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Legal Certainty in Collateral Seizure of Digital Shares from Public Companies

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This study aims to enable us to find out the provisions contained in the confiscation of guarantees on shares, and the execution mechanism based on applicable positive law in order to obtain legal certainty in the practice of implementing the confiscation of guarantees on shares. The method in this study is normative, with descriptive analytical research specifications. Data analysis was carried out using a qualitative normative method. The results of the study show that, first, the provisions that apply to the attempt to confiscate the shares are the provisions in Article 227 paragraph (1) of the HIR, so that the confiscation can be carried out as long as it fulfills the basic elements stipulated in the article. The object is vague and sees the developing trend in the judiciary that courts will generally reject applications for confiscation of shares if the confiscation request does not clearly state their identity. The confiscation of digital stock guarantees is only hampered by the confiscation of go public shares, because the shares are on the Stock Exchange. If it is related to the issue of the confiscation of shares in Book II of the Administrative and Technical Guidelines for General Civil Courts Number 11, basically it is legal to confiscate the shares but in practice it is known that it will be difficult to carry out, because it is necessary to register them with the Ministry of Law and Human Rights because there is no series on the shares. Therefore, the confiscation is not effective because there are difficulties in identifying the shares on the Stock Exchange. So that in achieving legal certainty, it is necessary to have a national procedural law product in the form of a law (wet) that can accommodate all legal dynamics in Indonesia. Then, in the future, with the creation of products of civil procedural law in the future, there will be the creation of legislation products in the legal certainty of the practice of implementing collateral confiscation on shares in the context of resolving existing disputes.

Keywords: confiscation, execution, guarantee seizure, legal certainty, stock

INTRODUCTION

In its implementation, sequestration (*sita jaminan*) is a measure taken to enforce civil court decisions. The term sequestration consists of two words, *sita* and *jaminan*. Sequestration is a legal action taken by a judge to secure assets involved in a dispute at the request of one of the conflicting parties. Meanwhile, according to Hartono Hadi Suprapto, *jaminan* (guarantee) is something given to a creditor to create confidence that the debtor will fulfill obligations that can be valued in monetary terms arising from an engagement (Devi, 2019).

When combined, sequestration (*sita jaminan*) refers to the seizure of goods owned by the defendant in a dispute related to ownership status, compensation claims, and debts. Within its scope, sequestration is divided into several forms. Among these are sequestration of the defendant's assets and sequestration of the plaintiff's assets. The issue of sequestration is closely linked to the matter of the object or property being requested, as there are specific regulations that limit the ability to perform sequestration. One such example is shares. Shares are defined as certificates of participation or

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ownership of an individual or entity in a company that issues those shares (Agustianto, 2009).

Shares are defined as certificates indicating that an individual has capital in a company, meaning that the person owns assets in the company as a result of their share ownership. According to Kansil, shares represent participation in a company's capital, with the division of capital into shares regulated by the Articles of Association, which are part of the Deed of Establishment of the Limited Liability Company (Kurniawan, 2014). Shares can be subject to sequestration because, under Article 511 of the Indonesian Civil Code (*KUHPerdata*) in conjunction with Article 503 of the Indonesian Civil Code, shares are considered movable intangible assets. The regulation of shares as objects of sequestration is also stipulated in Article 227 paragraph (1) of the Indonesian Civil Procedure Code (HIR). Problems arise when there are regulations or guidelines conflicting with the implementation of share sequestration, such as Book II of the Technical Guidelines for General Civil Administrative and Judicial Procedures, which was enacted based on the Decree of the Chief Justice of the Supreme Court Number KMA/032/SK/IV/2006. These conflicting issues create uncertainty for judges in issuing sequestration orders involving shares.

This issue arises from the difficulty of implementing sequestration when shares are the object. Consequently, the scope of judges' actions is limited due to the National Working Meeting (*Rakernas*) held as a discussion forum by the Supreme Court of Indonesia and the Chief Judges, which affects decision-making related to share sequestration. From the perspective of the judges, who are the decision-makers in various disputes, an opinion has developed, evidenced by the outcomes of the *Rakernas*, which indirectly restricts judges' ability to make decisions regarding the seizure and sequestration of shares. The *Rakernas* clarified that an object of sequestration can only be seized if the item to be seized is clearly identified, detailing the identity of the item, including the name of the holder, the quantity, and the place of registration. Therefore, the application of sequestration on shares must detail the identity of the shareholder, the serial number, the price or value of the shares, the date of acquisition, and the number of shares to be seized.

In its development, there has been a tendency in courts to reject requests for sequestration of shares if the request does not clearly specify the identity of the shares. Such requests may be considered vague and thus not subject to sequestration. Additionally, there are reasons why judges are often not permitted to impose sequestration on shares. This article will focus on digital shares obtained from public companies. A public company is one that offers business ownership to the public. In Indonesia, a company that successfully offers shares to the public through the Indonesia Stock Exchange is considered a public company. One of the many benefits of being a public company is the substantial funding it can secure due to the dynamics of investor demand and supply determining stock prices on the exchange. Share prices can rise as more investors become interested in buying them. Meanwhile, digital shares are shares owned by investors and purchased through digital applications. For example, if someone buys shares from a public company through a digital app such as Ajaib, those shares are considered digital shares. Besides discussing the legal certainty of sequestration in the judiciary, this paper will also explore the legal certainty of sequestration practices on digital shares obtained from public companies.

METHOD

Research is an activity involving the selection of a title, formulation of a problem, followed by the collection, processing, presentation, and analysis of data conducted systematically and efficiently using scientific methods. The results are useful for understanding a situation or problem in the effort to advance knowledge or to make decisions aimed at problem-solving (Supranto, 1997)

This study employs normative legal research. Normative legal research is a process aimed at discovering legal rules, principles, and doctrines to address the legal issues encountered. The approaches used in this research include the statute approach and the historical approach. The data utilized in this study are secondary data obtained through library research, encompassing both legal sources and legal science literature.

The materials used in this study are:

1. Primary Legal Materials.
2. Secondary Legal Materials: legal writings, legal doctrines, and related research findings.

3. Tertiary Legal Materials: legal encyclopedias and legal dictionaries.

Subsequently, all the data is processed and analyzed using the qualitative analysis technique, which involves analysis using qualitative measures. The reasoning process involves drawing conclusions using deductive reasoning, starting from general propositions whose truth has been established (known or axiomatic) and ending with a specific conclusion (new knowledge).

The researcher managed all the data through data management techniques as follows.

1. Data Reduction Data reduction involves the selection, sorting, and simplification of obtained data. Reduced data provides a more specific overview and facilitates researchers in further data collection and searching for additional data if needed.
2. Data Presentation After data reduction, the next step is data presentation. Data presentation aims to organize data and arrange it in relational patterns for easier comprehension. Data can be presented in narrative form, charts, relationships between categories, and flowcharts. This organized data will eventually be used to draw conclusions.
3. Drawing Conclusions or Verification This stage involves drawing conclusions from all the data obtained in the study. Drawing these conclusions marks the final stage of data processing.

RESULTS AND DISCUSSION

Seizure of Collateral on Shares and Its Position in Judicial Proceedings

Seizure of collateral is one effort to secure rights by seizing movable and immovable property owned by the Defendant, ensuring that a ruling in favor of the applicant for seizure is not illusory.8 Seizure of collateral is carried out in cases of default claimed by the plaintiff, as the plaintiff feels a loss, and the goods are then used as security for payment so that the plaintiff's claim is not illusory or futile. The provisions for seizure of collateral are found in Article 227 of the Indonesian Civil Code (HIR-S.1941 No.44). In paragraph (1) of Article 227, it is stated that: if there is a reasonable suspicion that a debtor, before a decision is made against them or before a decision against them can be enforced, intends to conceal or remove their movable or immovable property to evade debt collection, then upon request from an interested party, the chief judge of the district court may issue an order for seizure of the property to protect the rights of the requesting party. The requester must be notified to appear at the first district court session thereafter to advance and substantiate their claim. The party referred to in this article is the creditor who has a claim against the party from whom seizure of collateral is requested.

The rights referred to in the aforementioned article are the rights of creditors, whether ordinary creditors or preferred creditors. Security under Article 1131 of the Civil Code is general and applies to all creditors. Meanwhile, Article 1132 of the Civil Code permits special and prioritized security rights, such as Mortgage Rights, formerly known as Hypothecs. The purpose of collateral seizure is to protect existing rights, not to create or grant new rights. Therefore, since the entirety of the debtor's assets, both movable and immovable, whether existing or future, serve as collateral for all creditors, every creditor has the right to request the seizure of collateral over the debtor's entire assets, whether secured specially and prioritized or not. In cases involving claims for payment of a sum of money, seized assets remain intact until a legally binding judgment is made. Thus, if the defendant does not voluntarily fulfill the payment obligation, payment can be enforced by selling the seized assets through public auction (executorial *verkoop*). It is evident that the primary purpose of seizure is to ensure that the plaintiff's claim is not illusory or unenforceable when the judgment is enforced (Yahya, 2005). The position of collateral seizure is crucial to ensure the payment of claimed amounts is secured.

Seizure of collateral is a preparatory action to ensure the enforceability of a civil judgment. The issue of collateral seizure is closely linked to the object or item requested for seizure, as there are specific provisions limiting such actions, one of which is shares. Shares are defined as part of the capital of a Limited Liability Company with a certain nominal value (Sastrawidjaja & Mantili, 2008). Shares are classified as intangible movable property, as regulated in Article 511 of the Civil Code in conjunction with Article 503 of the Civil Code (Meliala, 2015). Digital shares, on the other hand, are shares owned by investors and invested through digital applications. Digital shares have become

increasingly popular, as evidenced by the trend of purchasing shares from publicly listed companies via digital banking apps, such as the Ajaib application.

Shares can be used as objects of collateral seizure under the conditions stipulated in Article 227 paragraph (1) of the HIR, which allows for seizure if there is a reasonable suspicion that the shares will be concealed or transferred by the Defendant. Due to their intangible nature, judges may have reservations about accepting shares as collateral for seizure. When the judges order collateral seizure involving shares, it impacts the practical implementation, leading to inconsistencies in court decisions due to the difficulty of approving collateral seizures with shares as the object. This inconsistency creates ambiguity within the national judicial system (Gerchikova, 2020).

An object of seizure can only be seized if it is clear what item is to be seized and must detail the identity of the item, including the name of the holder, quantity, and place of registration (Balaga, 2004). The determination of collateral seizure on shares must specify the identity of the shareholder, the serial number, the price or value stated in the shares, the date the shares were acquired, and the number of shares to be seized. Due to the ambiguous nature of the object and the prevailing trend in the judiciary, courts generally reject applications for collateral seizure on shares if the request does not clearly state the identity of the shares. This statement is further reinforced by the reasons outlined in Book II of the Supreme Court, which specify why judges are not permitted to order collateral seizure on shares.

The diverse regulations regarding collateral seizure, especially for digital bank shares in publicly traded companies, are unclear and create ambiguity among law enforcement officials. It is hoped that the government will formulate a rigid regulation governing this matter and its execution mechanism. The government should also consider revising and incorporating provisions on collateral seizure and its regulations into the Draft Civil Code (*RUU KUHPerdata*). To achieve legal certainty, there is a need for a national civil procedure law in the form of legislation (wet) that can accommodate legal dynamics, given the current dualism in civil procedure law. Once codified into legislation, legal certainty will be achieved in the practice of collateral seizure on shares in the context of resolving civil procedure disputes. The Civil Procedure Law, which is currently in the 2022 National Legislation Program (*Prolegnas*), should also accommodate interests that have not been clearly regulated, such as the collateral seizure of shares discussed here.

Execution of Collateral Seizure Process and Legal Certainty in Judicial Practice

The practice of collateral seizure is an effort to secure the rights of the plaintiff when a court decision is in their favor, a practice that has been recognized since the use of the *Herzien Inlandsch Reglement* (HIR). The panel of judges, in ordering the seizure of the plaintiff's property, must carefully consider the quantity of the seized items and their relation to the compensation value claimed by the plaintiff. This measure ensures that the seizure of the defendant's movable property is not excessive.

In the practice of collateral seizure in court proceedings, a judge should not base their considerations solely on Book II of the Technical Guidelines for General Civil Administration and Judiciary. Instead, they should refer to the primary rules or actual sources of law, identifying the legal basis or regulations that underpin the content of Book II. For example, if Book II references the HIR (*Herzien Inlandsch Reglement*), then the HIR should be the primary basis for decisions on collateral seizure of shares, not Book II itself. This approach ensures adherence to the fundamental legal sources and prevents legal or ethical sanctions for non-compliance with Book II.

In practice, Book II serves as an auxiliary guide for judges who may be unfamiliar with certain legal aspects. During the National Working Meeting (*Rakernas*) of Shareholders, it was suggested that the identification and quantity of movable assets subject to collateral seizure should be detailed more precisely, including the name of the holder, quantity, and place of registration. However, *Rakernas* holds a position outside the positive law applied in Indonesia.

According to Bagir Manan, *Rakernas* represents an organizational culture that generates new ideas and directions, evaluations, experiences, emerging issues, and planned actions for the coming year. Additionally, the *Rakernas* represents a push towards the modernization of the judiciary, which is essential as the Indonesian judiciary faces the challenges of modernization in the future.

The purpose of the *Rakernas* is to discuss and resolve existing juridical technical issues, aiming to enhance the quality of judicial decisions and the professionalism of judges. This is crucial

because courts at various levels, including the Supreme Court, often issue contradictory decisions in similar cases. Therefore, such decisions need to be harmonized through *Rakernas*. This indicates that *Rakernas* aims to align perceptions within the judiciary across different levels. However, the panel of judges should not base their decisions solely on *Rakernas* outcomes; judicial decisions should be founded on clear legal reasons and principles. Legal reasoning should be substantiated by legal sources to justify the approval or rejection of a decision. In positive civil procedure law, Supreme Court decisions can serve as jurisprudence for judges, while *Rakernas* serves as a forum for discussing and resolving issues in decision-making.

Even if a judge verbally states that a case can be rejected because it is not aligned with *Rakernas*, this cannot be considered a valid legal basis for rejecting a case. Instead, the panel of judges should provide written decisions with clear legal grounds for rejecting the application for collateral seizure of shares, particularly if the object in question is not clearly described. According to the guidelines in Book II of the Technical Guidelines for General Civil Administration and Judiciary, Section Y, point 11: "Judges do not order the seizure of shares," and point 12: "The blocking of shares is carried out by Bapepam at the request of the Chief Judge of the High Court if it is related to a case."

Based on analysis, the applicable provision for requests for collateral seizure of shares in publicly listed companies on the stock exchange is that the blocking of securities is conducted by the OJK, not by a judge. Obstacles in the mechanism for executing collateral seizure of shares can occur with publicly listed shares, as they are on the stock exchange. Due to the difficulty in identifying shares in the stock exchange, which requires knowing the serial ownership number, a series of permits from relevant authorities is necessary. Once the shares to be seized are identified, the court will register them with the Ministry of Law and Human Rights through the bailiff to prevent their transfer.

The likelihood of the court or the panel of judges rejecting the application for collateral seizure of shares, especially if the ownership details are not clearly specified, despite strong reasons for the plaintiff to request the seizure, results in moral and material losses for the concerned parties and leads to legal uncertainty in resolving civil disputes. Regarding collateral seizure of shares, regulations should be created with legal certainty in line with Indonesia's legal aspirations. The lack of legislative awareness in creating legal products is an example of the absence of a Civil Procedure Code. Once such legislation is established, it will ensure legal certainty in the practice of collateral seizure of shares.

CONCLUSION AND SUGGESTION

Conclusion

The status of collateral seizure is crucial to ensure that the claims made in a lawsuit are secured and that the judgment can be executed. Issues arising from this process affect the implementation of decisions involving shares due to legal uncertainties faced by judges. In positive law, the status and provisions regarding the seizure of shares are regulated under Article 227 paragraph (1) of the HIR, which allows for collateral seizure based on a reasonable suspicion that the shares will be concealed or transferred by the defendant. However, given the intangible nature of shares, judges often have reservations about using them as collateral. This hesitation leads to inconsistency in court decisions and ambiguity in the national judicial system. In practice, the execution procedure for the seizure of shares in private companies does not encounter significant problems.

The challenges in the execution procedure for collateral seizure of shares arise primarily with publicly traded shares, as they are listed on the stock exchange. According to Article 227 HIR and the guidelines in Book II of the Technical Guidelines for General Civil Administration and Judiciary, while legally permissible, the seizure of publicly traded shares is difficult to implement due to the inability to identify the series of the shares. Thus, the seizure process is ineffective. The execution of the seizure of publicly traded shares, as regulated under Article 227 HIR, differs due to the scripless nature of these shares, complicating the physical enforcement of the seizure.

Suggestion

To achieve legal certainty, there is a need for national civil procedure legislation (wet) that accommodates legal dynamics, considering the current dualism in civil procedure law. Once

established, such legislation will provide legal certainty in the practice of collateral seizure of shares in resolving civil procedure disputes. The Draft Civil Procedure Code, currently in the 2022 National Legislation Program (*Prolegnas*), should also address interests that have not been clearly regulated, such as the collateral seizure of publicly traded shares. Additionally, due to the complexity of identifying publicly traded shares listed on the stock exchange, it is recommended to establish cooperation with the stock exchange to obtain the serial numbers of the shares.

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