

JURIDICAL ANALYSIS OF THE LEGALITY OF SHARE OWNERSHIP AND THE APPLICATION OF UNLAWFUL ACTS IN LIMITED LIABILITY COMPANY (STUDY OF SUPREME COURT DECISION NUMBER 2669 K/PDT/2025)

Syifa Aulia Dewinta Rustama ^{a*)}, Tri Lisiani Prihatinah ^{a)}

^{a)} *Jenderal Soedirman University, Purwokerto, Indonesia*

^{*)} *Corresponding Author: syifa.aulia.d@mhs.unsoed.ac.id*

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Abstract. Limited Liability Companies as a legal entity based on capital partnerships place shares as the main instrument in determining ownership structures, control rights, and legitimacy in decision-making, so that share ownership disputes have the potential to cause complex legal problems, including unlawful acts. This study aims to analyze the validity of ownership and transfer of shares through testing the complementary relationship between the PT Law and the principle of civil proof, as well as analyzing the application of unlawful acts by methodologically separating the legal standing layer and the material elements of PMH along with the responsibility of the company's organs in protecting the rights of shareholders, in the Supreme Court Decision Number 2669 K/Pdt/2025. The method used is normative legal research with a legislative approach and a case approach. The results of the discussion show that the relationship between the PT Law and the Civil Code in the context of proving share ownership is complementary, not a normative conflict that is resolved through the principle of *lex specialis*, and that the implementation of PMH requires a strict separation between the legal standing test as a formal requirement and the material elements of PMH. Moreover, the Supreme Court's decision reflects the choice of legal certainty values that are valid but do not fully integrate the Radbruch triadic balance between justice, utility, and legal certainty. It is recommended that the parties ensure the validity of the documents and the listing of shares, and that lawmakers consider more explicit provisions regarding the evidentiary power of stock documents in civil disputes.

Keywords: Stock Disputes; Limited Liability Companies; unlawful acts; Supreme Court Decision 2669 K/Pdt/2025;

I. INTRODUCTION

Limited Liability Companies (PT) as legal entities that rely on the principle of capital partnership place shares as the main instrument that determines the ownership structure, division of power, and legitimacy in the decision-making process by the company's organs. Shares not only reflect economic rights in the form of dividends, but also contain control rights in the General Meeting of Shareholders (GMS) which have a direct impact on the policy direction and continuity of the company. Thus, shareholding disputes often develop into complex legal issues, especially when it comes to the validity of the transfer of rights, the listing in the list of shareholders, and the legitimacy of the actions of the directors or commissioners.[1] In judicial practice, the dispute is often qualified as an unlawful act (PMH) when one of the parties feels that his subjective rights are violated and cause losses.[2]

This phenomenon shows that share ownership disputes cannot be considered solely as administrative or contractual issues, but as juridical conflicts that touch on

fundamental aspects in company law and civil law. [3] In this framework, Supreme Court Decision No. 2669 K/Pdt/2025 is relevant for analysis, because the case presents a debate on the validity of the status of share ownership as well as a test of elements of unlawful acts within the company's internal scope. The decision not only reflects the dynamics between *judex facti* and *judex juris*, but also shows how the Supreme Court assesses the accuracy of the application of the law by *judex facti*, especially in the application of evidentiary law and company law in relation to the principle of civil liability, which at the same time shows the difference in judgment between the court of first instance and the appellate court and the Supreme Court in interpreting the validity of evidence and the application of legal norms. [4]

On Supreme Court Decision Number 2669 K/Pdt/2025, The Supreme Court conducted a comprehensive evaluation of the validity of share ownership and the implications of the transfer of shares in PT Tapak Bimo Group by placing the problem within the legal framework of civil and

corporate law in a systematic manner. The subject of the dispute at the cassation level is related to Suyana's claim as the Respondent of Cassation who stated that he owns 50% of the shares based on the Collective Share Certificate dated September 4, 2017, as well as the legal consequences for the absence of the Cassation Petitioner at the invitation of the GMS-LB. The Supreme Court considered that the Judex Facti decision of the Semarang High Court was wrong in the application of the law, referring to Article 1865 of the Civil Code which affirms the principle of *Actor Incumbit Probatio*, namely the burden of proof is on the party who claims to have the right. Since Suyana claims ownership of 50% of the shares, the obligation of valid and convincing proof is entirely on her.

At the PN level, judex facti received evidence in the form of a Collective Share Certificate signed by the President Director at that time, as well as referring to the Company's Deed of Establishment which listed Suyana as one of the founders, thus stating that the share ownership was proven. However, the Supreme Court considers that the application of the law of proof by Judex Facti is inappropriate because Article 1888 of the Civil Code emphasizes that the power of proof of a letter depends on the original document, while the evidence submitted is only in the form of a photocopy of the certificate without original documents or other supporting evidence. In civil proof law, photocopying without original documents does not have perfect evidentiary power due to the element of authenticity (*Authenticity*) is not met. Therefore, the Supreme Court considered that PN and PT were wrong when making the photocopy as the basis for acknowledging 50% share ownership.[3]

Although this study uses a framework *lex specialis derogat legi generali* As one of the cornerstones of the analysis, it is necessary to conduct a more critical test of the validity of the application of the principle in the context of proving share ownership. Bases *lex specialis* only occurs when there are two norms that govern the same object but are opposite to each other. In this case, the PT Law does not contain norms that explicitly deviate from Article 1888 of the Civil Code. Article 50 of the PT Law which regulates the Register of Shareholders is administrative, namely requiring the board of directors to conduct recording, but does not specifically regulate the evidentiary value of DPS in civil disputes in court. Thus, the relationship between the two is more appropriately understood as a complementary relationship than a normative conflict: the PT Law regulates the formal mechanism for listing shares, while the Civil Code regulates the standard of proof before the court. Both apply cumulatively without overriding each other. The implication is that the Supreme Court in the a quo decision does not actually apply the principle *lex specialis*, but applying the principle of general proof which is actually consistent with the spirit of the PT Law itself which requires official registration as the basis for the validity of share ownership.

When studied comprehensively, the *a quo* Not only does it raise the problem of proof at the technical level, but it also opens up a space for discourse on the potential conflict of principles between civil law and company law. This dispute confronts the company's legal regime as *lex specialis* with the provisions of proof in the Civil Code as *Lex Generalis*. [4] On

the one hand, Law Number 40 of 2007 concerning Limited Liability Companies specifically regulates the mechanism for proving share ownership through the Register of Shareholders, capital deposits, and governance of the company's organs. On the other hand, the Supreme Court in the case emphasized the application of the general evidentiary principle as stipulated in Article 1865 and Article 1888 of the Civil Code.

In addition, the decision shows a normative tension between the formalistic approach in evidentiary law and the principle of substantive justice in shareholder protection. The emphasis on the authenticity of documents and administrative aspects has the potential to contradict the reality of legal relations that have factually taken place. From a theoretical perspective, there is also a debate about whether the company's internal disputes should be analyzed in the construction of unlawful acts based on Article 1365 of the Civil Code, or more appropriately placed in perspective *fiduciary duty*, the principle of prudence, and good corporate governance (*Good Corporate Governance*). [5]

Based on this complexity, this study focuses on two main interrelated dimensions. First, the juridical dimension related to the validity of ownership and transfer of shares, including critical testing of the relationship between the company's legal provisions and the evidentiary principle in civil procedure law whether the relationship between the two is a normative conflict resolved through the principle of *lex specialis derogat legi generali*, or is it complementary and applies cumulatively. Second, an analysis of the application of elements of unlawful acts in the company's internal disputes, by emphasizing the methodological separation between the legal standing test as a formal requirement for the lawsuit and the testing of the material elements of PMH, as well as the limits of civil liability that can be imposed on the company's organs. In both dimensions, the value framework *Triadic Radbruch* is used as an analytical knife to assess the consistency and balance between legal certainty, fairness, and utility in the judgment under review. Through this study, it is hoped that a more comprehensive understanding of the normative boundaries between shareholding disputes and legal responsibilities in Limited Liability Companies will be obtained, as well as contribute to the discourse on the harmonization of corporate law and civil law in Indonesian judicial practice. [6]

II. RESEARCH METHODS

This research is a normative legal research (normative juridical) that focuses on the study of legal norms that regulate the validity of ownership and transfer of shares in a Limited Liability Company as well as the application of unlawful acts in internal disputes of the Company. The approach used includes the legislative approach (*Statute approach*), conceptual approach (*conceptual approach*) and case approach (*Case Approach*), with the main object analyzed is Supreme Court Decision Number 2669 K/Pdt/2025.

The legal materials used consist of primary legal materials in the form of laws and regulations, especially Law Number 40 of 2007 concerning Limited Liability Companies and Article 1365 of the Civil Code, as well as relevant court

decisions. In addition, secondary legal materials are used which include literature, doctrine, and scientific journals related to company law and unlawful acts. The collection of legal materials is carried out through literature research (*Library Research*).[7]

Analysis of legal materials is carried out qualitatively with a prescriptive method, namely legal research (especially normative) is an approach that aims to provide assessments, suggestions, or solutions about what should be (*Das Sollen*) according to the law on a legal issue. This research focuses on norms, principles, and doctrines to solve problems, not just describe facts.

III. RESULTS AND DISCUSSION

A. The validity of ownership and transfer of shares in a limited liability company is reviewed from the principles of civil proof and the provisions of the Limited Liability Company Law in the Supreme Court Decision Number 2669 K/Pdt/2025.

The legal event that occurred began with the Plaintiff together with Marsidi and the Defendant establishing PT Tapak Bimo Group based on the Deed of Establishment Number 07 dated November 9, 2016. In the deed, the structure of the company's organs is determined, namely Marsidi as President Director, Defendant as Finance Director, and Plaintiff as Commissioner. Based on the Collective Share Certificate dated September 4, 2017, the composition of the share ownership was stated to consist of Marsidi 25%, the Defendant 25%, and the Plaintiff 50%. The dispute regarding the share ownership of PT Tapak Bimo Group began with Suyana's claim as a commissioner who stated that he owned 50% of the company's shares based on the Collective Share Certificate. Suyana considered that his rights as shareholders and commissioners were violated because the Defendant, Any Rochiyani, did not attend the Extraordinary General Meeting of Shareholders (GMS-LB) held to discuss the replacement of the deceased President Director. At the first level at the Ungaran District Court and the appeal level at the Semarang High Court, the judge considered that the evidence of share ownership and the position of the commissioner was sufficient, so that the Defendant was declared to have committed an Unlawful Act (PMH) based on Article 1365 of the Civil Code and was required to pay material damages. The decision of the PN and PT focuses on the protection of the substantive rights of shareholders by considering that a photocopy of the Collective Share Certificate is sufficient as evidence, and considers that Suyana still has legal capacity as a commissioner so that he has the right to sue, this approach emphasizes substantive justice over formal certainty. On the contrary, the Supreme Court assessed differently by emphasizing the formal provisions of the Limited Liability Company Law and the principle of formal proof.[8] The Supreme Court rejected all lawsuits because the proof of share ownership in the form of a photocopy of the certificate was not valid enough without original documents or other evidence, and at the time of the GMS-LB, Suyana no longer had the position of commissioner according to the Company's Deed of Establishment so that it did not have legal capacity (*Legal Standing*) to demand. This difference in

assessment shows a clash between *lex specialis* (Company Law) and *Lex Generalis* (Civil Code), as well as the tension between the formalistic approach of proof and substantive justice.

In addition, based on Law Number 40 of 2007 concerning Limited Liability Companies, share ownership is not enough to be proven only through share certificates. Article 50 of the PT Law requires the Board of Directors to hold a Register of Shareholders (DPS) which officially contains the identity and number of shares of each holder. DPS is the main and authentic evidence in determining the legitimate party as a shareholder. PN and PT emphasize more on share certificates and the facts of the company's establishment, so that the recording in the DPS is not analyzed in depth, which according to the Supreme Court weakens the claim of legal share ownership. Furthermore, Articles 33 and 34 of the PT Law stipulate that every issued share must be fully paid up according to the nominal value and the deposit must be legally proven. In this case, there is no strong evidence regarding the 50% capital deposit by Suyana, the evidence submitted is only a photocopy of the certificate without the support of a capital deposit, DPS recording, or other original documents, so the claim of share ownership does not have an adequate basis for proof.

In the perspective of Gustav Radbruch's Legal Theory, a good legal system must be able to integrate three fundamental values in a balanced manner, namely justice (*Entitlement*), benefits (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*). Radbruch does not place legal certainty as the highest value that always outperforms the other two values, but rather recognizes that all three are in a permanent tension (*Spannungsverhältnis*) and must be balanced according to the context. Furthermore, Radbruch explicitly states that when positive law produces intolerable injustice (*unerträgliche Ungerechtigkeit*), then justice must take precedence over legal certainty, a proposition known as Radbruch's Formula.[9] In the context of the Supreme Court's Decision Number 2669 K/Pdt/2025, the Supreme Court's emphasis on formal legal certainty through strict evidentiary standards and legal standing requirements can be justified from the perspective of the *Rechtssicherheit* because it provides predictability in the company's dispute resolution. However, if the Plaintiff factually co-founded the company and is historically recognized as a shareholder by the co-founder, then the rejection of the lawsuit solely due to the absence of original documents and the expiration of the term of office of the commissioner has the potential to result in substantive injustice that is contrary to the values of *Gerechtigkeit* in the Radbruch triad. Thus, the Supreme Court's decision reflects the choice of legally valid values, but does not fully integrate the balance between the three Radbruch values, and the Indonesian company's legal system in the future needs to consider a more adequate protection mechanism for parties who face administrative weaknesses in document recording without compromising the standards of legal certainty that have been established.[10]

Normatively, the Limited Liability Company Law emphasizes that share ownership must be proven through official registration and legal documents, while the position of

commissioners and directors is formal, determined by the deed of establishment and the resolution of the GMS. On the contrary, the Civil Code provides the principle of PMH, namely the responsibility of the party who commits the act of violating the rights of others and causing losses. The analysis shows that the PN and PT emphasize substantive justice by considering that the ownership documents are sufficient to prosecute so that the Defendant's actions are qualified as PMH, while the Supreme Court emphasizes formal legal certainty, assesses that the ownership of shares is not proven to be valid without original documents or official registration, and the legal capacity of the commissioner must be clear so that the elements of PMH are not met. In the context of the responsibility of the company's organs, this case shows that PMH can only be applied if the ownership of shares and legal position are proven, so that the civil liability of the company's organs arises only when the act is detrimental to a party with valid legal rights and legal capacity. The Supreme Court affirmed that PMH cannot be applied widely without a valid basis for legal shareholding and legal standing, emphasizing formal legal protections to prevent internal disputes that cannot be officially proven.

Thus, the settlement of ownership disputes and the transfer of shares must refer to the Limited Liability Company Law as *lex specialis*, while the PMH principle of the Civil Code only applies if the shareholders and commissioners have a valid formal position and proof of share ownership in accordance with the Company Law. This analysis emphasizes the tension between substantive justice that is prioritized by PN/PT and formal legal certainty that is prioritized by the Supreme Court. The Supreme Court emphasized formal legal certainty to prevent disputes that cannot be officially proven. The practical implication of this decision is that shareholders are obliged to ensure that the stock documents are recorded and legally valid, the commissioner or director can only sue PMH if they have an official legal standing, and the company's internal disputes cannot be resolved only based on a sense of justice or photocopies of documents, but must follow formal procedures of the Company Law to ensure legal certainty and prevent internal conflicts from recurring.

B. Application of Unlawful Acts and Civil Liability That Can Be Imposed on Company Organs

Before assessing whether all elements of Article 1365 of the Civil Code are fulfilled in a quo case, it is necessary to first emphasize that legal standing and material elements of unlawful acts are two layers of analysis that must be methodologically separated. Legal standing or legal capacity (*persona standi in judicio*) is a formal condition that determines whether a person has the right to file a lawsuit before the court, while the elements of PMH in Article 1365 of the Civil Code are material conditions that determine whether a claim for damages can be granted.[11] The absence of legal standing should result in the lawsuit being declared inadmissible (*declared inadmissible*) at the formal level, not stated rejected (*Denied*) on the basis of the non-fulfillment of the material elements of PMH. The construction of the Supreme Court's decision that combines these two layers needs to be criticized because it has the potential to create confusion between the formal defect and the material defect of the lawsuit

which in turn weakens the consistency of legal reasoning in the decision. A firm separation between these two layers is important not only for the dogmatic consistency of the civil procedure law, but also for the sake of clarity to the parties as to the legal basis for the rejection or rejection of their claims.

The application of elements of unlawful acts in shareholding disputes in the Supreme Court Decision Number 2669 K/Pdt/2025 was analyzed by referring to Article 1365 of the Civil Code which requires the fulfillment of four elements cumulatively, namely the existence of unlawful acts, the existence of errors, the existence of losses, and the existence of causal relationships between these acts and losses.[6] In the a quo case, the Plaintiff postulated that the Defendant's actions of not attending the invitation of the GMS-LB and other actions in the management of the company constituted an unlawful act that harmed him as a shareholder by 50%. Therefore, the Supreme Court first tests whether the Plaintiff's legal position as a shareholder and/or commissioner is legally proven, considering that this status is the basis for determining whether or not there is a violation of the claimed subjective rights.

In the Supreme Court Decision Number 2669 K/Pdt/2025, the Ungaran District Court, which was upheld by the Semarang High Court, accepted the argument that the Plaintiff was a Commissioner as well as a holder of 50% of the shares, so his not involvement in the EGMS was seen as an unlawful act. However, at the cassation level, the Supreme Court stated that the Plaintiff was not proven to have legal capacity as a Commissioner at the time of the EGMS on September 29, October 9, and October 12, 2023, by referring to the Deed of Establishment of PT Tapak Bimo Group Number 07 dated November 9, 2016 which stipulates the term of office of commissioners for five years. Since this capacity was not proven to be legally valid at the time of the dispute, the Plaintiff's non-involvement in the GMS cannot be qualified as an unlawful act.

When analyzed using Article 1365 of the Civil Code, the claim for compensation on the basis of unlawful acts requires the fulfillment of four cumulative elements, namely the existence of unlawful acts, the existence of errors, the existence of a causal relationship between acts and losses, and the existence of losses. The elements of unlawful acts include actions that violate the law, violate the subjective rights of others, are contrary to the legal obligations of the perpetrator, are contrary to morality, or are not in accordance with the proper attitude of prudence in society.[12] In this case, the court of first instance considered that the Defendant had taken active actions in the form of managing and administrative processes of land acquisition owned by the company affected by the Bawen-Jogja Toll Road project, carrying out these actions without involving or coordinating with the Plaintiff as a 50% shareholder and Commissioner, and did not attend the invitation of the Extraordinary GMS after the death of the President Director. The action is seen as *Actus Reus* Because it is a concrete act in the management of the Company's assets that can be tested for legality, so that the elements of the act are considered fulfilled.

Furthermore, the element of error is considered to be fulfilled in the form of negligence or neglect of legal obligations in the company's governance. Although no

malicious intent was found, the judge argued that after the death of the President Director, the company's organs should be rearranged through the GMS mechanism.[13] The Defendant's absence at the Extraordinary GMS and the continued management of assets is considered not in line with the principles of good corporate governance, so that the fault is considered to exist because the action is seen as not in accordance with the legal obligations that govern the mechanism of the company's organs.

The element of causality relationship is also considered to be fulfilled because asset management without a GMS mechanism and without involving the Plaintiff as a 50% shareholder can rationally affect the value of the company's assets and shares. In a theoretical perspective *adequate causality*, an act is considered to have legal consequences if it can reasonably and logically cause the postulated loss.[14] Because the company's assets determine the value of the shares, the action is considered to have the potential to hamper the Plaintiff's economic rights. The element of loss is based on the recognition that the Plaintiff is the holder of 50% of the shares based on the Collective Share Certificate dated September 4, 2017, so that it has a direct interest in asset management and strategic decision-making of the company. The loss does not have to be real, but is sufficient in the form of a reasonable potential to affect the economic value of the shares, so that the court of first instance and the appeal granted compensation of 50% of the value of the assets according to the proportion of the shares as a form of restoration of rights (*restitutio in integrum*).

However, in Supreme Court Decision Number 2669 K/Pdt/2025, the Supreme Court stated that the construction of the unlawful act depends on the assumption that the Plaintiff is a legitimate shareholder and Commissioner. Because at the cassation level the legal status is not proven, the basis for a violation of rights becomes lost. Without a legitimate right, the unlawful element was not met, so the Supreme Court overturned the previous ruling and declared the lawsuit unconstitutional.

In perspective Theory of Unlawful Acts (*tort*) that has developed since the verdict *Lindenbaum vs Cohen*, unlawful acts are not only interpreted as violations of the law, but also include violations of the subjective rights of other parties, contrary to legal obligations, morality, and the principles of propriety and prudence in social life.[15] In the context of the Supreme Court Decision Number 2669 K/Pdt/2025, the approach of the District Court and the High Court that qualifies the Defendant's actions as an unlawful act reflects the application of the concept of PMH in this broad sense. The action of managing the company's assets without going through the GMS mechanism and without involving parties who are seen as shareholders is considered contrary to the principles of prudence and good corporate governance, so that it is substantively considered to violate propriety and potentially harm the interests of shareholders, even though it is based on evidence that has not fully met formal standards.[16]

However, the Supreme Court at the cassation level emphasized that the implementation of PMH still requires the existence of Legitimate subjective rights as a basis for legal protection. In the construction of PMH theory, violations of

subjective rights are fundamental elements and cannot be ignored. Therefore, when the Plaintiff's status as a shareholder and commissioner cannot be legally proven, there are no rights violated, so that the element of unlawful acts is not fulfilled. Thus, this analysis shows that even though an action can be factually considered inappropriate, its qualification as a PMH still depends on the existence of a clear legal standing, so that legal certainty in proof becomes a determining factor in assessing the civil liability of the company's organs.

IV. CONCLUSIONS

The dispute over the shares of PT Tapak Bimo Group as reflected in the Supreme Court Decision Number 2669 K/Pdt/2025 shows two fundamental juridical issues that are interrelated and require a more structured discussion than just a conflict between substantive justice and formal legal certainty. First, regarding the validity of ownership and transfer of shares, this decision emphasizes that proof of share ownership cannot be based on a photocopy of a share certificate without original documents or recording in the Register of Shareholders as required by Article 50 of the PT. However, the relationship between the PT Law and the Civil Code in the context of proof is more appropriately understood as a complementary relationship rather than a normative conflict resolved through the principle of *lex specialis derogat legi generali*. The PT Law regulates the formal mechanism for listing shares while the Civil Code regulates the standard of proof before the court, both of which apply cumulatively and complement each other. From Radbruch's triadic perspective, the Supreme Court's decision reflects the choice of legal certainty value that is valid but contains a cost of justice that cannot be ignored, considering that the party who factually co-founded the company has the potential to lose legal protection solely due to administrative weaknesses in document recording. Second, regarding the application of unlawful acts, the analysis shows that legal standing and the material elements of PMH are two layers of analysis that must be separated methodologically. The absence of legal standing should result in the lawsuit being declared unacceptable at the formal level, without immediately dropping the assessment of the material elements of PMH. Without a firm separation between these two layers, the consistency of legal reasoning in judgments becomes susceptible to conceptual confusion between the formal defects and the material defects of the lawsuit. Thus, effective legal protection for shareholders requires not only the completeness of administration and official records, but also the clarity of the construction of legal reasoning from the court in assessing the company's internal disputes. Based on the analysis above, there are several suggestions that can be put forward. For shareholders and the company's organs, it is recommended to ensure that the ownership of shares, positions in the company's organs, and all supporting documents are officially and legally recorded in accordance with the provisions of the PT Law, considering the strict formal evidentiary standards as applied by the Supreme Court make administrative completeness an absolute prerequisite for effective legal protection. Application *Principles of Good Corporate Governance* through transparency, compliance with

GMS procedures, and formal documentation of decisions is a preventive step that cannot be ignored. For judges, it is recommended to make a firm separation between testing legal standing as a formal requirement and testing elements of PMH as a material requirement, so that the resulting decision has a consistent reasoning construction. In addition, legal considerations should not stop at justifying legal certainty alone, but also explicitly consider the dimension of substantive justice as required by the value framework *Triadic* Radbruch. For lawmakers, the results of this analysis signal that the PT Law needs to consider more explicit provisions regarding the evidentiary power of the Register of Shareholders and share certificates in civil disputes, as well as a protection mechanism for founding shareholders who face administrative weaknesses in the recording of documents as part of the company's legal reform agenda in the future.

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