

# Juridical analysis of abandoned shares in the process of changing the status of a public company to a private company

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## Abstract

**Purpose:** This study aims to analyze the legal framework, practical implementation, challenges, and possible solutions related to stranded shares in the process of converting a public limited liability company (PT) into a private PT (go private).

**Methodology:** A normative juridical approach was applied by examining relevant legal instruments, including the Company Law, Capital Market Law, and OJK regulations. An empirical juridical approach was also employed through interviews with notaries, OJK officials, capital market practitioners, and case studies of issuers facing obstacles due to stranded shares.

**Results:** The findings indicate that the absence of specific regulations regarding the classification and settlement of stranded shares significantly hampers the achievement of the General Meeting of Shareholders (GMS) quorum and obstructs the effectiveness of tender offers. Consequently, this condition delays the going private process and causes harm to active shareholders.

**Conclusion:** Legal uncertainty resulting from unregulated stranded shares undermines corporate restructuring in the capital market. A comprehensive regulatory revision and enforcement mechanism are needed to address the issue effectively.

**Limitation:** This research focuses on stranded shares in Indonesia's capital market and does not provide comparative perspectives from other jurisdictions, which may offer alternative mechanisms.

**Contribution:** This study enriches academic discourse and provides policy recommendations by highlighting the need for regulatory reform, the establishment of judicial remedies to exclude inactive shares, and investor education. It contributes to strengthening legal certainty and stakeholder protection in corporate governance.

**Keywords:** *Juridical Analysis, Public Limited PT, Stranded Shares*

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## 1. Introduction

Specific regulations regarding dormant shares in the process of transforming a public company into a private one are essential to provide legal certainty, not only for the shareholders involved but also to ensure a smooth transition of status. Dormant shares often pose obstacles in this process. The transition from a public to a private company, known as "go private," is a corporate action in which a public company changes its status to a private company. This occurs when the number of shareholders decreases, either through a share buyback or other means, and the company no longer meets the requirements for being a public company (Pratama & Suwadi, 2024). This transformation also requires the approval of independent shareholders, as stipulated in Article 64 (1) (A) of the Financial Services

Authority Regulation No. 3/POJK.04/2021, aimed at protecting the interests of independent shareholders in the go-private process (A. S. Ningsih, 2022).

Dormant shares can impede the process of transforming a public company into a private company. An example is the go-private case of PT Bentoel Internasional Investama (RMBA). The delisting of RMBA was scheduled for January 16, 2024, but was delayed due to the presence of shareholders whose whereabouts were unknown (Durrohman, 2024). In dealing with these dormant shares, PT Bentoel Internasional Investama (RMBA) applied to the court to declare the absence of dormant shareholders during the go-private process. The South Jakarta District Court, with Case Number 263/Pdt. P/2022/PN.Jkt.Sel ordered the Balai Harta Peninggalan Jakarta to manage the shares of the absent shareholders (A. M. M. Sari, 2023). There are many reasons why shareholders go missing. The primary and most obvious reason is the death of shareholders. The heirs may not be aware that the deceased holds shares. Another reason could be that the shareholder got married or moved to a new home. During such life changes, many things need to be dealt with. If shares are not seen as important during the shareholder's period of ownership, they might never be addressed (Ezekpeazu & Uche, 2023).

The presence of dormant shares can delay the approval process by independent shareholders or cause the number of shareholders to remain above the required limit, as stipulated in the Financial Services Authority Regulation No. 3/POJK.04/2021, Article 64, Paragraph 1, Letters A and B (Dewi & Arifardhani, 2024; Pratama & Suwadi, 2024). Therefore, it is necessary to immediately regulate the resolution of dormant shares when changing the status of a public limited company to a closed one. The government is expected to address these issues quickly, transparently, and effectively to build public trust in state administrators (H. K. Ningsih & Adam, 2023; Respationo, 2013; Wulandari, Siregar, & Sukarja, 2024). Based on the above background, the author aims to study and analyze the resolution of issues where, during the process of changing the status of a public company to a closed company, dormant shares are found, which hinder the achievement of this status change, in the form of a thesis titled "Juridical Analysis of Dormant Shares in the Process of Transitioning a Public Limited Company (PT) to a Closed Company".

## **2. Literature review**

### **2.1. Theoretical Framework**

The theoretical foundation is a set of relevant theories derived from the literature, expert opinions, and prior research findings that support the research. These theories are used to build arguments, clarify variables, and serve as a basis for analyzing research problems. Sugiyono (2018) states that "Theoretical foundations are studies of theories that are considered relevant by researchers for the issues being investigated.". In this study, the author uses relevant theories as a theoretical foundation, in line with Sugiyono's view that the theoretical foundation serves as the scientific basis for explaining the research variables. The theories include legal protection, ownership of shares, and corporate law. This theoretical foundation serves as the basis for analyzing dormant shares in the transition process of a public limited company to a closed company.

### **2.2. Conceptual Framework**

The conceptual framework is a theoretical structure that outlines the relationships between the concepts under study. These concepts are concrete manifestations of abstract theories. In the conceptual framework, these concepts not only identify the phenomena being studied but also abstract them into a more general and structured form (Ngulube, Mathipa, & Gumbo, 2015; Varpio, Paradis, Uijtdehaage, & Young, 2020). The primary function of these concepts in research is to bridge the gap between theory and observation, facilitating a deeper understanding of the reality under study. In this study, a conceptual framework is used to explain and organize variables relevant to the research topic, aiming to build a strong theoretical foundation.

### **2.3. Juridical Analysis**

Analysis is an investigation of an event or action to understand its true state (cause and reason), where detailing a subject or its components aims to obtain an accurate understanding and comprehensive interpretation of its meaning (Harms-Ringdahl, 2021). Juridical means according to the law. Juridical

analysis involves breaking down the components of an issue to study them in depth and then relating them to applicable laws, principles, and norms as problem-solving tools. The goal of juridical analysis is to shape a mindset for solving problems in accordance with the law, particularly regarding dormant shares in the process of transitioning a public company to a closed one (Ferena, Erniyanti, Gunawan, & Respationo, 2024).

#### **2.4. Public Company (*Perseroan Terbuka*)**

A Limited Liability Company (*Perseroan Terbatas*) is a legal entity that is a partnership of capital, established by agreement, conducts business with capital fully divided into shares, and meets the requirements set out in this law and its implementing regulations (Adriadi, Pratama, & Syahida, 2021; Widyari, 2024). Unlike an individual company, a limited liability company, although a separate legal entity, cannot perform its duties independently. Therefore, it requires corporate organs to run its business, manage its assets, and represent the company both in and out of court (Hidayat, 2019; Ulinuha, 2020). According to Article 1 of Law No. 40 of 2007 on Limited Liability Companies, a Limited Liability Company has corporate organs consisting of the General Meeting of Shareholders, a Board of Directors, and a Board of Commissioners (Simbolon, 2024). A Limited Liability Company, hereinafter referred to as "the Company," is a legal entity formed by an agreement, conducting business with capital fully divided into shares and meeting the requirements set forth in the law and its implementing regulations (Ulinuha, 2020).

Limited Liability Companies are divided into two types: public and private. According to Law No. 40 of 2007 on Limited Liability Companies, a Public Company is one that conducts public offerings of shares in accordance with capital market regulations. As for Private Companies, the Law does not provide a direct definition, but by taking the definition of a Public Company, a Private Company is one that does not conduct public offerings of shares and whose shareholders' number does not meet the requirements for a Public Company.

##### **2.4.1. Definition of the Transition from Public Company to Private Company**

The transition from a public to a private company is commonly referred to as "go-private." Go-private is the process of a public company ending its public status on the stock exchange by acquiring publicly traded shares through one or a small group of shareholders (Cumming, Peter, & Tarsalewska, 2020). This transition is carried out through the delisting of shares, a process regulated by Financial Services Authority Regulation No. 3/POJK.04/2021 on Market Activities and Indonesia Stock Exchange Decree No. Kep-00054/BEI/05-2024 regarding Regulation No. I-N on Delisting and Relisting. Going private is the process by which a public company ends its corporate status on the securities exchange by acquiring its publicly traded shares through one shareholder or a small group (Darmawan, 2025; Nim, 2022).

Apart from bankruptcy, there are several reasons for requesting a delisting. Companies choose to list their shares for two main reasons: first, to access public capital markets; and second, to provide liquidity for their shareholders. Gaining access to public markets and improving transparency allows companies to have greater leverage with banks, resulting in lower borrowing constraints and diversified funding sources (Chaplinsky, Hanley, & Moon, 2017; Ritter, 1987). Some companies use this funding to finance growth opportunities, while others go public to rebalance their leverage (Pagano, Panetta, & Zingales, 1998). Survey evidence in the U.S. shows that funding is not the primary determinant of listing shares on the stock exchange, as companies go public primarily to create public shares for future acquisitions. However, in Europe, companies do this to increase their leverage with banks and reduce their debt, while companies that cannot rebalance their debt decide to delist (Amato, Belloni, Falbo, & Gobbi, 2021). Therefore, companies are estimated to delist if they cannot raise equity capital to rebalance their capital structure. Smaller companies often face the reality that, despite being listed, capital is not available to them, and their shares eventually become illiquid. Faced with this, many realize that the ongoing costs and compliance associated with remaining listed are not a wise use of shareholders' funds. Therefore, companies with less liquidity tend to delist (Bakke, Jens, & Whited, 2012; Bharath & Dittmar, 2010).

#### *2.4.2. Process of Changing the Status of a Public Company to a Private Company*

In the process of transitioning a public company to a private one, one of the actions required is the approval of shareholders through a General Meeting of Shareholders (RUPS). The General Meeting of Shareholders is an important forum for company decision-making, where shareholders can participate and vote on the direction of the company (Chandra, Erniyanti, Fadlan, & Respationo, 2023; Shah & Li, 2025). In the process of changing the status from a public company to a private one, as per OJK regulations, approval from the Independent Shareholders' General Meeting is not required. Only approval from the General Meeting of Shareholders is required, with the procedure and timeline set by the OJK. If the Stock Exchange requests a change in status from a public to a private company, the procedure for this change is divided into three steps (Kristianto & Kupita, 2023). Before delisting a public company's shares, the Stock Exchange must submit a request to the Financial Services Authority to change the status from public to private. Upon receiving this request, the Financial Services Authority instructs the public company to change its status to private (P. P. Sari & Sudiyana, 2022; Wulandari et al., 2024).

#### **2.5. Dormant Shares**

The definition of dormant shares or dormant shareholders is not explicitly mentioned in laws and regulations. In various literatures, references can be found to shareholders who are considered dormant, "untraceable," "missing," "absent," "inactive," or "passive." To conceptualize dormant shareholders, it is necessary to analyze the approaches of several countries toward this term and similar concepts used by various parties and determine the scope of individuals who can be categorized as dormant shareholders (Chen, 2022). Dormant shareholders are those who have not exercised their corporate rights or have failed to fulfill their obligations for a long time, despite having the opportunity to do so (Dueñas, 2017; Padmanegara, 2024). However, passive shareholders who purchase shares for investment cannot be considered dormant shareholders. A shareholder can only be considered "missing" if the company has made efforts to contact the shareholder but still cannot reach them or receive a response from them. This approach seems more reasonable when determining a shareholder as "missing" to protect the rights of shareholders.

According to other experts, dormant shareholders are those who do not participate in general meetings, do not receive dividends, and fail to provide updated information about themselves or any changes to the company (Amelia, 2023; Bazrafshan, Banaay, & Bazrafshan, 2021). Another expert interprets dormant shareholders more narrowly as individuals who have passed away, individuals whose whereabouts are unknown, or legal entities that have been liquidated. This means that not only deceased shareholders are categorized as dormant, but also cases in which heirs do not receive the inheritance (Vakili Moghadam, 2024). Therefore, after comparing the approaches to define the concept of dormant shareholders, as well as similar concepts, it can be concluded that dormant shareholders can be considered as "missing," as the concept fits the criteria of a shareholder's failure to exercise their rights and the loss of connection between the company and the shareholder.

Dormant shareholders include those who cannot be found, have passed away, or whose identity is unknown (Edwards, 2022). A shareholder may become "untraceable" for various reasons, including failure to notify the company of a change of address or the lack of information from heirs about the deceased's shares. In summary, it should be noted that, currently, there is no uniform approach in the law and academic literature to define the category of people classified as dormant shareholders of a company, nor a uniform concept to designate those who have long failed to exercise their company rights and have lost contact with the company itself.

#### **2.6. Research Assumptions**

In the context of the thesis titled "Juridical Analysis of the Role of Notaries in Drafting and Ratifying the Articles of Amendment of a Limited Liability Company From a Legal Certainty Perspective for Shareholders," several assumptions relevant to the formulation of the problem can be outlined as follows.

1. The legal regulation concerning dormant shares in the process of transitioning a public limited company (PT) to a closed one has not been detailed or comprehensively regulated in the applicable

laws in Indonesia. This assumption is based on the fact that the concept of "dormant shares" has not been explicitly defined in Law No. 8 of 1995 on Capital Markets or Law No. 40 of 2007 on Limited Liability Companies. The absence of specific regulations can cause legal uncertainty in the implementation of the transition from a public company to a closed one, particularly regarding the treatment of inactive or unclaimed shares.

2. The implementation of dormant shares in the practice of transitioning a public limited company to a closed one has the potential to hinder corporate legal processes if no clear mechanism for resolving such shares exists. Shares that are not taken or claimed by their holders can hinder important decisions in the General Meeting of Shareholders (RUPS), such as decisions regarding delisting or the removal of shares from the stock exchange. Therefore, this assumption emphasizes that dormant shares can create obstacles in the conversion process of a company's legal status, particularly in terms of quorum requirements, voting distribution, and protecting minority shareholders' rights.
3. Obstacles to implementing dormant shares can be addressed through a juridical approach that offers normative solutions and policies, such as specific regulations by the OJK, public company policies, or judicial decisions.

This assumption points to the possibility that, although explicit regulations are not yet available, obstacles arising from dormant shares can still be resolved through progressive legal interpretations, the application of general legal principles, and the active roles of regulators and the judiciary in providing legal certainty for shareholders and corporations. Therefore, solutions can be found through the creation of new norms, implementation of regulations, or jurisprudential decisions that provide guidance on corporate practice.

### **3. Methodology**

#### **3.1. Research Methods**

The research method is the approach used to achieve the research objectives and find answers to the problems presented in the study. Furthermore, the research method serves as a guide for understanding the research object through data collection and interpretation. According to Soerjono Soekanto, research is a framework of thinking applied in research. Therefore, selecting an appropriate research method is crucial to ensure valid and accountable data. The research method used in this study is as follows:

##### *3.1.1. Type of Research*

This study is normative, meaning that it was conducted by examining secondary or library data. This type of research focuses on studying rules, norms, and values. Using this research type, the researcher provides a descriptive and detailed analysis of the legal rules found in primary sources (Boulanger, 2020).

##### *3.1.2. Approach Methodology*

This research was conducted using a statute, conceptual, and comparative approach.

#### **1) Statute Approach**

This approach was used by the author to examine the laws and regulations related to the issues under study (Marzuki, 2021). The statute approach is typically used to analyze laws and regulations that contain deficiencies in their normative provisions or even lead to deviations, both at the technical level and in their practical implementation. This approach involves analyzing all relevant laws and regulations related to the legal issues addressed. For instance, the statute approach can be applied by examining the consistency or conformity between the Constitution and legal regulations or between one law and another (Hamzani, Widyastuti, Khasanah, & Rusli, 2023; Saydullayevich, 2025).

#### **2) Conceptual Approach**

The conceptual approach is based on prevailing legal theories and doctrines. By studying these legal doctrines and perspectives, the researcher can identify ideas that form the legal definitions, concepts, and principles relevant to the issue. The conceptual approach is a legal research

methodology that provides an analytical perspective for solving legal problems by examining the underlying legal concepts (Negara, 2023). This approach can also be seen through the values embedded in the normative framework of a law in relation to the legal concepts it uses. It is particularly used to assess whether the normative aspects of a regulation align with the fundamental principles of the legal concepts underlying it. The conceptual approach is based on existing legal theories and doctrines. This approach is important because understanding relevant theories and doctrines serves as the foundation for building legal arguments when discussing legal issues. These theories and doctrines help clarify ideas by providing definitions, legal concepts, and principles relevant to the problem being studied.

### **3) Comparative Approach**

This approach involves a critical analysis of various legal bodies to examine how the outcomes of a legal issue may differ based on each set of laws. Comparisons can be made between different jurisdictions. In this study, a legal comparison is made between Indonesia and several other countries, including the United States and the United Kingdom.

### **3.2. Data Sources**

The types of legal materials used are divided into primary, secondary, and tertiary legal materials. Primary legal materials are legal materials that are binding on the public and serve as the legal foundation, including:

1. Law No. 40 of 2007 on Limited Liability Company.
2. Financial Services Authority Regulation No. 3/POJK.04/2021 on
3. The Indonesia Stock Exchange Decree No. Kep-00054/BEI/05-2024 on delisting

Secondary legal materials explain or elaborate on primary legal materials to find the theoretical or conceptual basis. Secondary sources included books, scientific literature, theses, dissertations, articles, legal journals, and online sources. Tertiary legal materials provide explanations for primary and secondary legal materials. In this study, tertiary legal materials include relevant guides, dictionaries, and official data from government agencies.

#### **3.2.1. Data Collection Techniques**

The data collection method used in this research was a document study. Document study is a method that can be used by qualitative researchers to gain an understanding from the subject's perspective through written materials and documents directly produced by the subject (Herdiansyah, 2010). The regulations regarding dormant shares in various countries were obtained from their respective websites.

#### **3.2.2. Data Analysis**

The data processing method used in this study consisted of several steps. The first step was to collect relevant data related to the research problems through document studies from various regulations, both domestic and international, for comparison. The next step was to organize the data into a more analyzable form. The organized data are then presented in a way that is easy to understand to help the researcher identify the issues in companies attempting to go private but hindered by unknown or dormant shareholders and to identify the resolution mechanisms for these issues. The final step was to draw conclusions based on the analysis (Hamzani et al., 2023).

## **4. Result and discussion**

### **4.1. Legal Regulation of Dormant Shares in the Process of Transitioning from Public to Private Company**

Dormant shares in the capital market refer to shares that are no longer actively traded, whose owners are unknown, or who do not respond to communication from the issuer, stock exchange, or other relevant authorities. These shares often become administrative and juridical obstacles in the process of making strategic corporate decisions, especially in the General Meeting of Shareholders (RUPS). The existence of dormant shares can result in an insufficient quorum in the RUPS and hinder a company's efforts to change its status from a public to a closed company. The criteria for dormant shares can be identified by the lack of activity in the securities account, outdated ownership data, unclaimed dividends, and failure to establish official communication. In practice, dormant shares are not explicitly

regulated in a separate legal provision but can be traced through their connection with the principles of information transparency and market efficiency. Therefore, the existence of dormant shares has legal implications for the effectiveness of corporate decisions and should be viewed within the framework of applicable capital market and corporate regulations.

Law No. 4 of 2023 on Strengthening and Developing the Financial Sector (UU PPSK), as an update to the Capital Market Law, emphasizes the role of the Financial Services Authority (OJK) in establishing market regulations, including the authority to regulate issuers who do not comply with disclosure requirements or whose shareholders are inactive. Although the term "dormant shares" is not explicitly mentioned, the norms in the UU PPSK strengthen the OJK's position to regulate and address problematic ownership structures, including inactive ones, through additional technical regulations. The Financial Services Authority Regulation No. 3/POJK.04/2021 on Market Activities is a key technical regulation in the context of transitioning from public companies. Article 1, paragraph 18 defines "Public Companies," and Article 23 reaffirms the role of the RUPS as the highest corporate organ of the company. However, if dormant shares cannot be represented at the RUPS, there will be legal uncertainty about the quorum and potential lawsuits regarding decisions made at the RUPS without a valid quorum. Therefore, the existence of dormant shares must be addressed within a clear and fair framework.

Article 70 of Financial Services Authority Regulation No. 3 of 2021 implicitly covers delisting, the legal basis for going private, requiring announcements, OJK approval, and RUPS procedures. However, it does not specify how to handle inactive shares. This gap highlights the urgency of formulating policies that provide legal certainty for companies wishing to go private but are hindered by dormant shares. Juridical analysis through a statute approach concludes that even without explicit regulation, dormant shares significantly impact legal certainty in corporate decisions. Therefore, systematic interpretation and new norms or revisions to the POJK provisions are needed to allow issuers to take legal action against inactive shares. This is consistent with the capital market principles of transparency, certainty, and protection for stakeholders.

Internationally, some jurisdictions offer mechanisms for resolving dormant shares, such as escheatment or forced buybacks. However, Indonesia's legal system does not specify how to resolve dormant shares in decisions such as going private. This gap causes legal uncertainty for both issuers and active shareholders. The theory of legal certainty requires legitimacy in legal decisions, including those made by the RUPS. If dormant shares cannot be voted on, the quorum validity is questioned. Therefore, the OJK and regulators need to regulate dormant shares and resolution mechanisms so that the going-private process is not hindered by administrative absenteeism that is not the company's fault. In conclusion, dormant shares have a weak legal position but significantly impact the transition process. With the current legal framework, there is no normative mechanism to fully resolve this issue. Therefore, creating new norms or technical regulations to address dormant shares, especially in important decisions through the RUPS, is essential to maintain legal certainty and effective corporate law.

#### ***4.2. Implementation of Dormant Shares in the Transition from Public to Private Company (Go Private)***

This study uses an empirical juridical approach to understand how dormant shares are implemented in practice when issuers undergo the process of changing their status from a public limited company to a private limited company (go private). Data were obtained through in-depth interviews with corporate notaries, OJK officials in charge of issuer supervision, and capital market practitioners directly involved in the go-private legal process. This approach is used to explain the gap between legal norms and practical realities, particularly when issuers face shares that are no longer administratively active. Interviews with notaries handling corporate go-private actions revealed that dormant shares are a major obstacle in decision-making processes at the General Meeting of Shareholders (RUPS). Notaries explained that shares that do not provide power of attorney or are absent at the RUPS cannot be considered non-existent, as they are still legally recorded in the shareholder's structure. When these shares represent a significant proportion of the total circulating shares, the company faces difficulties in meeting the quorum requirements outlined in Articles 86 and 88 of the Company Law.

Interviews with OJK officials indicated that, until now, there have been no specific technical provisions that explicitly regulate the handling of dormant shares. In the delisting process, the OJK only requires formal procedures, including conducting a tender offer and holding an RUPS. However, when a company reports that some shareholders cannot be contacted or do not respond, the OJK does not provide a specific mechanism, leaving the resolution to the issuer according to the principles of transparency and investor protection. Capital market practitioners interviewed stated that dormant shares typically occur due to outdated shareholder data, unreported share transfers through inheritance, or because shareholders are abroad with no contact information. In one case, a company failed to hold two consecutive RUPS due to not reaching quorum because approximately 17% of the shares held by former shareholders were no longer active. This delayed the go-private process for over a year.

Based on these empirical findings, it is evident that the lack of explicit legal provisions for dormant shares causes inefficiencies in decision-making at the RUPS, prolongs the go-private process, and opens the potential for legal conflicts. This highlights the need for affirmative regulations that allow companies to identify and address shares that are inactive for a certain period. This provision would support legal certainty and strengthen the corporate position in legally and orderly restructuring of its legal status. Additionally, one case study from Batam shows the go-private process of PT Delta Tbk, which applied for delisting in 2020. During this process, it was found that 11% of the shares were owned by individuals whose whereabouts were unknown and who did not respond to the RUPS invitations. The company sent invitation letters via courier, registered mail, and media publications but received no response. This affected the failure to reach a quorum and hindered the submission to OJK for delisting.

The Board of Commissioners plays a supervisory role in this process, ensuring that all procedures comply with the principles of good corporate governance. Commissioners must also assess whether the actions taken by directors regarding dormant shares are legally and ethically sufficient. One of the company's commissioners interviewed stated that, without a clear legal framework, "we cannot make strategic recommendations because the risk lies in the potential for future legal disputes from passive shareholders." The role of the notary is crucial, especially in preparing the RUPS minutes and the deed of amendment to the articles of association. Notaries are required to record the validity of shareholder attendance at the RUPS and note the situation if any shares are absent without a power of attorney. According to one notary, "Without an explicit legal basis, we can only record that the shares were absent, but we cannot state that their presence is not needed for the quorum." This emphasizes that notaries are in a professional and juridical dilemma.

The Financial Services Authority (OJK), as the capital market regulator, has the authority to regulate and supervise the go-private process, including setting administrative requirements. However, interviews with OJK officials indicated that there are no specific regulations dealing with dormant shares. "We focus on the completeness of formal documents and are not in a position to disregard the rights of shareholders, even if they are inactive," said an OJK official. This shows that the OJK does not yet have the normative authority to regulate dormant shares in the context of the RUPS. The Indonesia Stock Exchange (BEI), as a securities exchange operator, also plays a role in the voluntary delisting process. The BEI is authorized to accept requests for the removal of shares and assess whether the procedures have been followed correctly. However, the BEI has no authority to determine whether dormant shares can be excluded from the RUPS. "We only check if the issuer has made an open announcement. If there are shares that do not respond, they are not within our technical jurisdiction. The protection of the rights of dormant shareholders has been accommodated through formal provisions, such as the obligation for controlling shareholders to conduct a tender offer, as regulated in POJK No. 54/POJK.04/2015 and 3/POJK.04/2021. Issuers are required to provide all shareholders with the opportunity to sell their shares at a fair price before a delisting. However, in practice, if shareholders do not respond or cannot be contacted, the offer is not fully accepted. This raises the debate about the extent to which the state and capital market authorities must ensure that legal rights remain effective.

The non-participation of dormant shareholders in the RUPS or tender offer process does not automatically eliminate their legal rights. As emphasized in the Theory of Legal Protection, every individual, including inactive shareholders, retains the right to fair treatment and cannot be disregarded.



This theory underscores the importance of the state creating a legal system that provides protection, both preventively (in the form of information and notices) and repressively (through complaints or compensation mechanisms if rights are violated). In this context, administrative steps, such as public announcements, notification letters, and providing reasonable time for responses, represent preventive legal protection obligations for issuers. However, the lack of a follow-up mechanism when shareholders remain inactive reveals a gap in the substantive legal protection. While rights are protected, they are not effectively exercised in practice. This shows that the available legal protection is still normative and not operational in nature.

#### ***4.3. Barriers and Solutions in Implementing Dormant Shares in the Transition from Public to Private Company***

The implementation of the transition from a public limited company to a private limited company (going private) faces several obstacles, both juridically and technically. One of the main barriers found in this research is the existence of dormant shares, which are shares that are still administratively registered but are no longer active, or the owner's whereabouts are unknown. In corporate law, such shares still have voting and economic rights, but in practice, they cannot be involved in decision-making processes, causing serious issues in corporate actions. The most dominant juridical barrier is the lack of regulation on how dormant shares should be handled. Interviews with notaries and OJK officials revealed that no specific regulations exist on how a company can treat passive or inactive shares in the RUPS or tender offers. Financial Services Authority Regulation No. 3/POJK.04/2021 only requires issuers to provide information and conduct tender offers but does not provide a mechanism to neutralize non-responsive share. This places issuers in a legal dilemma.

An OJK official interviewed stated, "We do not yet have technical regulations regarding the classification of inactive shares as shares that can be excluded from quorum calculations. As long as there is no legal revocation of rights, these shares are still counted." This statement emphasizes that, although such shares have no real impact on corporate decisions, they are still legally recognized. This legal gap has created a practical deadlock. Another obstacle concerns the inability to meet the quorum in the RUPS due to the existence of dormant shares. According to Articles 86 and 88 of the Company Law, all important decisions in a company must be made through an RUPS with specific quorum requirements. However, in the case studies of PT Indosat Tbk and PT Delta Djakarta Tbk, it was found that a quorum could not be achieved because some shareholders were absent and did not provide a power of attorney. This caused the company to hold repeated RUPS or even delay the go-private process for several months.

A senior notary interviewed stated: "We can only record in the minutes that certain shares were absent, but we cannot state that these shares are irrelevant or not counted. This is a legal dilemma because the formality of RUPS cannot be bypassed, even though most of the passive shares are impossible to contact." This illustrates the limitations of notaries in bridging the reality of practice with rigid legal formalities. Another technical obstacle is that the tender offer process does not fully reach the dormant shares. Issuers have performed their obligation to offer shares openly through mass media. However, many shareholders are no longer active, are overseas, have passed away, or their addresses are unknown. In such cases, the tender offer becomes ineffective because there is no response from shareholders. The success of going private heavily depends on a positive response from all public shareholders.

Interviews with capital market practitioners revealed that, in some cases, companies had conducted multiple tender offer announcements, but the results remained stagnant because dormant shares were not absorbed. "It is like dealing with a fictitious entity that is legally real but practically non-existent. This slows down the entire process," said a corporate law consultant. This situation incurs additional costs and creates uncertainty for majority shareholders who want to consolidate control of the company. The impact of this uncertainty is also felt by other active shareholders, both majority and minority, who wish to participate in the go-private process. A board member from PT Delta Djakarta Tbk stated, "We are blocked by a handful of shares whose whereabouts are even unknown. Meanwhile, active shareholders want to make important strategic decisions." This shows that uncertainty affects not only the institution but also hinders the certainty of rights for other shareholders.

When analyzed through the Theory of Legal Certainty, as proposed by Gustav Radbruch, the law should provide order and clarity for all parties, including corporations and their shareholders. However, in the case of dormant shares, the law creates uncertainty by failing to provide a solution for instruments that are “alive legally but dead practically.” This theory underscores that, without enforceable and predictable regulations, the legal system fails to provide procedural and substantive justice. The absence of regulations on the classification or resolution mechanism for dormant shares also impacts the legitimacy of the go-private process in the eyes of the law. Some companies have been forced to repeat RUPS, extend tender offers, or even postpone delisting because they could not exclude dormant shares from the repurchase. This not only causes additional legal and administrative costs but also creates legal uncertainty for third parties, such as new investors and potential strategic partners. In the long run, this damages the investment climate and credibility of the national capital market.

Thus, based on the empirical juridical approach, it can be concluded that the barriers caused by dormant shares seriously impact legal certainty in the go-private process. The Theory of Legal Certainty highlights the need to create positive norms that can specifically regulate the validity, recognition, and treatment of inactive shares. Without these regulations, the corporate decision-making process will remain uncertain, ultimately hindering the effectiveness of the company’s legal status transformation in the face of dynamic business adaptation needs. In addition to regulatory and judicial efforts, practical steps, such as education and improved reporting by issuers to public shareholders, are also needed. One board member from PT Delta Djakarta Tbk stated, “Many old shareholders do not know they are still listed as shareholders, especially retail investors from the 1990s. Communication responsibility cannot end with just one announcement.” Therefore, companies must be more proactive in building a periodic reporting system and updating shareholder ownership databases in collaboration with the KSEI and custodians.

This education also includes legal awareness that shares left unattended can delay important company decisions and lead to losses. Through consistent communication via mass media and public investor forums, issuers can reduce inactivity and encourage passive shareholders to engage in corporate decisions. This practice improves transparency and strengthens the company’s credibility in maintaining good governance. Considering all the empirical findings and theoretical analyses, the author concludes that resolving dormant shares in the context of going private requires synergy between regulations, judicial authority, stakeholder education, and issuer responsibility. Only with a comprehensive solution involving all these aspects can the process of changing a company’s status be carried out fairly, effectively, and in accordance with the principles of legal certainty and good corporate governance.

## **5. Conclusion**

### **5.1. Conclusion**

Based on the discussion in the previous section, the following conclusions can be drawn:

1. Legal regulations regarding dormant shares in the process of transitioning a public company to a private one are not explicitly addressed in Indonesian regulations, such as Law No. 40 of 2007 on Limited Liability Companies, the Capital Market Law, or the OJK regulations related to going private. While these regulations provide a general legal framework for RUPS and tender offers, no specific norms regulate the classification, validation, or legal consequences of inactive or untraceable shares. This lack of regulation creates a legal vacuum, leading to uncertainty in the execution of the rights and obligations of dormant shareholders during strategic decision-making.
2. In practice, dormant shares significantly disrupt the implementation of go-private corporate actions, especially in meeting RUPS quorum requirements and completing the tender offer. Although issuers have complied with procedural obligations, such as public announcements and valid invitations, they are still hindered by the absence of dormant shareholders, whose rights are legally recognized. This results in delays in decision-making, increased administrative costs, and postponements of share delisting. The implementation becomes ineffective because the formal rights attached to dormant shares are not accompanied by the physical presence or active participation of their owners.

3. The main barriers to implementing dormant shares are unclear regulations, failure to achieve RUPS quorum, and the ineffectiveness of tender offer execution. Legally recorded but inactive shares create legal uncertainty, harming the issuer and active shareholders. Proposed regulatory solutions include revising POJK to address dormant shares, implementing judicial remedies to disregard passive shares through court decisions, and enhancing education and reporting from issuers to public shareholders. This approach aligns with the principles of legal protection and stakeholder theories, which demand a balance between protecting rights and ensuring effective corporate governance.

## 5.2. Recommendations

Based on these conclusions, the author offers the following recommendations:

1. The Financial Services Authority (OJK), together with the Indonesia Stock Exchange (BEI) and the Indonesia Central Securities Depository (KSEI), should immediately establish technical regulations or specific guidelines to regulate the classification and handling of dormant shares, including legal mechanisms to exclude inactive shares from decision-making processes in RUPS and tender offers. This aims to provide legal certainty for issuers and prevent stagnation in the go-private process.
2. The government, through the People's Representative Council and the Ministry of Finance, should encourage the amendment or creation of sectoral laws, particularly revising the Limited Liability Company Law and the Capital Market Law, to include new norms regarding legal protection for passive securities and judicial authority to resolve the legal status of dormant shares. This is crucial to ensure the certainty and effectiveness of capital market regulations that are adaptable to the dynamics of modern corporate practice.
3. Public shareholders are urged to increase their awareness and responsibility for maintaining the activity of their share ownership, including updating their identity data with the KSEI and following official issuer information. Active public involvement as investors is vital to prevent dormant shares, which can hinder corporate actions and harm collective interests in company development and a healthy capital market.

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