JURIDICAL REVIEW OF THE ACQUISITION OF SHARES OF A LIMITED LIABILITY COMPANY IN A BUSINESS LAW PERSPECTIVE

Gisella Tiara Cahyani1, Najwa Maulida Azzahra[2], Asmal ul Hosnah[3]
Faculty of Law Pakuan
Tegallega, Bogor, West Java, 16129, Indonesia
E-mail : gisellatiara21@gmail.com

Submitted: Nov 2023	***Accepted: May 2024***	***Published: May 2024***

ABSTRAK

Akuisisi saham dalam bisnis sering terjadi saat satu perusahaan membeli saham dari perusahaan lain. Artikel ini membahas aspek yuridis akuisisi saham dalam konteks Perseroan Terbatas (PT) dengan menganalisis peraturan hukum, hak dan kewajiban pihak, dan perlindungan hukum pemegang saham. Serta adanya dampak hukum yang mungkin timbul akibat transaksi tersebut, dengan mengkaji isu-isu hukum yang mungkin timbul dalam akuisisi saham, seperti persaingan usaha yang tidak sehat, perlindungan hukum pemegang saham. Melalui pemahaman ini, artikel ini bertujuan memberikan pemahaman yang lebih mendalam tentang regulasi hukum yang mengatur akuisisi saham dalam konteks perseroan terbatas dengan menjelaskan implikasinya dalam lingkungan bisnis.

Keyword: Akusisi Saham; Perseroan Terbatas; Perlindungan Hukum

ABSTRACT

Acquisition of shares in a business often occurs when one company buys shares of another company. This article discusses the juridical aspects of share acquisition in the context of a Limited Liability Company (PT) by analyzing legal regulations, the rights and obligations of parties, and the legal protection of shareholders. As well as the legal impacts that may arise as a result of the transaction, by reviewing legal issues that may arise in the acquisition of shares, such as unfair business competition, legal protection of shareholders. Through this understanding, this article aims to provide a deeper understanding of the legal regulations governing share acquisition in the context of limited liability companies by explaining their implications in the business environment.

Keyword*: Share Acquisition; Limited liability company; Legal protection*

A. INTRODUCTION

The acquisition of shares of a limited liability company (PT) is one form of transaction that is common in the business world. This transaction involves the acquisition of shares of a PT by another party with the aim of controlling or expanding the company's business. The acquisition of PT shares has a significant impact in the context of business law, as it involves various legal aspects such as company law, competition law, and contract law. In the juridical review of the acquisition of PT shares, it is necessary to understand that business law is the legal framework that governs the relationship between various business entities, including PT. This business law seeks to create a balance between the interests of the various parties involved in the business transaction, such as shareholders, company management, and third parties affected by the transaction.

The acquisition of PT shares can be done through various mechanisms, such as the purchase of shares in the secondary market, tender offers, or direct agreements between the selling shareholder and the buying party. Each of these mechanisms has different legal implications, particularly in terms of protection of minority shareholder rights and information disclosure obligations to the public. In a business law perspective, the acquisition of PT shares is one way to achieve business objectives, such as expanding markets, improving operational efficiency, or profiting from an existing business. However, the process of acquiring PT shares does not always go smoothly, and often involves legal issues that need to be addressed.[1]

One of the problems that often arises in the acquisition of PT shares is the conflict of interest between majority and minority shareholders. Majority shareholders have great power in corporate decision-making, while minority shareholders often have limitations in influencing those decisions. Therefore, there needs to be a legal mechanism that protects the rights of minority shareholders in the context of the acquisition of shares of PT.

---

[1] Fauzi Hamdy, *Business Competition Law in Indonesia: Theory and Practice,* (Jakarta: Kencana, 2019), p. 120

Competition law also plays an important role in the acquisition of shares of PT. In some cases, the acquisition of PT shares can result in monopolies or oligopolies that are detrimental to market competition. Therefore, business law must also ensure that PT share acquisition transactions do not violate existing competition rules.

In the context of PT share acquisition, contract law is also an important factor. This transaction involves an agreement between the parties involved, including the shareholder who sold the shares and the buying party. This contract must meet all applicable legal requirements, including provisions regarding payment of share price, delivery of shares, and disclosure of relevant information. In some cases, the acquisition of PT shares may involve multinational companies, operating in various jurisdictions. This can lead to complex issues related to international law, taxes, and trade regulations. Therefore, in the context of PT share acquisitions involving multinational companies, it is necessary to understand the legal implications in the various jurisdictions involved. Legal aspects related to the acquisition of PT shares in a business law perspective.

Corporate law is the basis of the acquisition of shares of PT. Each LLC is governed by laws governing the structure, management, and rights of shareholders. In the context of acquiring PT shares, it is necessary to understand various aspects of company law, such as shareholder rights, decision-making procedures, and company management obligations. Shareholder rights are an important element in the acquisition of shares of PT. Shareholders have the right to decide on changes in the structure of the company, including the acquisition of shares. However, these rights may differ between majority and minority shareholders. There needs to be a legal mechanism in place that protects the rights of minority shareholders so that they are not overlooked in the acquisition process.

The decision-making procedure must also be followed in the acquisition of shares of PT. This includes majority shareholder approval, a formal announcement to the public, and granting minority shareholders the right to choose whether they want to sell their shares or remain shareholders. Neglect of this procedure may result in legal disputes.[2] The company's management obligations are also an important factor in the acquisition of shares of PT. Company management has the obligation to run the company's business in accordance with the interests of shareholders. They must ensure that the PT share acquisition transaction runs fairly and transparently. In some cases, the acquisition of PT shares can result in market concentration which has a negative impact on business competition. Competition law exists to prevent monopolistic and oligopoly practices that harm consumers and competitors.

Competition law restricts the acquisition of PT shares that can result in market dominance by one particular company or group of companies. If the acquisition of PT shares can harm business competition, the competition supervisory authority may seek approval before the transaction can be carried out. In addition, parties who feel aggrieved by the acquisition can file a lawsuit. In some jurisdictions, there are also rules that restrict the acquisition of PT shares by foreign companies, especially if there are national security considerations. This is also an important aspect in the context of PT share acquisitions involving multinational companies.

The acquisition of PT shares involves an agreement between the party selling the shares and the buying party. This contract must meet all applicable legal requirements, including provisions regarding payment of share price, delivery of shares, and disclosure of relevant information. Contract law also regulates the rights and obligations of parties involved in the transaction. The PT share acquisition agreement must be clear and binding, so that all parties understand what is expected of them in the transaction. A breach of contract may result in a legal dispute that requires resolution in court.

In some cases, the acquisition of PT shares involves multinational companies, operating in various jurisdictions. This can give rise to issues of international law, tax, and trade regulations. It is necessary to understand the legal implications in the various jurisdictions involved in such transactions.

---

[2] Soenardjo, *Share Acquisition: Legal Aspects, Policy and Implementation,* (Jakarta: Sinar Grafika, 2018), p. 45

In some cases, acquisitions of PT shares involving multinational companies can also involve complex tax regulations. The taxes imposed on such transactions may vary between the jurisdictions involved. Therefore, there needs to be careful tax planning to minimize the tax impact that may arise. International trade regulations can also affect PT share acquisitions involving multinational companies. These regulations can restrict or affect cross-border transactions, especially if they involve heavily regulated industries.

International laws, taxes, and trade regulations can be complex factors in PT share acquisitions involving multinational companies. In acquiring PT shares, it is necessary to understand various related legal aspects, including company law, competition law, contract law, and international law. The acquisition of PT shares is a complex transaction and often involves many parties with different interests. In the context of business law, it is important to ensure that the PT share acquisition transaction runs fairly, transparently, and in accordance with applicable law. Protection of minority shareholders' rights, prevention of monopolistic practices, and understanding of the implications of international law are important aspects in the juridical review of PT's share acquisition.

The acquisition of PT shares in a business law perspective, covering various legal aspects relevant to this transaction. With a deep understanding of the legal aspects involved, PT share acquisition transactions can be carried out properly, in accordance with applicable business law principles. Departing from this background can be a problem, namely first, How does the legal framework governing the acquisition of shares of a limited liability company (PT) play a role in protecting the rights of minority shareholders in the context of the transaction?; Second, what is the impact of competition law on PT share acquisition, and how does competition regulation affect share acquisition practices in a business perspective?

B. RESEARCH METHODS

The research method used in this study is the normative juridical method. The research focuses on the analysis of various legal sources governing the acquisition of shares of limited liability companies (PT) in a business law perspective. Legal sources to be analyzed include laws, government regulations, court rulings, and related legal literature. Primary data will not be taken, but the analysis will be based on existing legal texts. This research approach is descriptive-analytical, where the results of the research will be used to explain the legal framework governing the acquisition of PT shares and its impact on business practices.

C. DISCUSSION

1. The legal framework governing the acquisition of shares of a Limited Liability Company (PT) plays a role in protecting the rights of minority shareholders in the context of the transaction

The acquisition of shares of a limited liability company (PT) is a transaction that often involves a majority shareholder who wants to control the company or take over part or all of the company's shares. In this context, minority shareholders are often vulnerable, as their decision-making power is often limited. Therefore, the legal framework governing the acquisition of PT shares plays an important role in protecting the rights of minority shareholders.

Corporate law is the main foundation in the acquisition of PT shares, and this legal framework plays a central role in protecting the rights of minority shareholders. In most jurisdictions, including Indonesia, corporate law has adopted critical principles of protection of minority shareholders' rights. Here are the main aspects related to company law:[3]

a. Rights of Minority Shareholders

Company law generally grants minority shareholders certain rights, including the right to attend shareholder meetings, voting rights, and the right to obtain company information. These rights give minority shareholders the

---

[3] Kartika Paramita, *Share Acquisition Arrangement by the Business Competition Authority,* (Jakarta: Pustaka Utama Grafiti, 2017), p. 75

opportunity to understand and influence decisions relating to the acquisition of shares of PT.

b. Transparency and Disclosure

Corporate law often requires disclosure of relevant information to minority shareholders. This includes disclosures regarding the acquisition transaction, its potential impact on the company, as well as information regarding the parties involved in the transaction. Timely and accurate disclosure is key in providing understanding to minority shareholders.

c. Decision-Making Procedure

Decision making in companies is generally regulated in company law. Minority shareholders have the right to protest decisions that may harm their interests, and appropriate decision-making procedures must be followed. For example, they can use their veto power or the right to file a lawsuit if the decision does not meet legal requirements.

d. Protection Mechanism

Some jurisdictions provide additional protective mechanisms for minority shareholders, such as the right to bring a class action in the event of a violation of law or fraudulent conduct in the acquisition of PT shares. It gives minority shareholders access to sue the responsible party if their rights are violated.

The legal framework governing the acquisition of PT shares may vary between jurisdictions. In Indonesia, regulations relating to PT are regulated in Law No. 40 of 2007 concerning Limited Liability Companies. Although this law provides some protections for minority shareholders, there are still challenges that need to be overcome, especially in the face of majority shareholders who may have more power.

Shares indicate the rights and obligations as well as the legal relationship between the owner and the limited liability company and the owner represents in proportion to the large number of shares owned in the capital of this limited liability company. According to Article 52 paragraph (1) of the PT Law, shares give their owners the right to (1) the right to attend and vote at the GMS; (2) the right to receive dividend payments and remaining assets resulting from liquidation; (3) the right to exercise other rights based on the PT Law.

These shareholder rights only come into effect after the shares are recorded in the shareholder register in the name of the owner in accordance with Article 52 paragraph (2) of the PT Law. This right can also only be exercised after all share ownership requirements have been fulfilled because if not, the party who obtains share ownership cannot exercise their rights as a shareholder and the shares are not counted in the quorum in accordance with Article 48 paragraph (3) of the PT Law. Apart from rights, shareholders also have obligations which are reflected in the responsibilities of shareholders as regulated in Article 3 paragraph (2) of the PT Law which states that shareholders can still be held responsible if (1) the requirements of the company as a legal entity have not been or are not fulfilled; (2) the shareholder concerned, either directly or indirectly, in bad faith, uses the company for personal interests; (3) the shareholder concerned is involved in an unlawful act committed by the company; or (4) The shareholder concerned, either directly or indirectly, unlawfully uses the company's assets, which results in the company's assets being insufficient to pay off the company's debts.

Competition law also plays an important role in the acquisition of shares of PT. In many jurisdictions, competition regulation aims to prevent monopolistic or oligopoly practices that harm competition in the market. In the context of share acquisition, here are the aspects to consider:[4]

[4] Diana Sari, *Impact of Business Competition Law on Investment and Innovation in Share Acquisition of PT,* (Jakarta: Gramedia Legal, 2016), p. 105

a. Market Concentration

Acquisition of PT shares involving majority shareholders can result in significant market concentration. This could trigger the attention of competition supervisory authorities, who can seek approval before a transaction can take place. In some cases, these authorities may reject acquisitions if they are judged to be detrimental to competition.

b. Effect on Price and Quality

Competition law may also consider the impact of the acquisition of PT shares on the price and quality of the product or service. If the acquisition may result in an increase in price or decrease in quality, this may be considered a violation of competition law.

The framework of competition law varies between jurisdictions, and competition authority approval requirements may vary. Therefore, in some cases, minority shareholders may have to rely on competition authorities to protect their interests in the acquisition of PT. Contract law also plays a significant role in the acquisition of shares of PT. This transaction involves an agreement between the party selling the shares and the buying party. Some aspects to note in this context include:[5]

a. Transaction Settings

The share acquisition agreement must include all transaction terms, including price, term, and conditions that need to be met. The legal framework of the contract will regulate the rights and obligations of the parties involved, as well as the consequences of breach of the agreement.

b. Rights of Minority Shareholders

Share acquisition agreements may also include special rights for minority shareholders. This can be either the right to sell their shares at a fair price or

---

[5] Wijaya Kusuma, *Business Competition Law and Share Acquisition Regulation,* (Yogyakarta: Gadjah Mada University Press, 2020), p. 88

the right to remain shareholders with sufficient powers to protect their interests.

Violation of the PT share acquisition agreement may result in a legal dispute that requires resolution in court. Therefore, minority shareholders must ensure that the agreement contains provisions that protect their interests. In some cases, the acquisition of PT shares involves multinational companies, operating in various jurisdictions. This can give rise to complex issues related to international law, taxes, and international trade regulations. Some considerations in this context include (a) International Law, the acquisition of PT shares involving multinational companies must comply with applicable international law. This can include international trade rules and tax regulations that vary between jurisdictions; (b) tax, PT share acquisition transactions involving multinational companies can raise complex tax issues. The taxes imposed on such transactions may vary between the jurisdictions involved. Therefore, there needs to be careful tax planning to minimize the tax impact that may arise. (c) international trade Regulations acquisitions of PT shares involving multinational companies can also trigger international trade regulations. This is especially relevant if the company operates in an industry that is strictly regulated by international trade regulations.

The legal framework governing the acquisition of shares of a limited liability company (PT) plays an important role in protecting the rights of minority shareholders in the transaction. Corporate law provides a basis of protection with minority shareholder rights, transparency, and appropriate decision-making procedures. Competition law ensures that acquisitions do not harm competition in the market. Contract law governs agreements between the parties involved, including the rights of minority shareholders. International and tax law needs to be considered in the context of multinational share acquisitions. In the context of business law, it is important to understand the existing legal frameworks and how they play a role in protecting the rights of minority shareholders in the acquisition of PT shares. With a deep understanding of the legal aspects involved, PT share acquisition transactions can be carried out fairly, transparently, and in accordance with applicable business law principles. On a deeper level, it is important to consider some additional aspects that complement the aforementioned legal framework in protecting the rights of minority shareholders in the context of a limited liability company (PT) share acquisition.

In many cases, minority shareholders often lack information or access to details of ongoing transactions. Mechanisms that ensure transparency of information are essential. Corporate law usually provides for the requirement of accurate and timely disclosure of information to minority shareholders. Although this is regulated by law, the practice may vary in different companies. Therefore, mechanisms that ensure the fulfillment of the necessary disclosure of information for minority shareholders are crucial for their protection.

Although the role of the government and supervisory agencies is regulated within the legal framework, challenges often arise in overseeing the acquisition of shares of PT. Minority shareholders may face difficulties in monitoring or ensuring that any form of fraud or action detrimental to them can be detected and intervened. On the other hand, supervisory authorities may also have limitations in efficiently monitoring and evaluating share acquisitions, especially in complex and potentially manipulative practice cases.[6]

Mechanisms that protect minority shareholders from certain corporate actions that may harm their interests. These corporate actions can take the form of asset separations, restructurings, or corporate takeovers that might reduce the value of minority shareholders' shares or even eliminate their positions entirely. The legal framework should consider adequate protections for minority shareholders in these situations, including specific approval requirements from minority shareholders for certain actions.

The process of determining share prices is an important concern in the protection of the rights of minority shareholders. The price offered to minority

[6] Anita Dewi, *Share Acquisition and Its Impact on Product Price and Quality,* (Jakarta: Publisher Erlangga, 2019), p. 42

shareholders in a share acquisition must be fair and reflect the true value of their shares. Sometimes, minority shareholders may feel that the bid price is not worth the true value of their investment. Therefore, mechanisms or regulations governing fair share pricing are very important in protecting the interests of minority shareholders.

Minority shareholders may gain further support or protection through the involvement of shareholder associations or independent third parties. Shareholder associations can fight for the rights of minority shareholders or provide impetus for tighter scrutiny of transactions involving such companies. Independent third parties, such as financial or legal advisors, can also provide an objective view and assist minority shareholders in navigating the share acquisition process. In situations where the acquisition of PT shares can have far-reaching implications for minority shareholders, it may also be necessary to consider alternative dispute resolution mechanisms, such as mediation or arbitration, that allow minority shareholders to resolve their differences with other parties without having to involve lengthy and complicated litigation.

Protecting the rights of minority shareholders in the acquisition of PT shares requires a strong legal framework, but it also requires careful monitoring from regulatory agencies, access to clear information, and mechanisms that enable fair participation. The legal framework must be continuously updated and adjusted to ensure adequate protection for minority shareholders, as well as to maintain stability, transparency, and fairness in the share acquisition transactions of PT.

2. **The impact of competition law on the acquisition of PT shares, and how competition regulations affect share acquisition practices in a business perspective**

The impact of competition law on the acquisition of PT shares has significant implications in the business context. The perspective of competition regulation affects share acquisition practices substantially, regulates the protection of fair competition, prevents market dominance, and ensures the balance of power in the business sector. In this context, competition regulations play an important role in monitoring and regulating the behavior of market participants and limiting the potential monopoly that may occur due to the acquisition of shares of PT.

Competition regulation seeks to prevent monopolies or oligopolies that harm consumers or competitors. In the context of a PT share acquisition, if the transaction may result in market dominance by one particular entity or group of companies, the competition supervisory authority will oversee and evaluate the economic implications of the acquisition. These authorities seek to ensure that the supply of goods or services is not too concentrated in a single entity that might be detrimental to the market.

Basically, the impact assessment conducted by the business competition authority in the acquisition of PT shares is aimed at ensuring that the existence of sufficient competitors and the balance of bargaining power is maintained in the market. It also prevents the occurrence of anti-competitive practices such as price fixing, production restrictions, or market allocation that are detrimental to consumers.

In many jurisdictions, there are requirements that require companies to obtain permission from competition authorities before making significant acquisitions of PT shares. This permission usually depends on the size of the transaction, where transactions that are large or that are considered to have a large impact on the market will be surveyed more closely. The competition authority will assess the possible impact of the transaction, including its effect on competitors, consumers, and market structure.[7]

This process usually involves an in-depth analysis of market position, economic strength that may accumulate, and the potential impact on competition in the industry. Although its main purpose is to prevent monopolies or oligopolies, these approval permits also aim to ensure that competition is maintained in a healthy business context. Business competition regulations also pay attention to the impact of PT share acquisition on the price and quality of products or services offered. If

[7] Mochtar Kusumaatmadja, *Business Competition Regulation in Share Acquisition of PT,* (Bandung: Refika Aditama, 2017), p. 110

an acquisition results in an increase in price or a decrease in quality, competition authorities can assess whether this harms consumers or undermines market competition. In some cases, reduced competition can result in higher prices and lower innovation. This oversight includes evaluating the impact of the acquisition on the efficiency, innovation, and quality of the product or service. If the acquisition of shares leads to a reduction in competition or lowers quality standards, the competition authority may intervene and order the company to take measures that prevent these problems from occurring.

Business competition regulations can also affect investment and innovation in the context of the acquisition of shares of PT. In some cases, concerns about competition restrictions may hinder investment or innovation, especially if companies feel that competition regulation will hinder their business activities. On the other hand, on the other hand, this regulation can encourage innovation and investment by guaranteeing healthy competitive conditions, which in turn can encourage companies to become more efficient and innovative. Therefore, in a business context, companies planning to acquire PT shares must consider the impact of competition regulations on their business plans. Share takeovers that have the potential to harm competition or consumers can present risks for companies in terms of competition license approvals, sanctions, or disruptions to their business operations.

Competition law usually regulates sanctions and penalties imposed if violations of competition regulations occur. If an acquisition of PT shares violates competition law, the companies involved may be subject to serious sanctions, including significant fines. In addition, in some jurisdictions, individuals responsible for such violations may also be personally punished. These sanctions can include significant fines, transaction bans, and corrective actions that may require companies to return the market to its previous state or take action to restore fair competition. Therefore, companies planning the acquisition of PT shares must be very careful in ensuring that their transactions comply with applicable competition laws.

For companies involved in the acquisition of PT shares, understanding the competition regulations and their impact is an important step in undergoing the transaction. Some best practices that can help companies deal with competition regulations include:[8]

a. Impact Assessment

   Companies should conduct a comprehensive impact analysis on their planned acquisition of PT shares. It includes evaluating the impact on competition, price, quality, and innovation.

b. Legal Compliance

   Ensure that all aspects of the transaction are in accordance with applicable competition regulations. Companies must comply with approval permit requirements and avoid violations of competition laws.

c. Legal Expert Consultation

   Working with a lawyer who has in-depth knowledge of competition law can help companies identify potential risks and take appropriate action.

d. Transparency and Cooperation

   Transparency in the face of competition authorities is very important. Open communication and cooperation with authorities can expedite the approval process.

e. Alternative Options

   Consider alternative options in business strategy planning. If competition regulations may preclude acquisition plans, consider other options that may be more appropriate.

From a business perspective, the impact of competition law on the acquisition of PT shares is an important factor to consider. Business competition regulation aims to protect fair competition, prevent monopolies, and ensure consumer profits. Therefore, companies that plan to acquire PT shares must understand and comply

---

[8] Arif Prakasa, *Penalties and Sanctions in Business Competition Regulation: A Case Study in Share Acquisition of PT,* (Surabaya: ITS Publisher, 2018), p, 99

with this regulation. The impact includes market surveillance, monopoly prevention, approval permit requirements, influence on the price and quality of products or services, investment, innovation, penalties and sanctions. Companies also need to consider best practices in dealing with competition regulations to minimize risks and ensure legal compliance. By understanding the impact of competition law, companies can better acquire PT shares, maintain a balance of market competition, and ensure the sustainability of healthy and sustainable business operations.

D. CONCLUSION

The impact of competition law on PT share acquisitions is that competition regulations play an important role in supervising and regulating share acquisitions to prevent market dominance, maintain fair competition, and protect consumers. Impacts include market surveillance, approval permits, influence on the price and quality of products or services, investment, innovation, and penalties and sanctions. Understanding and compliance with competition regulations is key for companies planning to acquire PT shares, so that they can carry out such transactions in accordance with the law, minimize risk, and maintain a balance of market competition.

BIBLIOGRAPHY

Fauzi Hamdy, *Business Competition Law in Indonesia: Theory and Practice,* Jakarta: Kencana, 2019.

Soenardjo, *Share Acquisition: Legal Aspects, Policy and Implementation,* Jakarta: Sinar Grafika, 2018.

Kartika Paramita, *Share Acquisition Arrangement by the Business Competition Authority,* Jakarta: Pustaka Utama Graffiti, 2017.

Diana Sari, *Impact of Business Competition Law on Investment and Innovation in Share Acquisition of PT,* Jakarta: Gramedia Legal, 2016.

Wijaya Kusuma, *Business Competition Law and Share Acquisition Regulation,* Yogyakarta: Gadjah Mada University Press, 2020.

Anita Dewi, *Share Acquisition and Its Impact on Product Price and Quality,* Jakarta: Erlangga Publishers, 2019.

Mochtar Kusumaatmadja, *Business Competition Regulation in Share Acquisition of PT,* Bandung: Refika Aditama, 2017.

Arif Prakasa, *Penalties and Sanctions in Business Competition Regulation: A Case Study in Share Acquisition of PT,* Surabaya: ITS Publisher, 2018.