

# Legal Position Analysis of Shareholders Who Did Not Make Full Deposit in Limited Liability Company Case Study of PT Agen Gas in Central Java

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## ABSTRACT

There is a clear boundary between the corporation and its owners, which is not the same as shareholders. Capital that can be approved, placed, or paid up is one of the components of a company's articles of association. Article 33 paragraph (1) of the Limited Liability Company Law also stipulates that a full deposit of 25% of the authorized capital is required. To emphasize common legal occurrences, it is known that shareholders often fail to fulfill their responsibilities in providing the working capital required by the deed of incorporation at the beginning of the company's existence. In this study, we looked at issues from closed cases that we collected from a number of gas agency LLCs in Central Java. Examine the rights of shareholders, procedures for proving ownership, and the legal position of shareholders who do not contribute all their capital. Writing systematically based on an analytical-critical approach and the nature of literature research is the research method used. The findings of this study also make it clear that shareholders who do not pay the full issued capital according to the agreement are in default in connection with the agreement to form a limited liability company, as stated in Article 33 of the PT Law Number 40 of 2007 concerning Limited Liability Companies. Limited. The people involved in this lawsuit have all been officially recognized as shareholders, which means that their names are now considered inseparable. Therefore, shareholders must acquire and maintain their rights as shareholders.

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## INTRODUCTION

A limited liability company (LLC) is a type of legal entity that meets the requirements established in its laws and regulations. What is meant by a capital partnership formed through an agreement and using authorized capital divided into shares to carry out business activities. A Limited Liability Company (LLC) is established when the rights, responsibilities, and assets of the founders are transferred to shareholders and management with the approval of authorized officers. Looking at the definition, it is clear that there are three main conditions that must be met by company founders before they can apply to the Ministry of Law and Human Rights to become a legal entity. Capital partnerships, agreements to form companies, and business operation performance are the three pillars on which companies depend.

A corporation is considered a legal entity independent of its owners, who are not necessarily shareholders, according to the concept of a limited liability company and a separate entity in

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corporate law. The corporation will be protected from abuse by shareholders thanks to the existence of an independent entity. The reason is, the corporation is fully responsible and owns all the assets it has. But this is the tipping point; Now the corporation is threatened with debt due to its losses.

To form a corporation, several representatives are needed to meet with a notary and provide a proposal for the organization's articles of association. Capital that can be approved, placed, or paid up is one of the elements of the organization's articles of association. In addition to serving as a tool for obtaining financial gains, capital is also important for the survival and growth of a limited liability company. As stated in Article 33 paragraph (1) of the PT Law, it is also required to place and fully pay up at least 25% of the allowed capital. Furthermore, subsection (3) of Article 33 provides that the issued capital must be fully paid up whenever more shares are issued. Payment of shares in installments cannot be accommodated under this provision.

Looking at common legal occurrences, it is clear that shareholders often fail to fulfill their responsibilities in providing the working capital required in the deed of establishment since the company's inception. Keep in mind that some rules stipulate that a shareholder must deposit a certain amount of capital equivalent to his share ownership. Therefore, this action can be considered illegal and constitute a breach of contract. Legal consequences that may arise from this event include actions to distribute dividends to shareholders who do not fulfill their obligations and actions against shareholders who do not pay the agreed capital. However, irregularities in depositing capital can also be found when a person has been legally written as a shareholder, through a certain agreement with the owner of the company, without depositing capital in full money. In other words, the share capital in the form of shares has been fully paid up in accordance with the agreed percentage, only done by someone else or done by the owner of the company directly.

The main problem in the discussion of this research is related to the above legal events that have an impact on the occurrence of unfair dividend distribution for shareholders. Taking information from 3 (three) gas agent Limited Liability Companies in the Central Java region, namely PT Pulung Satrio \*\*\*\*\*, PT Mitra Mandiri \*\*\*\* and PT Cemara Bangkit \*\*\*\*\* with the company's identity disguised to respect and protect the identity of several sources. Based on the information obtained, there are shareholders in several gas agent limited liability companies in the Central Java region who have been registered as shareholders, listed in the deed of establishment of PT, although they do not meet the capital deposit in full form of money, but because of a personal agreement between the shareholder and the company owner. Furthermore, it is stated that the capital deposit in accordance with the agreed percentage of shares in the form of money has also been made by the owner of the company itself, so that legally the share capital on behalf of certain parties has been fulfilled and the names of these parties have legally fulfilled the requirements for share ownership as regulated through the PT Law. But over time, the distribution of dividends is carried out according to the subjective authority of the owners of the company, sometimes less than the agreed percentage amount. Given the existence of several personal factors and the risk opportunities of legal events that occur when bringing the case to the court domain has led the relevant shareholders to choose to normalize it.

The above background and the problems of the case study in this study have directed the discussion of further studies on two problem formulations, namely: What is the position of shareholders who do not make full capital deposits against their rights as shareholders according to Law Number 40 of 2007 concerning Limited Liability Companies? What is the legal protection for shareholders against unfair dividend distribution?

## METHOD

Research based on legal research methodology is essentially needed to prepare a company law study with a connected title. This study or research does not rely on dogmatic methodology but takes a normative legal stance based on relevant ideas and concepts using a conceptual approach. By basing all difficulties on laws and regulations that are relevant to the legal problems studied, the techniques of laws and regulations are used to evaluate and resolve the problems that have been determined.

Literature research is the backbone of this research; it uses a critical analytical writing system to organize related material about the item under consideration, and then analyzes the implications of that data to reach the desired conclusion. The researchers used primary and secondary sources to gather their findings. Data collected through direct interviews and other direct observations in the field are called primary data. Legal documents, both primary and secondary, are also considered secondary data. Legal documents that are fundamental and have legal force are called primary legal materials. While secondary legal materials are legal materials that describe basic legal materials such as proposed laws and regulations, research results, scientific articles, and works circulating in legal circles.

## RESULTS AND DISCUSSION

### **The position of shareholders who do not make full capital deposits against their rights as shareholders according to Law Number 40 of 2007 concerning Limited Liability Companies**

By not depositing all issued capital, the shareholder puts himself in a legally handicapped position because the Limited Liability Company status is compromised due to acts of default or material breach of agreement. If the issued capital is not paid up by the founders or shareholders, then the ownership of shares becomes incomplete from the point of view of the legal object, and default occurs. The ownership of shares in his possession is thus invalid and cannot be legally enforced. The right to dividends cannot be granted to shareholders who do not deposit the entire issued capital. This is because the shareholders responsible for the transfer of property rights that give rise to the right to dividends have not fully fulfilled their obligations to deposit the issued capital. this investment. According to Article 33 of Law Number 40 of 2007 concerning Limited Liability Companies, which stipulates that the actions of the founders or shareholders of a limited liability company who do not fulfill all their obligations to deposit issued capital into a limited liability company are unlawful, shareholders who do not deposit all issued capital as agreed in the agreement, legally violate the agreement in connection with the company establishment agreement limited.

According to M. Yahya Harahap, the concept of issued capital is money that is willing to be paid back by the founder or shareholder with the shares that have been given to him. In the above case, even though the shareholders did not make repayment, the founder of the company has agreed to repay the capital of the shares, in which the ownership of the shares has been handed over to the party concerned to be recorded in the deed of establishment of the Limited Liability Company. To establish the validity and validity of the registered party's control over the shares. There are inseparable rights in the name of registered shareholders because parties who have a special relationship have been registered as shareholders. In addition, as referred to in Article 52 paragraph (1) of the PT Law, shareholders have the following rights:

1. Attend and make noises in RUPS;
2. Receive dividend payments and the remaining wealth resulting from liquidation;
3. Exercising other rights under the Law

Therefore, every Shareholder who is legally recorded in the deed of establishment of a Limited Liability Company should get these three rights. Based on Article 52 paragraph (1) point b of the PT Law, shareholders are entitled to receive dividend payments and the remaining assets resulting from the liquidation of a company. The founder of the limited liability company in this case failed to fulfill this right. Meanwhile, for every share owned by a shareholder in a PT, the shareholder has the following individual rights:

1. The right to acquire shares from subsequent issuance of shares;
2. The right of precedence to be offered and to purchase shares;
3. The right to encumber and use the shares as collateral;
4. The right to apply for DA;
5. The right to ask the PT to purchase its shares at a fair price if the person concerned does not approve of the actions of the PT that are detrimental to the shareholders or the PT;
6. The right to transfer shares of PT;
7. The right to acquire dividends;
8. The right to obtain payment of the remaining proceeds of liquidation;
9. The right to call the GMS;
10. The right to attend and speak out in RUPS.

As stated earlier, some of these rights are shareholder rights that are not related to the ownership of the GMS. Based on information from several sources, the founders of PT often distribute dividends with an amount that does not match the agreed percentage, in other words the amount is less. This is due to the authority of the founder of the PT which is still subjective and not subject to the agreement, considering that at first, the founder of the PT directly paid off the deposit of share capital in the form of money on behalf of another party as a Shareholder. This results in the existence of previously agreed positions to be unequal. Given the fraternal relations, mutual trade contacts, and assistance in establishing a PT, it is permissible to offer share ownership to many people without requiring the deposit of all issued capital. Furthermore, in return, the parties must provide proof of share ownership.

In this case, it was also explained that Shareholders tend to normalize the PT founder's violation of the distribution of dividends with a smaller amount. However, this is based on several factors that prevent them from exercising legal protection of their rights as Shareholders. The factors in question are concerns if the relationship between shareholders and PT founders becomes disharmonious, views that justify PT founders in using their authority subjectively, fear of the power of PT founders who are considered greater and have the opportunity to take unexpected actions, and the existence of judicial processes that collect fees. These factors have indirectly become the consideration of Shareholders to close the door to efforts that can be made in protecting their rights as Shareholders.

Shareholders can take several steps to safeguard their rights with respect to improper dividend distribution while dealing with losses suffered. Based on Article 61 of the PT Law, every shareholder who is harmed due to the Company's actions that are considered unfair and unreasonable due to the decision of the GMS, Board of Directors, or Board of Commissioners can sue the Company. in the district court. Simply put, a shareholder complaint demands the company stop the adverse action and then take action to address the resulting impact. Shareholders can then request that the company buy its shares from them at a fair price. "As stipulated in Article 62 paragraph (1) of the PT Law", shareholder requests can be:

1. Changes to the articles of association;
2. Diversion or guarantee of PT wealth which has a value of more than 50% of PT's net wealth;
3. Merger, smelting, acquisition, or separation.

Based on Article 71 paragraph (2) and paragraph (3) of the PT Law, in order for the Company to provide dividends to its shareholders, there are several criteria that must be met. It has been claimed through this clause that:

1. Unless otherwise decided at the GMS, net profit after deducting reserve allowance is given to shareholders as dividends. This is in accordance with Article 70 paragraph (1).
2. In order for the Company to distribute dividends as referred to in paragraph (2), the Company must have a positive profit balance.

Dividends are basically the distribution of a company's income to shareholders according to their share ownership. Therefore, a company must make a profit before it can distribute dividends to its shareholders. The important profit is net profit, which is the profit left after tax deduction from the current year's profit. Therefore, the Company is exempt from paying dividends to shareholders for the current year if it does not earn profits.

### **Legal protection for shareholders against unfair dividend distribution**

Before establishing a limited liability company, it is also determined about the agreements that have been made by the founders before their company was established. All these agreements, as far as the composition and participation of capital and the composition of shares in the company, must be included in the deed of establishment.

The founders' pre-legalization legal activities that affect the company will remain binding upon becoming a legal entity, provided that:

1. The Company expressly accepts all agreements made by the founder or other persons assigned by the founder with third parties;
2. The Company expressly states that it takes over all rights and obligations arising from the agreement made by the founder or other persons assigned by the founder, even though the agreement is not carried out on behalf of the company;
3. The Company confirms in writing all legal actions carried out on behalf of the company.

Before or after the limited liability company is formed and has the status of a legal entity, all participants must fulfill their absolute commitment to entrust their shares to the company in an official document. Shareholders enter into debt and receivables agreements with companies as creditors when they fail to deposit shares within a stipulated period of time.

As the purpose of shareholders forming a limited liability company is to aim to maximize its profits from the share of dividends it earns at the end of each fiscal year. Both majority and minority owners expect financial benefits from their business. But what if minority shareholders do not distribute dividends at the end of the year according to the GMS decision? What if they don't get the right to receive it?

Under these circumstances, shareholders are still entitled to preventive and repressive legal protection. According to article 61 of the Law, any shareholder who suffers losses due to actions deemed unfair and unreasonable by shareholders based on the resolution of the GMS, Board of Directors, or Board of Commissioners can sue. Company in district court. The complaint essentially asks the company to stop this malicious activity and take action to fix the problems they cause and avoid other similar problems. Every shareholder has the right to sue his business based on the provisions of article 61 of the Business Law if he suffers losses due to unfair and unreasonable GMS decisions.

If it is about the GMS decision prohibiting dividend distribution, and the GMS is approved by 75% of the shareholders present and approved by 75% of the shareholders, then the GMS is valid according to law; As a result, any shareholder claim requesting the cancellation of the GMS has no legal basis. In the event that the procedure for dissolving a valid GMS is unsuccessful (because the

GMS remains valid), the following actions can be taken in accordance with article 62 of the Law. This provision states that any shareholder who disagrees with the Company's actions that harm both shareholders and the Company, such as changes to the articles of association, transfer or guarantee of wealth of more than 50% of net worth, or merger, takeover, or separation of the Company, has the right to request that the Company purchase its shares at a fair price. Your net worth is the sum of all your assets and liabilities on the most recent balance sheet that has been approved for the last six months. As a result, minority shareholders may demand a fair price from the company to purchase their shares, thus protecting themselves from shareholder losses.

Furthermore, the board of directors is obliged to take the initiative to collect shareholder debts. When the collection of a company is complete but the capital payment is still owed, there are several options that can be done:

1. File a civil lawsuit to shareholders who do not make deposits in the form of debt claims;
2. Request a General Meeting of Shareholders aimed at:
  - a. Buying back shares of the company that are not paid up by shareholders as treasury stock;
  - b. Expressly declare the reduction of the company's capital; or

Gives the right to other shareholders or approved third parties to directly take over, by fully depositing and all shares that have not been paid by the old shareholders.

## CONCLUSION

If shareholders of a limited liability company fail to pay their deposits in full, this may affect the business structure, lead to uneven dividend distribution, and may have legal consequences. In accordance with the agreement reached in a limited liability company, shareholders are required to provide capital participation. However, if shareholders do not fulfill these obligations, they may be considered in breach of contract and may be subject to legal sanctions. In situations where shareholders do not make full capital deposits, the company may face financial difficulties in carrying out its operations. This can affect the company's reputation, investor confidence, and the company's ability to secure additional funding. Having clear rules and procedures for depositing capital can help the company cope with situations when shareholders do not pay the entire amount. In addition, the business world must keep the lines of communication open with its shareholders and try to find solutions that can be implemented by everyone. Overall, it is important for companies to ensure that shareholders comply with their obligations and make full capital deposits. By maintaining this compliance, companies can avoid legal issues and maintain the financial stability necessary for long-term growth and success.

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