The Legal Validity of a Foreign National Heir as a Debtor in the Suspension of Debt Payment Obligations (PKPU) Proceedings

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Abstract

Foreign national heirs often lack sufficient understanding of the Indonesian legal framework applicable to them, creating opportunities for parties acting in bad faith to exploit legal loopholes. When a shareholder passes away and is deemed to have outstanding obligations in the form of tantiem and/or bonuses, the heirs may become debtors in Suspension of Debt Payment Obligations (PKPU) proceedings if they are unable to satisfy such debts. This research employs a doctrinal legal research method using a library-based approach, relying on secondary data and primary legal sources. The findings indicate the need for a clearer understanding of, and limitations on, the granting of tantiem and/or bonuses by shareholders so that, if such payments have not yet become due or been realized, they should not automatically be classified as debts. This approach is intended to provide legal protection in situations where a shareholder dies and the heirs are subsequently required to fulfill obligations relating to the payment of tantiem and/or bonuses. Where the heirs are foreign nationals, particular attention should be given to the legal validity of their status as debtors in Suspension of Debt Payment Obligations (PKPU) proceedings when they are unable to settle the debts of the deceased. Such legal certainty is essential to ensure that the heirs' rights are protected while they fulfill their obligations in the administration and settlement of the deceased's estate.

I. Introduction

Inheritance is a legal event involving the transfer of property rights upon the death of an individual. Through this process, the persons who are legally entitled to inherit and the proportion of the estate to which they are entitled are determined in accordance with the law applicable to the deceased and the heirs, whether under the Indonesian Civil Code or Islamic inheritance law. The Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*) provides that heirs may inherit either by operation of law (*ab intestato*) or pursuant to a testamentary disposition (will). All heirs who are legally entitled to inherit are entitled to receive their respective shares of the estate as prescribed by the Indonesian Civil Code, without distinction based on gender or nationality. Accordingly, the difference in nationality between Indonesian citizens and foreign nationals does not preclude a person from acquiring inheritance rights and does not constitute an obstacle to the administration of the estate.

An estate is deemed to open upon the death of the deceased, at which point the inheritance may be distributed to the lawful heirs. The estate consists of the deceased's assets that are capable of being inherited, including movable and immovable property, tangible and intangible assets, as well as consumable and non-consumable property. In practice, assets commonly forming part of an estate include money, land, buildings, and shares. An estate comprises the net assets remaining after the execution of the deceased's will, the settlement of outstanding debts, and the payment of other related expenses. The debts of the deceased constitute legal obligations that must be discharged in order to satisfy the rights of creditors. Accordingly, the settlement of the deceased's debts is one of the primary obligations that must be fulfilled by the heirs before the remaining estate may be distributed among the beneficiaries.[1]

Where the deceased leaves outstanding debts that have not been fully settled, such debts may form part of the liabilities of the estate to be inherited. If the heirs are unable to satisfy these obligations, they may file a petition for **Suspension of Debt Payment Obligations (PKPU)** as provided under Article 222(2) of the Law on Bankruptcy and Suspension of Debt Payment Obligations. The provision states that;

> "A debtor who is unable, or reasonably expects to be unable, to continue paying debts that have fallen due and are payable may petition for a Suspension of Debt Payment Obligations (PKPU) with the intention of proposing a composition plan that includes an offer to pay all or part of the debts owed to creditors."[2]

PKPU enables debtors to negotiate with their creditors in order to reach a settlement agreement, thereby preserving business continuity and protecting the value of the debtor's assets while minimizing significant losses. As a legal mechanism for debt

[1] Eman Suparman, *Hukum Waris Di Indonesia,* (Bandung*: Refika Aditama*, 2018), hlm. 92.

[2] Undang-Undang tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, UU Nomor 37 Tahun 2004, LN Nomor Tahun 2004, TLN Nomor, selanjutnya disebut UUK-PKPU, Pasal 222 ayat (2).

restructuring, PKPU serves as an alternative to bankruptcy proceedings. Accordingly, a petition for PKPU must be filed before the court issues a declaration of bankruptcy.[3]

The payment of *tantiem* and/or bonuses derived from shareholders' dividends in a limited liability company, where such payments have been promised to certain individuals, is often regarded as an obligation that must invariably be fulfilled. As distributions originating from shareholders' dividends, the granting of *tantiem* and/or bonuses must take into account the company's financial condition and corporate cash flow. Nevertheless, the expectation that such payments will always be made frequently leads to the assumption that they constitute debts when they are not paid. Consequently, upon the death of the majority shareholder who had promised the *tantiem* and/or bonuses, these payments may be treated as obligations that the heirs are expected to fulfill. A recurring issue in inheritance cases involving foreign nationals is that heirs of foreign nationality often lack sufficient knowledge of the Indonesian inheritance laws applicable to them. In such circumstances, the heirs may assume the legal status of debtors in **Suspension of Debt Payment Obligations (PKPU)** proceedings arising from the debts of the deceased. This situation may occur because, upon acquiring the status of lawful heirs, they are unaware that the estate includes substantial outstanding debts that must be settled. This issue constitutes the primary focus of the present analysis.

2. Research Method

This study employs a doctrinal legal research approach. The doctrinal approach is conducted through the analysis of secondary data comprising both primary and secondary legal materials. The primary legal materials consist of applicable statutory regulations, including Law Number 40 of 2007 on Limited Liability Companies, Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, and the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata).

3. Results and Discussion

A. Facts of The Case

The late SS (hereinafter referred to as "the Deceased"), the founder of PT KY, passed away in 2001. The Deceased's son, ERPS, who served as the President Commissioner of PT KY, subsequently passed away in 2022. ERPS was survived by his wife, RBP, and ER from his second marriage, both of whom are currently Singaporean nationals. To date, no judicial determination of heirs has been issued with respect to ERPS. Consequently, RBP and ER have not yet been legally recognized

[3] Nugraha Budi Raharja dan Ariawan Gunardi, "Penundaan Kewajiban Pembayaran Utang (PKPU) dalam Hukum Kepailitan," *Jurnal Kewarganegaraan*, Vol. 7 No. 2, (2023), hlm. 2010.

as the lawful heirs of ERPS.

A petition for Suspension of Debt Payment Obligations (PKPU) was filed by AR, SP, IPS, and DKR, relying on Deed No. 78, the Deed of Establishment of PT KY, as the legal basis for the petition. Under the deed, the Deceased undertook to grant a bonus amounting to eighteen percent (18%) of his personal net profits to S, N, A, and M, who were his siblings and close friend. The deed did not specify the monetary value of the promised bonus; rather, it merely provided that such bonus would be granted for as long as the Deceased remained the majority shareholder. The payment of the bonus was not mandatory but was intended to be made only to the extent permitted by the profits generated. Nevertheless, the unpaid bonuses for the period from 2020 to 2022 were subsequently treated as outstanding debts. As a result, the heirs were alleged to be liable for the payment of these obligations in the amount of IDR 700,000,000,000 (seven hundred billion Indonesian rupiah).

B. Bonus Payments In A Limited Liability Company As An Inheritable Debt

The shareholders of a limited liability company may be either natural persons or legal entities and are, *de facto*, regarded as the owners of the company. Share ownership confers various rights upon shareholders, including the right to receive dividend distributions, as provided under Article 52(1)(b) of Law Number 40 of 2007 on Limited Liability Companies. Dividends constitute a distribution of the company's profits to shareholders on a *pro rata* basis and may be paid in the form of cash, temporary share certificates, or corporate assets.[4]

Dividends may only be distributed when the company has a positive retained earnings balance. Such distributions may be made after the Board of Directors has submitted the company's financial statements, which are subsequently reviewed and approved by the General Meeting of Shareholders (GMS) within a maximum period of six months, as stipulated in Article 66(1) of the Company Law. Once the amount of the company's profits has been definitively determined based on the accumulated retained earnings reflected in the company's balance sheet, as detailed in its financial statements, the amount of dividends distributable to each shareholder can also be determined.[5] Based on the financial statements, the General Meeting of Shareholders determines whether the company's net profits will be distributed entirely as dividends, allocated to statutory reserves, or used for other distributions, including *tantiem* for members of the Board of Directors and the Board of Commissioners and

[4] Irsyadilla Hafizh Heru Sadjarwo, "Kedudukan Hukum Kepemilikan Saham yang Diperoleh dari Hasil Saham Bonus terhadap Harta Bersama," *JUPIIS: Jurnal Pendidikan Ilmu-Ilmu Sosial*, Vol. 13 No. 1, (2021), hlm. 266.

[5] Yosephine Iglessya, "Tanggung Jawab Direksi Dalam Penetapan Pembagian Dividen Kepada Pemegang Saham," *Jurnal Notarius*, Vol. 2 No. 2, (2023), hlm. 412.

bonuses for the company's employees. The company is legally required to allocate a portion of its net profits to statutory reserves until such reserves amount to at least twenty percent (20%) of the issued and paid-up capital. This obligation arises only where the company has generated positive retained earnings.[6]

Where the company's net profits are to be distributed entirely as dividends, such distribution may be subject to limitations set forth in the company's articles of association, provided that their implementation does not contravene the provisions of the Law Number 40 of 2007 on Limited Liability Companies. Dividend distributions must be approved by a resolution of the General Meeting of Shareholders (GMS) and may only be made when the company has a positive retained earnings balance.[7] In certain circumstances, however, majority shareholders may prefer that the company's net profits be retained and reinvested in the company rather than distributed to shareholders as dividends.[8] Accordingly, it is necessary to distinguish the legal position of shareholders according to the class of shares they hold in order to determine their entitlement to dividend distributions. Shares are generally classified into two categories, namely:

1. Common Shares (Common Stock) are mandatory in every limited liability company and generally do not confer any special privileges upon their holders or grant preferential rights over other shareholders. Article 52(1) of the Company Law provides that holders of common shares are entitled to attend and vote at the General Meeting of Shareholders, receive dividend distributions and the remaining assets upon liquidation, and exercise other rights as provided under the Company Law.[9]
2. Preference Shares (Preferred Stock) confer special rights upon their holders. Such rights may include the authority to nominate members of the Board of Directors and/or the Board of Commissioners, as well as priority over other classes of shareholders in receiving dividend distributions.[10]

Dividends may be distributed in two forms, namely annual dividends and interim dividends. Annual dividends are distributions of the company's profits to shareholders that have been approved by the General Meeting of Shareholders for a particular financial year. Interim dividends are provisional dividend payments made

[6] *Undang-Undang Tentang Perseroan Terbatas*, UU Nomor 40 Tahun 2007, LN Tahun 2007 Nomor 106, TLN Nomor 4756, selanjutnya disebut UUPT, Pasal 70.

[7] UUPT, Pasal 71.

[8] *Ibid*., hlm. 413

[9] Munir Fuady, *Hukum Perusahaan Dalam Paradigma Hukum Bisnis (Berdasarkan Undang-Undang Nomor 40 Tahun 2007),* Cet. 3, (Bandung: PT Citra Aditya Bakti, 2008), hlm. 29-32.

[10] Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2018), hlm. 265-266.

before the company's annual profits have been formally determined and distributed.[11]

Meanwhile, the other forms of allocation of net profits contemplated under the Law Number 40 of 2007 on Limited Liability Companies include the payment of *tantiem* to members of the Board of Directors and the Board of Commissioners, as well as bonuses for the company's employees. *Tantiem* refers to a share of the company's profits awarded to members of the Board of Directors and the Board of Commissioners by the shareholders based on a specified percentage of the company's allocated profits, as provided under Article 71(1) of the Company Law.[12]

The granting of *tantiem*, or performance-based incentives, to members of the Board of Directors and the Board of Commissioners requires the approval of the General Meeting of Shareholders (GMS). Such awards are determined by taking into account various factors, including the achievement of corporate performance targets, the company's financial capacity, and other relevant considerations.[13] These factors are consistent with the Elucidation of Article 71(1) of the Company Law, which provides that any resolution of the General Meeting of Shareholders concerning the allocation of net profits must take into consideration the interests of the company and the principle of reasonableness. A bonus is an additional monetary payment granted to employees beyond their basic salary and is classified as non-wage income under Government Regulation Number 36 of 2021 on Wages. Such non-wage income includes religious holiday allowances, incentives, bonuses, compensation for work-related facilities, and service charges in certain business sectors.[14] The payment of bonuses is generally determined based on the employee's performance or the company's profitability at the end of the financial year.

The payment of *tantiem* and/or bonuses by a company to its employees may be based on various corporate circumstances and considerations. Circular Letter of the Minister of Manpower of the Republic of Indonesia No. SE-07/MEN/1990 on the Classification of Wage and Non-Wage Components does not explicitly specify the types of bonuses that may be granted to company employees. In practice, however, companies commonly provide several types of bonuses, including the following:

1. Retention Bonus, awarded to employees as an incentive to encourage them to remain with the company.

[11] *Ibid*., hlm. 293.

[12] UUPT, Penjelasan Pasal 71 ayat (1).

[13] PT Industri Telekomunikasi Indonesia (Persero), Sistem dan Alokasi Remunerasi Direksi dan Dewan Komisaris, hlm. 317.

[14] *Peraturan Pemerintah tentang Pengupahan,* PP Nomor 36 Tahun 2021, LN Tahun 2021 Nomor 46, TLN Nomor 6648, Pasal 8.

2. Annual Bonus, granted at the end of the financial year when the company achieves or exceeds the performance targets established in the preceding year's business plan.
3. Referral Bonus, awarded to employees who successfully recommend new employees for recruitment by the company.

In the present case, the deed does not specify the nature of the bonus promised by the majority shareholder. It merely provides that the beneficiaries would receive a bonus amounting to eighteen percent (18%) of the majority shareholder's personal net profits. Such payment may take the form of *tantiem* and/or a bonus derived from the company's profits and awarded by the majority shareholder either to members of the Board of Directors and the Board of Commissioners or to the company's employees in accordance with a specified percentage. This is consistent with Article 71(1) of Law Number 40 of 2007 on Limited Liability Companies, which provides that;
"The allocation of net profits, including the determination of the amount to be appropriated for reserves as referred to in Article 70(1), shall be decided by the General Meeting of Shareholders."[15]

Tantiem and/or bonuses are paid from reserves appropriated out of the company's net profits, taking into account the company's financial performance. Consequently, the amount of dividends received by the majority shareholder likewise depends upon the profits earned by the company in each financial year. The Elucidation of Article 71(1) of the Company Law further provides that the appropriation of reserves from the company's net profits, as determined by the General Meeting of Shareholders, must take into account both the interests of the company and the principle of reasonableness. These statutory provisions demonstrate that the allocation of net profits for the payment of *tantiem* and/or bonuses is not a mandatory obligation imposed upon shareholders. Rather, the payment of *tantiem* or bonuses funded from dividends received by the majority shareholder should be determined after considering factors that support such payments, including the company's interests, the principle of reasonableness, the achievement of performance targets, the company's financial capacity, and other relevant considerations. Accordingly, a promise to grant *tantiem* and/or bonuses should not be construed as creating a continuing legal obligation that must invariably be fulfilled. In the present case, the shareholder who made the promise has passed away. Therefore, the unpaid *tantiem* or bonuses should not automatically be regarded as debts that pass to the deceased's heirs. From the perspective of Indonesian civil law, the estate of a deceased person consists of both assets and liabilities, and the heirs are obliged to settle only those obligations that legally constitute the debts of the deceased. Where the payment

[15] UUPT, Pasal 71 ayat (1).

of *tantiem* and/or bonuses was not legally mandatory during the shareholder's lifetime, the shareholder could not have been compelled to make such payments. Consequently, those unpaid amounts should not be treated as enforceable debts forming part of the estate that are transferable to the heirs.

Furthermore, the majority shareholder expressly stipulated that the promised bonus would merely be endeavoured to be paid to the designated recipients for as long as he remained the majority shareholder. This provision clearly indicates that the payment of *tantiem* and/or bonuses was intended to be limited to a specific period—namely, during his tenure as the majority shareholder—and was not designed to create a continuing or perpetual legal obligation. As discussed above, Article 71(1) of Law Number 40 of 2007 on Limited Liability Companies confirms that the payment of *tantiem* and/or bonuses does not constitute a mandatory obligation of shareholders, as such payments depend upon the dividends distributed in a particular financial year. Accordingly, the *tantiem* and/or bonuses alleged to have become payable between 2020 and 2022 cannot be claimed against the heirs, because ERPS's legal obligation, if any, to provide such payments was extinguished upon his death.

ERPS's position as the majority shareholder is also relevant in determining his entitlement to dividends, which formed the basis for the calculation of the promised *tantiem* and/or bonuses. It is therefore necessary to determine whether the class of shares held by ERPS entitled him to preferential dividend rights. If ERPS held preference shares, he would have been entitled to receive dividends in priority to other shareholders. In such circumstances, creditors should not be able to rely on any alleged delay in payment to pursue claims against the heirs, since the conditions personally imposed by ERPS for the payment of the *tantiem* and/or bonuses would have been deemed fulfilled through his entitlement to receive such dividends.

Accordingly, the failure of the majority shareholder to distribute *tantiem* and/or bonuses during the period from 2020 to 2022 cannot be regarded as a breach of legal obligation. The payment of such distributions necessarily depends upon factors including the amount of dividends received, the company's financial condition, and the principle of reasonableness. Consequently, ERPS's heirs cannot be held liable for the alleged obligation to pay IDR 700,000,000,000 (seven hundred billion Indonesian rupiah) in respect of *tantiem* and/or bonuses purportedly accrued between 2020 and 2022. Since the payment of *tantiem* and/or bonuses does not constitute a mandatory legal obligation, no enforceable debt arose against the deceased shareholder that could subsequently pass to his heirs as part of the liabilities of the estate.

C. Liability of Foreign National Heirs as Debtors in Suspension of Debt Payment Obligations (PKPU) Proceedings

An estate consists of the property left by the deceased, whether it has already

been distributed among the heirs or remains undivided. The transfer of inheritance rights to the heirs is intended to effect the transfer of ownership and control over the deceased's property. Upon the death of an individual, the deceased's estate is transferred by operation of law to the lawful heirs. Such transfer encompasses both the rights and liabilities of the deceased, including outstanding debts that may be enforced against the estate, provided that sufficient estate assets remain available to satisfy those obligations. The transfer of an estate may occur either by operation of law (*ab intestato*) or pursuant to a testamentary disposition (will). From the foregoing, it is evident that every succession gives rise to several essential legal elements:[16]

1. The deceased (the decedent), namely the individual who has passed away and leaves property to be transferred to the heirs.
2. The estate, namely the entirety of the deceased's property remaining after the settlement of outstanding debts and the execution of any testamentary dispositions.
3. The heirs, namely those persons who are legally entitled to inherit the estate.

   Article 852 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*) classifies heirs into four categories of intestate succession, as follows:[17]

   1. First Class, consisting of the surviving spouse and the deceased's children or their descendants.
   2. Second Class, consisting of the deceased's parents and siblings. This class inherits only where the deceased leaves no surviving spouse or lawful descendants, as provided under Articles 854 to 859 of the Indonesian Civil Code.
   3. Third Class, consisting of the deceased's ascendants beyond the parents, including grandparents. This class inherits where the deceased leaves no surviving spouse, lawful descendants, parents, siblings, or descendants of siblings.
   4. Fourth Class, consisting of the deceased's uncles and aunts, whether on the paternal or maternal side, together with their descendants up to the sixth degree of kinship, calculated from the deceased.

Furthermore, in addition to the essential elements of succession described above, several legal requirements must also be satisfied:

1. Requirements relating to the deceased

   The deceased must have passed away, as Article 830 of the Indonesian Civil

[16] Abdulkadir Muhamad, *Hukum Perdata Indonesia*, (Bandung: Citra Aditya Bakti, 2007), hlm. 280-282.

[17] Karel Wowor, "Hukum Harta Warisan Tanah Menurut Hukum Perdata," *Lex Privatum*, Vol. 7 No. 6, (2019), hlm. 104-105.

Code provides that succession arises only upon the death of a person.

2. Requirements relating to the heirs

a. The heir must be legally entitled to inherit the deceased's estate either by virtue of a blood relationship or marriage (*ab intestato*, by operation of law) or by virtue of a testamentary disposition made by the deceased in favor of a testamentary heir.
b. he heir must be alive at the time the succession takes effect.
c. There must be no statutory grounds rendering the heir unworthy to inherit, as provided under Article 838 of the Indonesian Civil Code.[18]

Based on the foregoing provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*), it can be concluded that there is no legal rule restricting inheritance rights on the basis of differences in nationality. This conclusion is consistent with Article 57(2) of Law Number 40 of 2007 on Limited Liability Companies, which governs the transfer of shares by inheritance. The provision contains no restriction on the transfer of share ownership by succession to foreign national heirs. This is consistent with the fact that, under Indonesian law, a limited liability company may lawfully have foreign shareholders through a Foreign Investment Limited Liability Company (Perseroan Terbatas Penanaman Modal Asing – PT PMA), namely a legal entity established under Indonesian law and domiciled in Indonesia whose capital is wholly or partly derived from foreign investment.[19]

Furthermore, as previously discussed, Article 852 of the Indonesian Civil Code classifies heirs into four categories solely on the basis of their familial relationship or bloodline with the deceased. Accordingly, a foreign national who can establish a blood relationship with the deceased is legally entitled to inherit and may receive the portion of the estate to which he or she is entitled under the inheritance laws applicable in Indonesia.[20] In the present case, the heirs are the deceased's wife (RBP) and child (ER), both of whom are foreign nationals. As both have a legally recognized civil relationship with ERPS, it is necessary to consider the Indonesian legal provisions governing their inheritance rights. With respect to ER, Article 4(c) in conjunction with Article 6(1) of Law Number 12 of 2006 on Citizenship provides that a child born from a lawful marriage between an Indonesian father and a foreign mother may hold dual citizenship and is entitled, upon reaching the age of eighteen, to elect one nationality.[21]

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[18] Anisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata*, (Jakarta: PT Raja Grafindo Persada, 2003), hlm. 184.

[19] Indah Sari, "Syarat-Syarat Penanaman Modal Asing di Indonesia Menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal," *Jurnal Hukum Dirgantara*, Vol. 10 No. 2, (2020), hlm. 59.

[20] *Ibid*., hlm. 103.

[21] *Undang-Undang tentang Kewarganegaraan*, UU Nomor 12 Tahun 2006, LN Tahun 2006 Nomor 63, TLN Nomor 4634, Pasal 4 huruf c jo. Pasal 6 ayat (1).

ER's decision to adopt his mother's nationality (RBP) does not preclude him from inheriting the estate, since the existence of a legally recognized blood relationship is sufficient to establish his status as a lawful heir.

The transfer of property rights through succession also requires careful consideration of which assets and liabilities form part of the deceased's estate. An estate comprises all property left by the deceased after deducting all outstanding debts, as the estate consists of both assets and liabilities.[22] In the succession process, heirs are entitled to determine how they will deal with the inheritance by choosing one of the following options:

1. To accept the inheritance unconditionally.
2. To accept the inheritance under the benefit of inventory, which must be declared before the District Court having jurisdiction over the place where the succession is opened.
3. To disclaim or renounce the inheritance.[23]

Where the deceased leaves outstanding debts as part of the estate, the heirs are, in principle, responsible for their settlement. This is reflected in Article 1100 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*), which provides that,

> "Heirs who have accepted the inheritance shall bear responsibility for the payment of the deceased's debts, testamentary legacies, and other charges in proportion to the share of the estate received by each of them."[24]

This provision establishes that heirs who have accepted an inheritance are obliged to satisfy the debts incurred by the deceased during his or her lifetime. From the creditors' perspective, the promised bonus may be regarded as having fallen due and therefore constituting an outstanding obligation capable of being transferred to the heirs. However, as discussed previously, Article 71 of Law Number 40 of 2007 on Limited Liability Companies provides that the payment of *tantiem* and/or bonuses is subject to the interests of the company, the principle of reasonableness, and the existence of positive retained earnings from which dividends may be distributed. Consequently, the payment of *tantiem* and/or bonuses does not constitute a mandatory legal obligation. Accordingly, the promised bonus cannot be regarded as an enforceable debt capable of being transferred to the heirs for settlement. For this reason, the heirs of ERPS likewise have no legal basis to renounce the inheritance

[22] Emeliana Krisnawati, *Hukum Waris Menurut Burgerlijk Wetboek (B.W)*, (Bandung: Utomo, 2006), hlm. 2.

[23] Surini Ahlan Syarif, *Hukum Kewarisan Perdata Barat*, (Jakarta: Kencana Pranada Media Group, 2006), hlm. 26.

[24] *Kitab Undang-Undang Hukum Perdata* [*Burgerlijke Wetboek*], diterjemahkan oleh R. Soebekti dan R. Tjitrosudibio, Pasal 1100 KUHPerdata.

merely to avoid liability for an obligation that, in law, never formed part of the liabilities of the estate.

With respect to the renunciation of inheritance, Articles 1057 to 1059 of the Indonesian Civil Code require that a renunciation be made expressly by filing a formal declaration with the Registrar of the District Court having jurisdiction over the place where the succession is opened. The legal consequence of such renunciation is that the heir is deemed never to have acquired the status of heir. Nevertheless, a renunciation cannot be made selectively. An heir who renounces an inheritance relinquishes both the assets and the liabilities forming part of the estate. Accordingly, if ERPS's heirs were to renounce the inheritance solely because the *tantiem* and/or bonuses were alleged to constitute debts, such renunciation would also extend to all assets comprising the estate. From the perspective of Indonesian insolvency law, where heirs are alleged to be unable to satisfy debts that do not, in fact, constitute their legal obligations, an application for Suspension of Debt Payment Obligations (PKPU) may nevertheless be initiated. The Law on Bankruptcy and Suspension of Debt Payment Obligations permits either creditors or debtors to file a petition for PKPU. Pursuant to Article 222(3), a creditor may file such a petition where it reasonably anticipates that the debtor will be unable to continue paying debts that have fallen due and are payable. Conversely, a debtor may petition for PKPU where the debtor is unable, or reasonably expects to be unable, to continue satisfying debts that have matured and become payable.[25]

With respect to a debtor's inability to pay debts that have fallen due and are payable, it is necessary to determine the criteria for establishing that the debtor is genuinely incapable of continuing to satisfy such obligations. Evidence of the debtor's financial incapacity may be established through an independent financial audit conducted by a certified public accountant, thereby providing objective evidence to substantiate the debtor's financial condition.[26] A petition for Suspension of Debt Payment Obligations (PKPU) may be filed either before a debtor is declared bankrupt or after a bankruptcy petition has been submitted. The distinction lies in the timing of the PKPU petition in relation to the bankruptcy proceedings. Where a PKPU petition is filed before a bankruptcy petition, the bankruptcy petition may not proceed against the debtor. Conversely, where a PKPU petition is filed after a bankruptcy petition has already been submitted, the examination of the bankruptcy petition must be

[25] Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Edisi Kedua, (Jakarta: Prenada Media Group, 2018), hlm. 414-415.

[26] *Ibid*., hlm. 416.

suspended pending the resolution of the PKPU proceedings.[27]

In the present case, the respondents in the PKPU proceedings are the heirs of ERPS, who, according to the creditors, are liable for the payment of bonuses allegedly accrued between 2020 and 2022. The creditors contend that the heirs should be declared bankrupt if they fail to satisfy those alleged obligations. The PKPU petition was filed by four creditors, thereby satisfying the requirement under Article 222(3) of the Law on Bankruptcy and Suspension of Debt Payment Obligations, which requires that a debtor have more than one creditor before PKPU proceedings may be initiated.

Where no bankruptcy petition has yet been filed, a PKPU petition may, in principle, be submitted. However, where the debtor is an heir who is a foreign national, the statutory requirements governing the filing of PKPU proceedings require further consideration. Article 3(4) of the Law on Bankruptcy and Suspension of Debt Payment Obligations provides;

"Where the debtor is not domiciled within the territory of the Republic of Indonesia but carries on a profession or business within the territory of the Republic of Indonesia, the court having jurisdiction shall be the court whose territorial jurisdiction includes the place where the debtor carries on his or her profession or business in Indonesia."[28] This provision clearly establishes that a petition for PKPU or bankruptcy may be filed against a foreign national, and that Indonesian law shall apply, with jurisdiction vested in the court where the debtor conducts his or her profession or business in Indonesia. Nevertheless, it should be noted that Article 3(4) applies only to foreign nationals who conduct a profession or business within Indonesian territory. The provision does not specifically regulate foreign national heirs who become debtors solely by virtue of succession. Accordingly, there is no sufficiently clear statutory basis for initiating PKPU or bankruptcy proceedings against ERPS's heirs solely on the basis that they are foreign nationals who inherited the estate.

Although the creditors initiated PKPU proceedings, thereby placing the heirs in the position of temporary debtors, the more appropriate legal remedy would arguably have been a bankruptcy petition. This conclusion is supported by Article 207 of the Law on Bankruptcy and Suspension of Debt Payment Obligations, which provides;

> "The estate of a deceased person may be declared bankrupt where two or more creditors submit a petition and can summarily establish that:
> a. the debts of the deceased remained unpaid during his or her lifetime; or
> b. at the time of death, the estate was insufficient to satisfy the deceased's debts."[29]

[27] Rai Mantili dan Putu Eka Trisna Dewi, "Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang Dalam Kepailitan," *Jurnal Aktual Justice*, Vol. 6 No. 1, (2021), hlm. 13.

[28] UUK-PKPU, Pasal 3 ayat (4).

[29] UUK-PKPU, Pasal 207.

Assuming, *arguendo*, that the unpaid bonuses from 2020 onward constituted debts incurred by ERPS during his lifetime, the minimum statutory requirements under Article 207 would appear to be satisfied. On that basis, the more appropriate proceeding would have been a petition to declare the deceased's estate bankrupt rather than the initiation of PKPU proceedings against the heirs. However, because the heirs are foreign nationals, Article 3(4) alone does not provide an adequate legal basis for filing a bankruptcy petition against them. This situation reveals a degree of legal uncertainty, and arguably a regulatory gap, concerning the status of foreign national heirs who may become debtors in PKPU or bankruptcy proceedings under Indonesian law.

The foregoing analysis demonstrates the existence of a legal controversy concerning the validity of treating a foreign national heir as a debtor in Suspension of Debt Payment Obligations (PKPU) proceedings. As discussed above, the payment of *tantiem* and/or bonuses does not constitute a mandatory legal obligation of shareholders. Consequently, upon the death of a shareholder, the heirs should not be required to satisfy such payments. Although neither the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*) nor Law Number 40 of 2007 on Limited Liability Companies imposes any restriction on foreign nationals inheriting shares in a company, thereby allowing foreign national heirs to succeed to both the rights and liabilities of the estate, Indonesian law does not provide a sufficiently clear legal basis for treating such heirs as debtors in PKPU proceedings. Accordingly, it is difficult to justify designating the heirs as debtors solely for the purpose of requiring them to pay *tantiem* and/or bonuses that are alleged to constitute liabilities of the estate. This issue warrants particular attention because foreign national heirs may have limited familiarity with the Indonesian legal system, which may result in their becoming debtors in PKPU proceedings without a full understanding of the legal consequences of their status.

In the author's view, RBP and ER, as foreign national heirs, should enhance their understanding of the Indonesian legal framework that continues to govern matters relating to their inheritance rights and obligations. A civil legal relationship arising from a marriage between an Indonesian citizen and a foreign national may produce legal consequences that extend beyond the marriage itself, including matters of succession. Accordingly, foreign national heirs should possess an adequate understanding of the Indonesian inheritance laws applicable to them so that they are able to fully appreciate their rights and obligations in the succession process and thereby ensure the effective legal protection of their inheritance rights.

4. Conclusion

The payment of tantiem and/or bonuses derived from dividends received by shareholders out of the company's net profits does not constitute a mandatory legal obligation of the shareholders. Consequently, any alleged obligation to make such payments cannot be transferred to or imposed upon their heirs. Under Indonesian inheritance law, there is no distinction or restriction on the right to inherit based on nationality. Accordingly, as a matter of law, a difference in nationality does not prevent an heir from succeeding to the rights and liabilities of the deceased's estate, including the obligation to settle legitimate debts of the deceased. However, Article 71(1) of Law Number 40 of 2007 on Limited Liability Companies makes clear that the payment of tantiem and/or bonuses is discretionary rather than mandatory. Therefore, although foreign national heirs may lawfully represent the deceased in matters relating to the estate, they are under no legal obligation to satisfy claims arising from unpaid tantiem and/or bonuses. Furthermore, foreign national heirs should not be regarded as debtors in Suspension of Debt Payment Obligations (PKPU) proceedings. Under the Law on Bankruptcy and Suspension of Debt Payment Obligations, PKPU proceedings may be initiated against a foreign national only where that person conducts a profession or business within the territory of Indonesia, rather than solely by virtue of his or her status as an heir. Accordingly, in the present case, the foreign national heirs should not be held liable for the alleged debts arising from the unpaid tantiem and/or bonuses, nor should they be treated as debtors in PKPU proceedings. At the same time, foreign national heirs should remain mindful of the Indonesian legal framework governing succession so that they are able to understand and effectively exercise their rights and obligations in relation to the inherited estate.

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