The Dialectic between Shareholder Primacy and Stakeholder Theory in the Indonesian Corporate Law System

Arman Candra, Fitri Rafianti

Abstract

This study analyzes the dialectical tension between the *shareholder primacy paradigm* and *stakeholder theory* in the framework of Indonesian corporate law. Law No. 40 of 2007 (UUPT) constructs an ambiguous hybrid model, in which governance architectures (such as GMS) support shareholder primacy, while positive legal obligations (Article 74 on CSR) encourage stakeholder models. The epicenter of this tension is the legal vacuum in the definition of "corporate interests". Using normative juridical research methods with legislative, conceptual, and case approaches, this study examines how the dialectic is resolved in practice. The main finding shows a paradigm shift: this dialectic is no longer only debated in the courtroom through *the hard law* of the UUPT. On the contrary, *the Financial Services Authority's (OJK) soft* law regulation on *Environmental, Social, and Governance* (ESG) has created a "legislative shortcut". By requiring *disclosure* in the capital market, the OJK de *facto* forces corporations to adopt a *stakeholder* model, making the OJK a stronger agent of change than the judiciary. This study recommends clarification of the UUPT through the adoption of *the principle of enlightened shareholder value* (ESV) and strengthening ESG supervision by the OJK from mere disclosure to substantive supervision.

Keywords: *Shareholder Primacy; Stakeholder Theory; Indonesian Corporate Law; Environmental, Social and Governance (ESG).*

Arman Candra
Master of Law, Universitas Pembangunan Panca Budi, Medan, Indonesia
e-mail: armancandra91@gmail.com

Fitri Rafianti
Master of Law, Universitas Pembangunan Panca Budi, Medan, Indonesia
e-mail: fitrirafianti@dosen.pancabudi.ac.id

Introduction

Modern corporate governance is basically based on a difference of views between two main approaches: *shareholder primacy* and *stakeholder theory.* The main debate in business ethics and law focuses on the company's objectives: whether the board of directors is only obliged to work to maximize value for shareholders, or whether they also have an obligation to balance the interests of various related parties (stakeholders), such as employees, customers, suppliers, and the community. [1]

Globally, the direction of this discussion has changed a lot. Driven by increased awareness of issues such as the climate crisis, human rights, and the impact of the pandemic, there has been a shift away from rigid principles regarding maximizing shareholder profits. Now, there is greater attention to the interests of stakeholders. [2] One of the key points of this shift was the Business Roundtable's (BRT) statement in 2019. In the statement, prominent CEOs in the United States redefined the company's goals with a stakeholder-focused approach. This is different from their previous position of putting shareholders first. [3]

In this global context, the corporate legal system in Indonesia shows a special situation. Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) does not explicitly choose one of these approaches. On the contrary, the Law creates a legal framework in which the two theories run together. This creates an ambiguous legal situation and has the potential for internal conflicts.

Indonesia's legal system seems to be a place to test how these two seemingly contradictory theories of governance can work together. This is not just a partial implementation, but a system in which the legal rules that put shareholders first such as the supremacy of the General Meeting of Shareholders (GMS) and the voting rights inherent in the shares [4] are applied along with clear legal obligations for stakeholders, as contained in Article 74 of the UUPT on Social and Environmental Responsibility (TJSL). This overlapping situation creates a legal conflict that is the main focus of this report. As a result, directors and courts in Indonesia are required to continue to find a middle ground and balance these potentially conflicting obligations.

Literature Review

To understand the legal situation in Indonesia, it is important to first examine the theoretical basis of the two approaches that form it. International academic studies have long discussed the justifications, implications, and criticisms of each model. To clarify the fundamental differences between these two approaches, the following table presents a doctrinal comparison in a concise manner.

Table 1: Doctrinal Comparison: Shareholder Primacy vs. Stakeholder Theory

Criterion	Shareholder Primacy	Stakeholder Theory
The Company's Main Objectives	Maximizing Shareholder *Value Maximization* (SVM)	Sustainable Value Creation for All Stakeholders
Dasar Theoretis	Agency *Theory*, Contract Nexus Theory, Residual *Claimant*	Theory of *Joint Value Creation*, Business Ethics, Theory of Resources
Role of the Board of Directors	Agent of the Shareholders	Mediator and Balancer of All Stakeholders
Definition of "Company's Interests"	Defined as the long-term financial interests of shareholders	It is defined as the collective health and sustainability of all stakeholder relationships
Key Figures	Milton Friedman, Adolph Berle	R. Edward Freeman, Merrick Dodd

1. Shareholder Priority

The shareholder priority model, which has dominated Anglo-American corporate thinking for decades, argues that the primary and sole goal of a corporation is to maximize the wealth of its shareholders. The intellectual basis of modern debate began in the 1930s through the "Great Debate" in the Harvard Law Review between Adolph Berle, who defended shareholder priorities, and Merrick Dodd, who advocated broader corporate social goals. However, the most influential argument comes from economist Milton Friedman. In his 1970 essay, Friedman stated emphatically that "the social responsibility of a business is to increase its profits". [5] According to him, managers are agents who have fiduciary duties to their principals, i.e. shareholders. Friedman's argument is strengthened by two main theoretical foundations. First, *agency theory*, which views the relationship between the manager (agent) and the shareholder (principal) as a contract in which the agent must act in the interest of the principal. [6] Second, the residual claims argument*,* which states that because shareholders are the parties who receive the rest of the company's wealth after all other claims (such as employee salaries and debts to creditors) have been paid, they bear the greatest financial risk. Therefore, it is their interests that must be prioritized to encourage investment and efficiency. [7]

Although often considered a binding legal obligation, many juridical analyses, especially in *common law* jurisdictions, suggest that shareholder priorities are more strongly operating as a dominant social norm among managers and taught in business schools, rather than as rigidly enforceable legal obligations. The existence of the *business judgment rule* doctrine, which provides broad protection for directors from liability for loss-making business decisions, effectively undermines strict enforcement of the law against maximizing shareholder value. [8]

2. Stakeholder Theory

As opposed to shareholder priorities, stakeholder theory proposes a more inclusive and socially oriented vision of the company. This theory was pioneered by R. Edward Freeman, who defined *a stakeholder* as "any group or individual who can influence or be influenced by the achievement of organizational goals". [9] This group includes not only shareholders, but also employees, customers, suppliers, creditors, and local communities. The company's goal in this model is not to maximize value for one group, but to create *joint value* in a sustainable manner for all stakeholders. [10] This theory argues that the company is the result of the collective contribution of various parties. Employees contribute "human capital," suppliers make specific investments to serve the company, and communities provide the infrastructure and social license to operate. [11]

Ignoring their interests is not only considered unethical, but it also undermines the long-term business strategy. A company that neglects its stakeholders will ultimately not be able to attract the quality resources it needs to generate sustainable profits. [12] This theory gained significant support with the 2019 BRT Statement. By explicitly rejecting shareholder priorities and adopting fundamental commitments to all stakeholders, mainstream business leaders recognize that an inclusive governance model is key to long-term success. [13]

This difference of views basically reflects a shift in understanding of the nature of the company. The traditional view rooted in the idea that shareholders "own" the company (a legally inaccurate but economically powerful concept [14] is beginning to be replaced by newer views. This new view sees the company as an entity in which various parties "invest" their specific resources and jointly bear risks that cannot be fully regulated by contract. If many parties contribute to value creation and bear residual risk, then the fundamental question shifts from "who owns it?" to "who contributes to value creation and bears the risk?". This shift changed the normative basis of corporate governance from mere property protection to the management of complex and interdependent risk contribution relationships.

Research Methodology

This research is constructed as *normative juridical research* that focuses on doctrinal analysis of the dialectical tension between the *shareholder primacy paradigm* and *stakeholder theory* in the framework of Indonesian corporate law. To dissect these problems, this study adopts several approaches at once: a statute *approach* to examine in depth the norms in Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) and Financial Services Authority (OJK) regulations related to ESG; conceptual *approach* to elaborate the theoretical foundations of both governance paradigms; and case *approach* that refers to relevant jurisprudence, including the Constitutional Court Decision No. 53/PUU-VI/2008. The collection of legal materials is carried out through library *research*, which includes primary legal materials (laws and regulations) and secondary legal materials (scientific journals, books, and academic publications). All data collected were analyzed qualitatively using systematic interpretation methods to interpret the ambiguity of crucial norms such as "the interests of the company" and "propriety and fairness" in Article 74 of the Constitution, thus producing a prescriptive analysis to answer the legal problems raised.

Results

Comparison of Shareholder and Stakeholder Approaches in the Indonesian Corporate Law System

Law No. 40 of 2007 (UUPT) is the main foundation on which differences in global views between shareholders and stakeholders are manifested in positive legal norms in Indonesia. An analysis of the key articles shows a dual approach, where the law simultaneously establishes a shareholder-centric governance structure, while establishing legally binding stakeholder obligations, without providing a clear settlement mechanism.

The core of the directors' obligations lies in the doctrine of *fiduciary duty*, which requires a *duty of loyalty* and a *duty of care*. [15] The UUPT codifies this principle through the key phrase "corporate interests". Article 92 paragraph (1) of the Constitution states, "The Board of Directors carries out the management of the company for the benefit of the company and in accordance with the company's intentions and objectives". Article 97 paragraph (2) of the Constitution further emphasizes, "Every member of the Board of Directors is obliged in good faith and full responsibility to carry out his duties for the interests and business of the company". [16] The main problem is that the UUPT does not provide an explicit definition of what is meant by "corporate interests". This legal vacuum opens up a very wide space for interpretation, creating ambiguity that is central to the differences of opinion in Indonesian corporate law.

On the one hand, the structure of the UUPT in general strongly supports the shareholder priority approach. Article 3 paragraph (1) of the Constitution applies the principle *of limited liability*, which is the main pillar of the modern corporate model that protects shareholders' personal wealth from the company's debts, limiting their risk to only the amount of capital deposited. [17] In addition, the General Meeting of Shareholders (GMS) is placed as "an organ of the Company that has authority not given to the Board of Directors or the Board of Commissioners". [18] The voting rights inherent in the shares give shareholders ultimate control over the strategic direction of the company, including the authority to appoint and dismiss members of the Board of Directors and the Board of Commissioners. [19] This power structure essentially gives preference to shareholders, as the board of directors is ultimately accountable to the party who can dismiss them.

On the other hand, the UUPT contains a specific provision in the comparison of global corporate law, namely Article 74. This article expressly requires companies that "carry out their business activities in the field and/or related to natural resources" to carry out Social and

Environmental Responsibility (TJSL). [20] This provision changes the concept of CSR/TJSL from being voluntary to a legal obligation that can be enforced (*hard law*).

Although it is mandatory, its implementation has significant legal uncertainties. Article 74 paragraph (2) states that the implementation of TJSL must be carried out with regard to "propriety and reasonableness". [21] This phrase is ambiguous and does not have clear quantitative or qualitative standards, making it difficult to oversee. [22] Furthermore, Article 74 paragraph (3) states that sanctions will be regulated "in accordance with the provisions of laws and regulations". [23] This provision does not specify which regulation is in question, thus creating uncertainty about the nature and source of the sanctions. [24] The UUPT thus creates a contradictory situation, placing the board of directors in a difficult legal position, as it is between a fiduciary duty to the "company" and a legal obligation to the stakeholders.

The tension contained in this UUPT is not only theoretical, but is reflected in legal practice and corporate disputes in Indonesia. In practice, the void of the definition of "corporate interest" is often filled with the assumption that it is synonymous with the interests of shareholders. This is logical, considering that shareholders have the highest power to appoint and dismiss directors. [25] However, the doctrine of *the Business Judgment Rule* (BJR) provides significant room for the board of directors. BJR protects the directors from personal liability for losses arising from business decisions, as long as such decisions are taken in good faith, prudent and without conflicts of interest. [26] These protections effectively allow directors to consider a variety of factors, including the company's long-term interests and impact on stakeholders, in interpreting what is best for the "company's interests".

The test of the constitutionality of Article 74 of the UUPT is an important point in this debate. In Decision No. 53/PUU-VI/2008, the Constitutional Court (MK) rejected the application *for judicial review* and affirmed the constitutionality of TJSL as a legal obligation. [27] The Constitutional Court based its decision on the national economic philosophy contained in Article 33 of the 1945 Constitution, which expressly rejects the view that the sole purpose of corporations is profit. Although this ruling constitutionally certifies that the state can impose social obligations on corporations, it does not provide operational clarity. The Constitutional Court did not discuss the core fiduciary obligations in Articles 92 and 97, so the TJSL was treated as an imposed external obligation, namely as a compliance fee, not as an integral part of the company's core objectives. As a result, this difference of views remains unresolved.

Real conflicts within Indonesian companies often reflect these tensions. For example, the dispute case in the Commercial Court Decision No. 08/HK. Brand/2014/PN. Niaga.SBY Jo. Decision No. 722.K/PDT. KHS-HKI/2015 jo. Decision No. 105.PK/PDT.KHS-HKI/2017 shows a violation of *duty of loyalty* where the interests of shareholders are threatened by the actions of the company's organs. [28] In addition, cases such as the dispute between McDonald's and Bambang Rachmadi, or the internal conflict at PT Sumalindo Lestari Jaya, highlight how controlling shareholders can use their dominant power at the GMS to sacrifice the rights of minority shareholders. [29]

Shifting Views of Stakeholders Towards Strengthening Environmental, Social, and Governance (ESG)

The difference of views between shareholders and stakeholders in Indonesia is no longer only debated in the courtroom based on the interpretation of the UUPT. Current regulatory pressures from the Financial Services Authority (OJK) and global market demands related to *Environmental, Social, and Governance* (ESG) issues have become new driving factors that are actively directing corporate practices towards a *de facto stakeholder model*.

OJK has positioned itself as the main driver of sustainable finance. Through OJK Regulation No. 51/POJK.03/2017 concerning the Implementation of Sustainable Finance and Sustainable Finance Roadmap Phase II (2021-2025), OJK requires financial service institutions, issuers, and public companies to prepare Sustainable Finance Action Plans

(RAKB) and Sustainability Reports that cover ESG aspects. [30] The Indonesia Stock Exchange (IDX) supports this agenda by launching ESG-based indices such as IDX ESG Leaders and providing increasingly detailed reporting guidelines. [31]

These regulations require companies to measure, manage, and report on their impact and dependence on various stakeholders and non-financial issues. Research in Indonesia is starting to show that good ESG disclosure, which is rooted in stakeholder theory, can have a positive effect on a company's long-term performance by improving reputation, attracting investment, and building stronger relationships with all stakeholders. [32]

This ESG regulation driven by the OJK effectively creates an alternative regulatory pathway. Instead of amending the UUPT which is a slow political process, the OJK as a capital market regulator uses its mandate to implement stakeholder norms through market mechanisms. By requiring *disclosure*, the OJK creates transparency that allows investors, activists, and the public to hold companies accountable for their ESG performance. It is a market-driven form of "soft law" that achieves what the ambiguous "*hard law*" of the UUPT cannot explicitly achieve. Thus, differences of views between shareholders and stakeholders in Indonesia are now increasingly determined in the capital market based on compliance with ESG norms, making the OJK a stronger change driver in driving the stakeholder model than the Constitutional Court.

Conclusion

Bahwa berdasarkan analisis terhadap kerangka hukum perseroan di Indonesia mengindikasikan ketiadaan adopsi murni atas paradigma *shareholder primacy* maupun *stakeholder theory*. Sebaliknya, Undang-Undang Perseroan Terbatas (UUPT) telah mengkonstruksikan suatu model hibrida yang secara inheren diliputi ketegangan yuridis. Di satu sisi, struktur kekuasaan formal yang bertumpu pada Rapat Umum Pemegang Saham (RUPS) dan pemegang saham secara jelas mendukung primasi pemegang saham. Di sisi lain, eksistensi kewajiban hukum positif dalam Pasal 74 mengenai Tanggung Jawab Sosial dan Lingkungan (TJSL) serta dorongan regulasi kontemporer dari Otoritas Jasa Keuangan (OJK) terkait *Environmental, Social, and Governance* (ESG), secara imperatif mengarahkan entitas korporasi menuju model pemangku kepentingan. Titik episentrum dialektika ini bermuara pada ambiguitas frasa krusial “kepentingan perseroan” dalam UUPT, yang berfungsi sebagai norma fleksibel dan memungkinkan koeksistensi kedua paradigma tersebut dalam ketidakpastian hukum.

Untuk mengatasi ketegangan dan ketidakpastian hukum tersebut, serta demi menciptakan iklim tata kelola perusahaan yang lebih definitif dan berkelanjutan, diperlukan langkah reformasi yang komprehensif baik pada ranah legislatif maupun yudikatif. Bagi legislator, diperlukan amandemen UUPT untuk memberikan klarifikasi yuridis atas tujuan perseroan, di mana adopsi prinsip *enlightened shareholder value* (ESV) dapat dipertimbangkan sebagai model yang mendamaikan kedua paradigma dengan mengarahkan direksi untuk mencapai kesuksesan jangka panjang bagi pemegang saham *melalui* pertimbangan cermat terhadap kepentingan pemangku kepentingan lainnya. Sementara itu, sambil menunggu reformasi legislatif, Mahkamah Agung memiliki peran krusial untuk mengembangkan yurisprudensi yang konsisten dalam menafsirkan kewajiban fidusia direksi, utamanya dalam mengklarifikasi bahwa keputusan yang mempertimbangkan dampak pemangku kepentingan secara wajar demi nilai jangka panjang tetap berada dalam lingkup perlindungan *Business Judgment Rule*.

Pada ranah regulator, Otoritas Jasa Keuangan (OJK) harus terus memperkuat kerangka kerja ESG sebagai motor penggerak utama. Penguatan ini menuntut adanya evolusi dari sekadar pemenuhan kewajiban pengungkapan (*disclosure*) menuju pengawasan yang lebih substantif terhadap implementasi praktik ESG. Langkah strategis ini mencakup pengembangan metrik yang lebih terstandardisasi untuk pasar Indonesia, mekanisme verifikasi independen terhadap laporan keberlanjutan, dan penerapan sanksi yang tegas terhadap praktik *greenwashing*. Dengan memastikan bahwa komitmen terhadap pemangku kepentingan terintegrasi secara bermakna ke dalam strategi dan operasi inti perusahaan, OJK dapat mengakselerasi terwujudnya model tata kelola yang lebih seimbang dan berkelanjutan di Indonesia.

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