and dynamics affect family-owned companies' decision-making process.[11] Some studies also try to understand the factors that influence the success of succession and their impact on the long-term performance of

[11] Andreas Vernando and Rintan Nuzul Ainy, "Perusahaan Keluarga dan Manajemen Laba," *Reviu Akuntansi dan Bisnis Indonesia* 6, no. 2 (2022), https://doi.org/10.18196/rabin.v6i2.15856 and Lucia Laurence and Ronny H Mustamu, "Manajemen Konflik dalam Perencanaan Suksesi Perusahaan Keluarga di Bidang Ekspedisi di Surabaya," *Agora* Vol. 3, no. No. 1 (2015).

companies.[12] Furthermore, the study of *governance* in family-owned companies, including independent commissioners, has also been a major focus in some literature.[13]

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[12] Siti Ulfah Apsari Rahmah and Dwi Cahyo Utomo, "Implementasi Environmental Management Accounting pada Perusahaan Keluarga dengan Latar Belakang Etnis Tionghoa," *Syntax Literate ; Jurnal Ilmiah Indonesia* 7, no. 2 (2022), https://doi.org/10.36418/syntax-literate.v7i2.6243. Sawal Sartono and Bondan Subagyo, "Analisis Gender dalam Suksesi Perusahaan Keluarga di Kabupaten Tulungagung," *Jupeko (Jurnal Pendidikan Ekonomi)* 5, no. 1 (2020): 29, https://doi.org/10.29100/jupeko.v5i1.1522. Monika Teguh and Andrew Wijaya, "Peranan Komunikasi pada Proses Suksesi di Perusahaan Keluarga Studi pada PT Catur Putra Harmonis," *Communiverse : Jurnal Ilmu Komunikasi* 5, no. 2 (2020), https://doi.org/10.36341/cmv.v5i2.1145. Hendra Karunia and Ronny H. Mustamu, "Analisis Perencanaan Suksesi pada Perusahaan Keluarga Industri Baja," *Agora* 3, no. 1 (2015). Vionita Septiani and Ronny H Mustamu, "Perencanaan Suksesi Pada Perusahaan Keluarga PT Gading Murni," *Agora* 2, no. 2 (2014). Marcus Remiasa and Shelvy Anggraini Wijaya, "Analisis Proses Suksesi Perusahaan Keluarga Studi pada PT Puterasean," *KINERJA* 18, no. 2 (2017), https://doi.org/10.24002/kinerja.v18i2.526. Putrianti Laksitreni, "Suksesi Dalam Perusahaan Keluarga: Studi Kasus Tiga Perusahaan Keluarga Di Jawa Tengah," *Jurnal Bisnis Strategi* 24, no. 2 (2015).

[13] Irma Andriani and Nelly Prima Putri, "Pengaruh Perusahaan Keluarga, Perusahaan Multinasional dan Komisaris Independen terhadap Penghindaran Pajak dengan Nilai Perusahaan sebagai Variabel Kontrol," *Ensiklopedia of Journal* 4, no. 4 (2022), https://doi.org/10.33559/eoj.v4i4.1190. Robby Krisyadi and Anita Anita, "Pengaruh Pengungkapan Tanggung Jawab Sosial Perusahaan, Kepemilikan Keluarga, dan Tata Kelola Perusahaan Terhadap Penghindaran Pajak," *Owner* 6, no. 1 (2022), https://doi.org/10.33395/owner.v6i1.599. Raja Ainaya Alfatiha, "Systematic Mapping Study: Analisis Manajemen Perubahan pada Perusahaan Keluarga," *Journal of Applied Business Administration* 6, no. 1 (2022), https://doi.org/10.30871/jaba.v6i1.3828. Indah Masri, "Hubungan Substitusi Real Earning Management dan Accrual Earning Management terhadap Perilaku Pajak Agresif pada Perusahaan Kepemilikan Keluarga di Indonesia," *Jurnal Riset Akuntansi & Perpajakan (JRAP)* 9, no. 01 (2022), https://doi.org/10.35838/jrap.2022.009.01.08. Indah Masri, "Hubungan Substitusi Real Earning Management dan Accrual Earning Management terhadap Perilaku Pajak Agresif pada Perusahaan Kepemilikan Keluarga di Indonesia," *Jurnal Riset Akuntansi & Perpajakan (JRAP)* 9, no. 01 (2022), https://doi.org/10.35838/jrap.2022.009.01.08. Hirdan Dwi Leksono et al., "Analisis Kesulitan Keuangan pada Perusahaan Keluarga yang Terdaftar di Bursa Efek Indonesia," *Jurnal Ekonomi, Bisnis, dan Akuntansi* 24, no. 2 (2022). Hirdan Dwi Leksono et al., "Analisis Kesulitan Keuangan pada Perusahaan Keluarga yang Terdaftar di Bursa Efek Indonesia," *Jurnal Ekonomi, Bisnis, dan Akuntansi* 24, no. 2 (2022).

Studies in management and finance aspects dominate the above research. Research on the legal aspects of family-owned companies is still limited; previous research only examined how to protect minority shareholders in family-owned companies.[14] Therefore, there are still research gaps that need to be filled. One of them is the need to study how the challenges faced by the court in issuing a verdict by looking at the dynamics of family companies interacting with the court process.

The law and the courts should play a role in advancing society, alleviating poverty, and supporting economic development.[15] For this reason, this paper is expected to contribute to and increase understanding of the relationship between law, business, and family. In addition, it provides valuable insights for legal practitioners, especially judges, family company owners, academics, and other interested parties, in an effort to create legal certainty for the business and investment world.

This research uses a case study method. Data is collected through literature studies, including books, journals, research articles, court decisions, and relevant legislation. Data analysis is carried out qualitatively with an interpretive approach, adopting a case approach and a legislative approach.

The court's function is to advise on abstract questions of law, which is more important than the court's function to effect a final adjustment between two particular parties.[16] For this reason, the courts need to provide justice by trying to overcome obstacles for justice seekers, not just being "case arbiters". [17] Suppose there is a situation where there is a conflict between justice and legal certainty. In that

[14] Fiona Priscilla Kohar and Yetty Komalasari Dewi, "Abuse of Rights by Majority Shareholders in Indonesian Family-Owned Company: Is It Likely?," *Sriwijaya Law Review* 5, no. 1 (2021): 29–41, https://doi.org/10.28946/slrev.Vol5.Iss1.603.pp29-41. Abhiyoga Dirdanaraputra Gautama and Yetty Komalasari Dewi, "Legal Protection for Indonesian Family-Owned Company Minority Shareholders : Comparative Study with Germany and Australia" 6, no. 1 (2022): 1–22, https://doi.org/10.1111/j.1741-6248.1988.00427.x.Colli.

[15] Adi Sulistyono and Isharyanto, *Sistem Peradilan di Indonesia dalam Teori dan Praktik* (Depok: Prenandamedia Group, 2018).

[16] George Whitecross Paton, *Jurisprudence*, Second (London: Oxford University Press, 1951).

[17] Amran Suadi, *Pembaharuan Hukum Acara Perdata di Indonesia*, Kedua (Jakarta: Kencana, 2019).

case, the judge has the authority to exercise his freedom (*freies ermessen*) in making decisions, even if it means sacrificing the aspect of legal certainty.[18]

To provide abstract answers, create legal certainty, and uphold justice, courts need to increase awareness of the existence of family-owned companies in Indonesia. This paper will present and discuss it based on the court decisions submitted in the background.

Legal Standing in Disputes Involving Family-Owned Companies

A family-owned company is a business entity that has complex personal and financial relationships. In interacting with the judicial process, courts are often faced with challenges in determining the capacity of the parties to the dispute, commonly known as *legal standing*. It means that the access of a person, group, or organization as a plaintiff in court is based on the principle of "no lawsuit without legal interest".[19]

To avoid legal uncertainty, the court must understand whether a person has the right to file a lawsuit or be a defendant in a family company. In this regard, analyzing *the judex factie* considerations in the Tanjung Pinang District Court Decision Number 06/Pdt.G/2022/PN.Tpg dated November 18, 2022, is interesting. In the case, the panel of judges considered the *legal standing* of the Plaintiff related to Articles 61 and 97 of Law Number 40 of 2007 on Limited Liability Companies ("UUPT"), as the following quote:

> *"Mengingat, Pasal 52, Pasal 61, dan Pasal 97 Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, KUH Perdata, serta ketentuan peraturan perundang-undangan lain yang berkaitan dengan perkara ini."*
>
> "Referring to Article 52, Article 61, and Article 97 of Law Number 40 of 2007 on Limited Liability Companies, the Civil

[18] Sudikno Mertokusumo, *Teori Hukum* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2011).

[19] Azizah Kamilah Putri, Anita Afriana, and Hazar Kusmayanti, "Perjanjian Pengikatan Jual Beli sebagai Dasar Peralihan Hak Atas Tanah: Telaah Yuridis terhadap Putusan Mahkamah Agung NOMOR 3500 K/PDT/2018," *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (2022): 260–76, https://doi.org/10.23920/jphp.v3i2.763.

Code, and other provisions of laws and regulations related to this case."

If the lawsuit is based on Article 61 of Law No. 40/2007, then the shareholders have the right to file a lawsuit against the company, namely PT Sumber Prima Lestari ("PT SPL"). The quote from Article 61 of the UUPT is as follows:

> *"Setiap pemegang saham berhak mengajukan gugatan terhadap Perseroan ke pengadilan negeri apabila dirugikan karena tindakan Perseroan yang dianggap tidak adil dan tanpa alasan wajar sebagai akibat keputusan RUPS, Direksi, dan/atau Dewan Komisaris".*
>
> "Every shareholder has the right to file a lawsuit against the Company to the district court if it is harmed due to the Company's actions that are considered unfair and without reasonable grounds as a result of the decision of the GMS, the Board of Directors, and/or the Board of Commissioners".

Therefore, it can be interpreted that shareholders have no legal basis to sue a member of the company's Board of Directors if the lawsuit is based on Article 61 of Law No. 40/2007.

On the other hand, if a lawsuit is filed based on Article 97 of Law No. 40/2007, then the shareholders on behalf of the company ("PT SPL") can file a lawsuit against the individual members of the board of directors. According to the following quote from Article 97 of the of Law No. 40/2007:

> *"Atas nama Perseroan, pemegang saham yang mewakili paling sedikit 1/10 (satu persepuluh) bagian dari jumlah seluruh saham dengan hak suara dapat mengajukan gugatan melalui pengadilan negeri terhadap anggota Direksi yang karena kesalahan atau kelalaiannya menimbulkan kerugian pada Perseroan."*
>
> "On behalf of the Company, shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights can file a lawsuit through the district court against members of the Board of Directors who, due to their mistakes or negligence, cause losses to the Company."

It is clear that the shareholders' capacity to file a lawsuit is to represent the company for and on behalf of the corporation, not for the personal interests of the shareholders.

Paying attention to the Decision of the Tanjung Pinang District Court Number 06/Pdt.G/2022/PN.Tpg, it can be seen that the

lawsuit is based on Article 61 Law No. 40/2007. The Defendant in the case should be the company as the subject of the law. Shareholders have no legal basis to personally sue the company's board of directors. Likewise, if the lawsuit is based on Article 97 paragraph (6) of Law No. 40/2007, then the Plaintiff must be a shareholder representing the company, not the shareholder personally.

Judex faction, in the decision, should have carefully considered Article 61 and Article 97 of the Constitution. The lawsuit contains a formal defect in the form of disqualification in person (*error in persona*) because the Plaintiff is not a party with the right and a legal standing for it.[20] The lawsuit should have been declared unacceptable or *niet ontvankelijke verklaard* ("NO").

In this regard, the court must be able to understand who has the right to represent or act on behalf of the company. In other words, the court must sort out which lawsuit represents the interests of the company or represents the interests of individuals. In family-owned companies, family members tend to mix their personal and company assets, thus confusing their legal capacity in disputes.

Issuing Provisional Decisions Involving Family-Owned Companies

Provision decision (*provisional order*) is a provisional decision (*interim award*). On the side of interim action until the final verdict related to the subject matter of the case is handed down as stipulated in Article 180 *Herzien Inlandsch Regulations* ("HIR").[21] The provision decision is immediately enforceable or executable in stock. In other words, starting from the time the Provisional Decision was issued, it can be immediately executed in accordance with Article 180 of the HIR, even though the subject matter has yet to be examined and decided.

The provision decision is a consequence of the existence of a provisioning lawsuit. The Plaintiff filed the lawsuit in addition to the main lawsuit. The content of the lawsuit is to ask the court that the Defendant be "punished" and "prohibited" from taking interim relief measures on a matter during the examination of the subject matter of the case.

[20] M Yahya Harahap, *Hukum Acara Perdata* (Sinar Grafika, 2014).
[21] Harahap.

As long as the verdict in the subject matter has not yet had permanent legal force (*gezag van gewijeide*), Defendant is not allowed to commit acts or acts that are prohibited in the dictum of the provisioning decision. In other words, anything prohibited in the provision decision must not be violated by the Defendant during the examination process of the main lawsuit and has not been decided and has not yet had permanent legal force or *Berkekuatan Hukum Tetap* ("BHT").

The power of the provision decision is so powerful that this decision is not sold cheaply by the court. In making the decision, the court referred to the Supreme Court Circular Letter Number 3 of 2000 on Immediate Decisions (*Uitvoerbaar Bij Vooraad)* and Provisional ("SEMA 3/2000"), one of the factors that can cause the Provisional Decision to be handed down is if the lawsuit is based on evidence of an authentic deed or an underhand deed that is not disputed the truth about its contents and signatures. Furthermore, the Supreme Court Circular Letter No. 4 of 2001 on the Issue of Immediate Decisions (*Uitvoerbaar Bij Vooraad)* and Provisional ("SEMA 4/2001") emphasizes that in issuing a decision, a guarantee is needed whose value is equal to the value of the goods/object of execution so as not to harm the parties if it turns out that the decision of the court of first instance is canceled.

The provision decision related to the family company dispute is interesting to analyze. One of them can be seen in the Semarang District Court Decision 527/Pdt.G/2022/PN Smg dated August 8, 2023. Amar, the provision decision in the case is as follows:

1. *Mengabulkan gugatan provisi Penggugat;*
2. *Menyatakan Rapat Umum Pemegang Saham Luar Biasa (RUPSLB) tanggal 17 November 2022 tidak berkekuatan hukum dan tidak mengikat;*
3. *Memerintahkan Tergugat I dan Tergugat II tidak melakukan tindakan hukum apapun atas kepentingan Perusahaan PT SINAR DUNIA tanpa seizin dan sepengetahuan Penggugat, termasuk tidak melakukan tindakan pendaftaran MERK, pendaftaran ulang MERK atas semua merek perusahaan maupun HAK CIPTA, semua Pendaftaran Merek dan HAK CIPTA yang didaftarkan ataupun melanjutkan proses hasil Rapat Umum Pemegang Saham Luar Biasa (RUPSLB) tanggal 17 November 2022 selama masa*

sengketa Persidangan Perkara a quo yang belum mempunyai kekuatan hukum tetap.

1. Granting the Plaintiff's provisioning lawsuit;
2. Declaring that the Extraordinary General Meeting of Shareholders (EGMS) dated November 17, 2022, has no legal force and is not binding;
3. Ordering Defendant I and Defendant II not to take any legal action in the interests of PT SINAR DUNIA without the permission and knowledge of Plaintiff, including not taking the action of registering MERK, re-registering the TRADEMARK of all company trademarks and COPYRIGHTS, all Trademark Registration and COPYRIGHT registered or continuing the process of the results of the Extraordinary General Meeting of Shareholders (EGMS) dated November 17, 2022 during the dispute period of the Trial of a quo case which does not have permanent legal force.

The prohibited action in the above case is the Defendant's act of registering for the benefit of the Company (PT Sinar Dunia) without permission and knowledge from Plaintiff. Following the nature of *uitvoerbaar bij voorraad*, the provision decision can be immediately implemented and has executory force without waiting for the decision of the main case of BHT. These prohibitions directly have coercive force from the provision decision until the main case examination process is decided and BHT.

The prohibition in the above provisioning decision may impact the company's operations and sustainability little. However, imagine if what is prohibited in the provision decision is implementing the GMS's decision regarding changes in the composition of the company's Board of Directors. There will be a conflict regarding who has the authority to represent the company. A prominent example of this can be seen at the North Jakarta District Court Case Number 256/Pdt.G/2014/PN Jkt.Utr dated November 13, 2014. Amar, the provisioning decision in the case is as follows:

> "Memerintahkan melarang/menangguhkan segala bentuk pelaksanaan Akta Notaris Wisnu Sardjono, SH, Nomor 04 Tanggal 12 Juni 2014 tentang Berita Acara Rapat Umum Para

> Pemegang Saham Luar Biasa PT MLC dan Akta Notaris Wisnu Sardjono, SH, Nomor 05 Tanggal 12 Juni 2014 tentang Pernyataan Keputusan Rapat PT MLC hingga putusan dalam perkara ini mempunyai kekuatan hukum Pasti."
> "*Ordering the prohibition/suspension of all forms of implementation of the Notary Deed of Wisnu Sardjono, SH, Number 04, dated June 12, 2014, on the Minutes of the General Meeting of Extraordinary Shareholders of PT MLC and the Notary Deed of Wisnu Sardjono, SH, Number 05 dated June 12, 2014 on the Statement of Meeting Resolution of PT MLC until the verdict in this case has definite legal force.*"

The dictum of the provision decision results in the company's management status (PT MLC) having to be restored to its original state (restitution to the original condition). A provision decision results in the action of the company's management before the provision decision can be canceled or annulled by the company's management, whose position is restored after the provisioning decision.

The problem is, what if it turns out that the provision decision harms one of the parties and the company in the future? This situation can create injustice. As explained earlier, the nature of the provision decision is that it can be implemented immediately (*uitvoerbaar bij voorraad*) so that it has executory force without waiting for the decision on the main BHT case.

In this regard, in imposing a provision decision on a family company dispute, the court must carefully consider paying attention to SEMA 3/2000 and SEMA 4/2001. The courts need to be more aware of the interests of all stakeholders. The provisioning judgment must consider its impact on the company as a business entity and the relationship between family members. The court must assess whether the provision ruling will interfere with business operations. The court must also ensure that the provisioning judgment is in the company's best interest.

Challenges Related to the Complexity of Corporate Legal Provisions

Based on Article 4 of Law No. 40/2007, the provisions that apply to the company are the Law No. 40/2007 itself, the Articles of Association ("AA"), and other legal provisions. In the Explanation of

Article 4 of the second paragraph of Law No. 40/2007, the term "*other legal provisions*" refers to all legal regulations relevant to the company's operations. It includes regulations related to the banking, insurance, and other financial institutions sectors. In addition, every company also has an obligation to comply with principles such as good faith, the principle of propriety, and good corporate governance practices or Good Corporate Government ("GCG").

It should be realized that understanding the law of a limited liability company is a complex matter, primarily related to the dividend distribution process and the holding of GMS, including the relationship between the company's organs. If the court fails to understand this, it can trigger legal uncertainty, as explained below:

Complexity of Dividend Distribution Arrangements

Dividends are the distribution of company profits to shareholders in the form of money on a pro-rata basis. In practice, several forms of dividends are known. Among other things, the final dividend (*final dividend*), cash dividends (*cash dividend*), dividends of assets other than cash *(property dividend*), and stock dividends (*stock dividend*).[22] Articles 66 to 71 of Law No. 40/2007 regulate several provisions so that the distribution of final dividends is following laws and regulations, as illustrated in the following diagram:

[22] M. Yahya Harahap, *Hukum Perseroan Terbatas*, ed. Tarmizi, 1st ed. (Jakarta: Sinar Grafika, 2008).

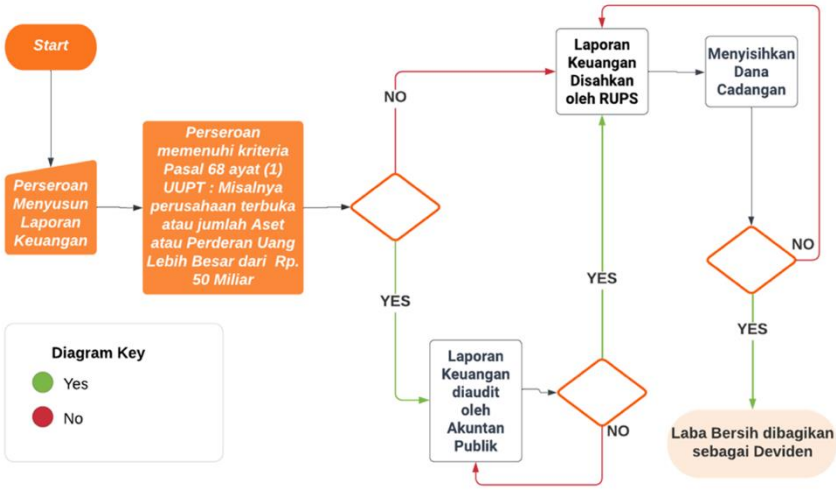

Figure 2. Preparation of Financial Statements and Corporate Dividends

Based on Article 66 of Law No. 40/2007, each company's Board of Directors has the responsibility to prepare financial statements by financial accounting standards as part of the annual report. Within up to 6 months after the company's financial year ends, the financial statements shall be submitted by the Board of Directors to the GMS after review by the Board of Commissioners.

Companies that meet specific criteria must first submit financial statements for audit by a Public Accountant. This criterion is regulated in Article 68 paragraph (1) of Law No. 40/2007, such as public companies (Tbk), companies that collect funds from the community, companies that have assets, and/or total business turnover with a value of at least Rp. 50 billion. If this obligation is not complied with, then the financial statements are not ratified by the GMS.

If the company has a positive profit balance, it must set aside a certain amount of net profit each financial year for reserve funds following Article 70 of Law No. 40/2007. This net profit allowance must be made until the reserve fund reaches at least 20% of the total issued and paid-up capital. After all net profit is deducted from the allowance for reserves, dividends can be distributed to shareholders per Article 71 paragraph (2) of Law No. 40/2007.

In practice, it can be found that the Board of Directors ignores the obligations that have been outlined by the Law No. 40/2007.

Paying attention to the Decision of the Tanjung Pinang District Court Number 06/Pdt.G/2022/PN.Tpg dated November 18, 2022, it can be seen that:

a. The company does not submit an annual report (which contains financial statements) within a period of no later than 6 months after the end of the company's financial year;
b. The company has operating assets of more than Rp. 50 billion, so its financial statements should be certified by a Public Accountant and
c. The company also does not set aside profits for reserve funds, even though it has positive profits.

These actions are contrary to Article 66, Article 68 and Article 70 of Law No. 40/2007. As previously stated, every company action, including the GMS as an organ of the company, must not violate the Constitution, the company's AD and related laws and regulations. It must also not be contradictory with the Law No. 40/2007. Therefore, the results of the GMS that are contrary to these provisions are qualified to be contrary to the law. The results of the GMS have since been null and void. To provide legal certainty for the disputing parties, the court should consider the dividend payment arrangement before making a ruling related to it.

Complexity of Organizing GMS

Article 79 paragraph (1) of Law No. 40/2007 stipulates that the person who has the right to hold a GMS is the company's Board of Directors. Not only does the Board of Directors hold annual GMS, but it is also authorized to hold other GMS, better known as Extraordinary GMS ("EGMS"). The procedures for holding the GMS have been regulated in detail in Articles 75 to 91 of Law No. 40/2007.

Furthermore, Article 79 paragraph (2) letter a of Law No. 40/2007 authorizes shareholders representing at least 10% or more of the total shares that have voting rights to request the convening of a GMS. This process must follow the procedure described in Article 79 paragraph (3) of Law No. 40/2007, namely, shareholders must submit a request for the holding of a GMS to the company's Board of Directors through an official letter that includes specific reasons. According to Article 80 paragraph (1) of Law No. 40/2007, if the Board of Directors or the Board of Commissioners does not invite the

GMS within 15 days from the date of receipt of the request letter, then the shareholders have the right to ask the Chairman of the District Court and request the holding of the GMS. This application must be in the form of a petition (*permohonan*) and not a claim (*gugatan*), and submitted following the principle of *actor sequitor forum rei*, namely in the jurisdiction where the company is located.

On the other hand, Article 79 paragraph (2) letter b of Law No. 40/2007 gives the right to the Board of Commissioners to request the holding of a GMS. To exercise this right, the Board of Commissioners must submit a request to hold a GMS to the company's Board of Directors. The request is in writing through a Registered Letter and accompanied by a sufficient reason. If the Board of Directors does not call the GMS within 15 days from the time the request is submitted, the Board of Commissioners has the authority to hold a GMS in accordance with Article 79 paragraph (6) of Law No. 40/2007.

In simple terms, the procedures described above are taken as described in the following diagram:

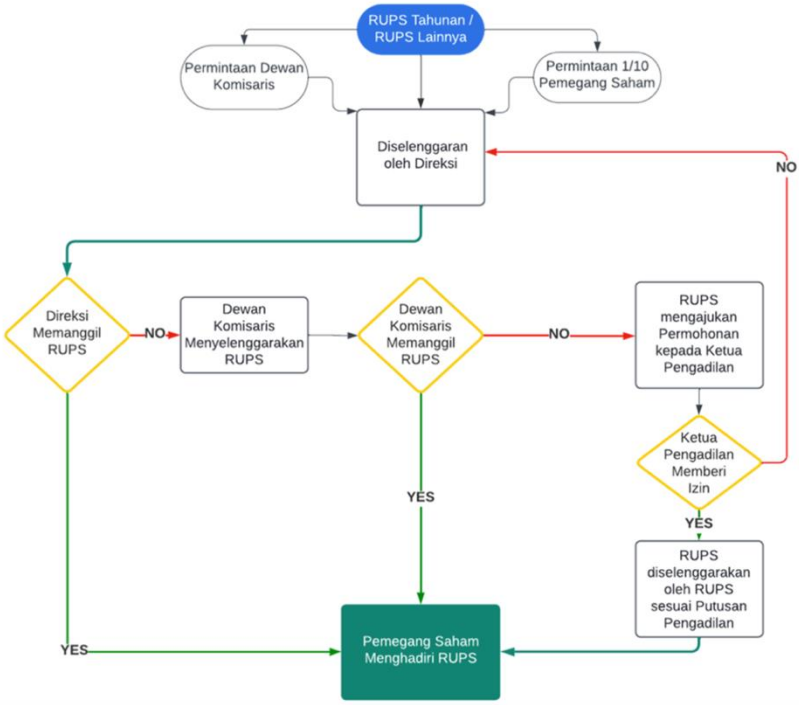

Figure 3. Holding of GMS

The absence of a majority shareholder in the company can trigger the problem of holding GMS in family companies. In addition, the family is a member of the Board of Directors or the Board of Commissioners in the company. This condition can be seen in the Tanjung Pinang District Court Case Number 06/Pdt.G/2022/PN.Tpg. The number of shares of each company shareholder is the same (50%:50%). In other words, the company has no majority or controlling shareholders.

If there are internal family problems, it can trigger conflicts in the implementation of the company's GMS. There is a high possibility of a GMS organized by the Board of Commissioners, even held by shareholders based on the district court's decision. Although the GMS can then be held, there is a potential for conflict in making the GMS decision. What if it turns out that deliberation and consensus are not reached in decision-making? Do we have to vote? In fact, Article 87 paragraph (2) of the UUPT stipulates that the resolution of the GMS is considered valid if it is approved by more than 1/2 (one-half) of the number of votes. This condition certainly brings uncertainty to the operations and sustainability of the family company.

Disputes related to the holding of the GMS are also seen in the Decision of the Sidoarjo District Court 68/Pdt.G/2019/PN SDA dated September 23, 2019, jo. Supreme Court Decision 3742 K/Pdt/2020. In its decision, the panel of judges stated that:

> *"Rapat Umum Pemegang Saham PT Fatma tanggal 28 April 2018 yang diselenggarakan oleh Tergugat II, Tergugat III, Tergugat IV adalah cacat hukum dan tidak sah."*
>
> "The General Meeting of Shareholders of PT The Fatma dated April 28, 2018, organized by Defendant II, Defendant III, and Defendant IV, is legally flawed and invalid."

In consideration of the Supreme Court Decision 3742 K/Pdt/2020, it was stated that

> *"berdasarkan ketentuan Pasal 86 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, Rapat Umum Pemegang Saham Luar Biasa (RUPSLB) sah jika dihadiri paling sedikit 1/2 (setengah) bagian dari jumlah seluruh saham dengan hak suara, jumlah mana tidak terpenuhi dalam penyelenggaraan RUPSLB Tergugat I yang diselenggarakan oleh Tergugat II, III, dan IV tanggal 28 April 2018 sehingga tepat RUPSLB tersebut tidak sah."*

> "based on the provisions of Article 86 paragraph (1) of Law Number 40 of 2007 on Limited Liability Companies, the Extraordinary General Meeting of Shareholders (EGMS) is valid if it is attended by at least 1⁄2 (half) part of the total number of shares with voting rights, which amount is not fulfilled in the implementation of the EGMS of Defendant I organized by Defendant II, III, and IV dated April 28, 2018 so that the EGMS is not valid".

The cases show the magnitude of potential disputes related to holding the GMS of family companies. Before deciding, the court must thoroughly understand the mechanism of holding the GMS to provide legal certainty for the operation and sustainability of the family-owned companies.

The Complexity of Regulating the Implementation of Organ Functions

The relationships between organs in a family company sometimes experience ambiguity and complexity. The company's Constitution and AD have stipulated the roles and responsibilities that each organ of the company must carry out. The Board of Directors is primarily responsible for representing the company's interests, both in and out of court. The Board of Commissioners is authorized to supervise and advise the Board of Directors. The GMS has authority that is not given to the Board of Directors or the Board of Commissioners.

Article 98, paragraphs (1) and (3) of Law No. 40/2007 explain that the authority of the Board of Directors as an organ representing the company inside and outside the court process is broad (*unlimited*) and does not have certain limitations or conditions (*unconditional*). This means that the Board of Directors has unlimited authority to represent the company in all aspects related to its management.

In practice, not all directors of family companies understand their functions and authorities well. It can be seen in the Tanjung Pinang District Court Decision Number 06/Pdt.G/2022/PN.Tpg dated November 18, 2022. In the case, Defendant I (the Board of Directors) postulated that it had given full power of attorney to the

Plaintiff (Commissioner) to act on behalf of Defendant II (the Company), as follows:

> *"Tergugat mendalilkan dalam jawabannya bahwa pada tahun 2009 Tergugat I memberikan kuasa kepada Penggugat selaku Komisaris dan kepada Saudari Lily Lasmiaty (istri Penggugat) untuk dapat bertindak atas nama Tergugat II untuk: membuka rekening perusahaan dan mengurus seluruh dokumen untuk membuka rekening bank atas nama Tergugat II, menarik dana, menyetor dana, meminta rekening koran, melakukan pembayaran, menerima, meminta mengaksep, mengedosir, mendiskonto segala surat, menandatangani cek dan/atau bilyet giro, nota, dan juga menandatangani surat-surat lainnya yang berhubungan dengan Tergugat II."*
>
> Defendant postulated in its answer that in 2009, Defendant I gave power of attorney to Plaintiff as Commissioner and to Lily Lasmiaty (Plaintiff's wife) to be able to act on behalf of Defendant II to open a company account and take care of all documents to open a bank account in the name of Defendant II, withdraw funds, deposit funds, request a bank statement, make payments, receive, requesting to accept, sweep, discount all letters, sign checks and/or bilyet giro, memorandums, and also sign other letters related to Defendant II.

On the Defendant's rebuttal, the court stated that the rebuttal of Defendant I could not be proven because the evidence of the letter was a photocopy of the photocopy. Then, the Defendant did not show the original before the trial, so it did not have evidentiary solid power.

If the facts in the above case are actual, then this condition shows how the relationship between organs in the family company is blurred. The Board of Directors, which is supposed to represent the company's interests, gives authority or power of attorney to the Commissioner to act on behalf of the company. What if then the Commissioner who accepts the trust commits betrayal? What if the Commissioner commits an act detrimental to the company, and who will be responsible? If paying attention to Article 97 paragraph (3) of Law No. 40/2007, the Board of Directors is personally responsible if it is wrong or negligent in carrying out its duties in the company's management. The carelessness of the Board of Directors violates the principle of *fiduciary duty*, resulting in the implementation of *piercing the*

corporate veil to the Board of Directors. [23] In this case, is it appropriate to impose responsibility only on the Board of Directors? In fact, the Commissioner acts as the proxy of the Board of Directors in the management of the company.

If this condition happens, the court should prioritize something other than legal certainty. The court must prioritize justice by considering the family relationships established in the company. The doctrine *piercing the corporate veil* indeed teaches that the company's limited liability can be penetrated (*piercing*) in certain circumstances.[24] However, before applying the principle of piercing the *corporate veil*, the court needs to determine and provide appropriate legal considerations in each situation. There are three stages that the court can carry out: *First*, identifies the types of family companies based on family control that can be classified into four categories, namely: (i) passively controlled public companies, (ii) actively controlled public companies; (iii) passively controlled private companies; and (iv) actively controlled private companies; *Second*, determining the involvement of the family in the management of the company both at the Board of Directors and senior management levels; and *Third*, examining the control of independent parties or independent commissioners in the supervision of family companies. [25]

Judgments Related to Internal Family Disputes

Internal family conflicts that impact a company can come from a variety of sources. However, they are generally caused by complicated family relationships. For example, disputes often arise due to inheritance issues, inequality between family members in the distribution of company resources, and unequal contributions from each family member.[26] For this reason, good relations must be

[23] Siti Hapsah Isfardiyana, "Tanggung Jawab Direksi Perseroan Terbatas dalam Pelanggaran Fiduciary Duty," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 2, no. 1 (2015): 168–91, https://doi.org/10.22304/pjih.v2n1.a10.

[24] Munir Fuady, *Hukum Perusahaan (dalam Paradigma Hukum Bisnis)* (Bandung: PT Citra Aditya Bakti, 2002).

[25] Bukspan and Yadin, "Marrying Corporate Law and Family Businesses."

[26] Bukspan and Yadin.

maintained so that the performance of the family company runs stably.[27]

Preparing potential successors is important for the sustainability of the family company. The main challenge for the court in making a ruling related to succession is to determine who will take over the company's leadership or ownership after the family company's owner dies or can no longer carry out its functions.

It can be seen in the case of the heirs of Eka Tjipta Widjaja as the owner of the Sinarmas Group. Freddy Widjaja's application as the heir, indirectly, certainly results in companies under the Sinarmas Group banner. *Judex Factie* in the Decision of the Central Jakarta District Court No.36/Pdt.P/2020/PN Jkt.Pst. dated February 3, 2020, decided:

> "*Menetapkan Pemohon yang lahir di Jakarta pada tanggal 14 Oktober1968 sebagaimana Kutipan Akte Kelahiran Nomor 2731/DP/1968 tertanggal 30 Oktober 1968 sebagai anak dari perkawinan antara Nyonya Lidia Herawati Rusli dengan tuan Eka Tjipta Widjaja*"
>
> "Stipulating that the Applicant who was born in Jakarta on October 14, 1968, as Citation of Birth Certificate Number 2731/DP/1968 dated October 30, 1968, as the child of the marriage between Mrs. Lidia Herawati Rusli and Mr. Eka Tjipta Widjaja".

At first glance, this decision is only related to the recognition of children out of wedlock. However, behind this determination, there are problems related to the ownership and sustainability of the Sinarmas Group as a family company.

Regarding this determination, then *Judex Juris* in Supreme Court Decision No. 3561 K/Pdt/2020 dated December 10, 2020, canceled the *Judex Factie* decision with the consideration:

> *Bahwa pengakuan anak luar kawin hanya dapat dilakukan oleh bapak dan atau ibunya, tidak dapat diajukan oleh anak yang memohon sendiri untuk diakui sebagai anak in casu. Tuan Eka Tjipta Widjaja tidak terbukti pernah mengakui Pemohon sebagai anak dimasa hidupnya, oleh karena itu tidak ada hubungan hukum antara Pemohon dengan Tuan Eka Tjipta Widjaja, sehingga penetapan Judex Facti harus dibatalkan.*

[27]Soeparto, "Pencapaian Kinerja Perusahaan Keluarga melalui Tingkat Kesiapan Suksesor dan Hubungan Antar Anggota Keluarga dan Bisnis."

> That the recognition of an illegitimate child can only be done by the father and/or mother and cannot be submitted by the child who begged himself to be recognized as a child *in casu*, Mr. Eka Tjipta Widjaja was not proven to have ever recognized the Applicant as a child in his lifetime. Therefore, there is no legal relationship between the Applicant and Mr. Eka Tjipta Widjaja, so Judex Facti's determination must be canceled.

This paper will not analyze the considerations made by *Judex Juris* but try to show the complexity of the rules in making decisions related to succession in family companies. The regulation of civil rights of children outside of marriage, inheritance law, and wills in Indonesia still has many loopholes and legal uncertainties, not to mention the problem of pluralism in inheritance law that applies in Indonesia, which makes the problem even more complex.

In addition to the problem of succession, parents' blind concern (*parental altruism*) is also the source of the following problem. Parents tend to promote their children within the family company, for example, by appointing them to key and senior management positions even though they are inexperienced and unsuitable for the position. It often creates significant costs for the company. [28]

The role of the courts is critical to ensuring that family, business, and legal interests are respected and fulfilled. Mistakes in giving consideration indirectly impact the sustainability of the family company.

Conclusion

Family-owned companies have a significant role in enhancing national competitiveness. However, conflicts that lead to court disputes threaten the sustainability of family-owned companies. The research highlights several legal challenges encountered in court decisions involving family-owned companies, including difficulties in determining *the legal standing* of the parties to the dispute, provision decisions that have the potential to be detrimental to the company, the complexity of understanding the company's law, primarily related to GMS, dividends, and inter-organ relationships, as well as internal family disputes related to the sustainability of family companies. Therefore, every time a court decides on a family company dispute,

[28] Bukspan and Yadin, "Marrying Corporate Law and Family Businesses."

courts need to adopt a nuanced approach that recognizes the unique characteristics of family-owned companies. By providing thoughtful and consistent legal considerations, courts can enhance legal certainty and foster confidence in the business sector. These improvements not only benefit family-owned companies but also contribute to broader sustainable economic activities and investment growth. Moving forward, legal frameworks and judicial practices should continue to evolve in response to the complexities inherent in family-owned company disputes, ensuring that the interests of all stakeholders are appropriately balanced.

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