HIGHLIGHTS ON THE COMPANY LAW OF INDONESIA*

I. *How business is organized in Indonesia*

Business is normally organized in about the same way throughout the world. In Singapore as well as in Indonesia, one can find business organization in the form of proprietorship, partnership, limited partnership or limited company. The name might be the same, but the content is, I think, definitely different.

From the point of view of the liability of the members of the business organization, I would say two extremes are found: at the one extreme we have a business organization which knows no limit upon the liability of the members, and at the other extreme we have a business organization which knows a definite limit upon the liability of the members. And in between these two extremes, variable forms are found. Diagramatically, one may thus picture it as follows:

Proprietorship	Partnership	Limited Partnership	Limited Company

In spite of the fact that there are various forms in which a business may be organized, I would limit myself to the discussion of what is normally termed a limited company. The name, which by now I think is clear, is derived from the limited liability of the members of such an organization.

In Indonesia, up to now, when we say limited company, are mean *private* limited company. A distinction between a public and a private company as it appears and as it is found in the Company Act of Singapore is not known yet in Indonesia. Indonesia may have such a public company in the near future when shares of Indonesian companies will be able to be sold and purchased freely in a stock exchange.

I am limiting myself to the discussion of the business organization called limited company, because I believe that this form of business organization is the most important in the current economic development of Indonesia. Various facts may be cited here. First, the Foreign Investment Law of Indonesia of 1967 requires that a person wishing to invest under the umbrella of this law should organize his business in the form of a limited company. Second, practice indicates that a person wishing to invest under the Domestic Investment Law of Indonesia of 1968 is also required to organized his business in the form of a limited company, even though the legislation itself does not specifically require it to be so. Third, some of the existing Indonesian Government enterprises are in the process of being converted into limited companies.

* A paper delivered during the Colloquium on Indonesian law at the Faculty of Law, University of Singapore, 1973.

Fourth, The Government of Indonesia is seriously considering the establishment of a capital market. As far as business organization is concerned, I think the only possible form is the limited company.

II. Designation of a Limited Company

In Indonesia we may know whether or not a company business is organized in the form of a limited company by noting a certain abbreviation before the name of the company itself. The limited company can be recognized by the abbreviation P.T. which stands for *Perseroan Terbatas.* Literally, I think we may translate this into English as limited association. It should, however, be noted here that the Company Law itself does not require the use of such an abbreviation, but practice does. Other abbreviations which I think are worthy to be noted are Fa which stands for Firma, and *C.V.* which stands for Commoditaire Venootschap. The first indicates that the business is organized as a partnership, and the second as a limited partnership.

III. Establishing the Perseroan Terbatas

When two or more persons decide to establish a limited company, they should first come together and determine

(i) the Name
(ii) the Domicile
(iii) the Duration
(iv) the Purpose
(v) the Capital
(vi) the Management
(vii) the Distribution of Profit, and
(viii) the Winding Up

Once they have done that, they should write down what they have agreed in a special document, called the *Articles of Association*, which should be drawn before a notary public. Here, I think, a great difference is apparent from the practice in Singapore. In Indonesia no distinction is made between Memorandum of Association and Articles of Association. The above seven items, namely the name of the company, the domicile, the duration, the purpose, the capital, the management, the distribution of profit and the winding up are all provided for in the Articles of Incorporation, together with the issue of shares, the transfer of shares, provisions as to notice and procedure at general meeting, appointment and duties of directors. What is provided in two documents in Singapore is provided in one document in Indonesia. Clearly, from this stand point, the system in Indonesia, I should say, is superior.

IV. Legal Person

It is an established practice in Indonesia that a limited company or P.T. is a legal person having its own property, rights and obligations, distinct from the properties and rights of the share-holders. Again,

just like the use of the abbreviation P.T., the Company Law itself does not specify anything concerning the status of a legal entity. Normally, a company is considered to have gained the status of a legal person, if an approval from the Minister of Justice has been obtained. This approval is, I think, similar to the Certificate of Incorporation issued by the Registrar of Companies as practised in Singapore.

The relationship of legal person and Ministerial approval on the one hand, and the time-gap involved between the drawing up of the Articles of Incorporation and the obtaining the Ministerial approval on the other create several problems. First, when actually can a limited company be considered to have acquired the status of a legal person? Until recently, the view was that the Articles of Incorporation and the Approval of the Minister of Justice should be registered in a public registry and announced in an official bulletin before one could say that the limited company has acquired the status of a legal person. Now, the Department of Justice seems to hold the opinion that the status of a legal person is acquired upon approval of the Minister of Justice regardless of whether or not it has been registered and announced. Second, who actually should be held responsible for the activities of the companies if approval from the Minister of Justice has not been obtained yet? In my opinion, since the company has not obtained the status of a legal person yet, the directors and the shareholders should be held responsible and jointly and severally liable. In a sense, the directors and the share-holders should be considered as forming a partnership. Third, who is actually liable after the approval of the Minister of Justice but before the registration and announcement? Since now the company has obtained the status of a legal person, I think the Directors should be held liable jointly and severally.

V. Capital Formation

The P.T. like any other limited company forms its capital by issuing shares. This is one of the reasons why I think that the P.T. is the logical form of business organization to make use of the capital available in the market. In Indonesia we recognize three different kinds of capital of the company, i.e.

(i) Authorized Capital

(ii) Issued Capital and

(iii) Paid-up Capital

Authorized capital is the maximum capital stated in the Articles of Incorporation. Issued capital must be at least 20% of the authorized capital before the Department of Justice will extend its approval, and the paid-up capital is the capital actually paid by the shareholders. In order to get the approval from the Minister of Justice, at least 10% of the issued capital must be paid up. Thus, in Indonesia only a minimum paid up capital is required before a company will be approved by the Department of Justice. It should also be noted here that the terms issued and subscribed capital are used interchangeably. I find that the British Companies Act distinguishes between issued capital and subscribed capital. The first, if I recall correctly, is to mean a nominal capital which has been actually issued to shareholders, and the second

an issued capital for which the shareholders have paid in cash (this is then similar to the Indonesian paid-up capital). Besides, Indonesia does not have what the British normally term as called-up capital versus uncalled-up capital. This little sketch on terminology proves again that caution should be taken in its use.

VI. Kinds of Shares

In Indonesia as elsewhere two kinds of shares are known, i.e. bearer shares and personal or registered shares. The name bearer share, I think, is self explanatory, the one who bears the share is taken to be the owner. Such a share accordingly to the Company Law of Indonesia could only be issued if its full value has been paid up. Bearer shares are to be distinguished from personal shares, because in personal shares the bearer is not necessarily the owner. The owner of a personal share is the one whose name is registered to be such. In view of this fact, personal shares are sometimes also called registered shares. Most of the limited companies in Indonesia issue only personal shares. Why the promoters or founders of the companies take this course could be attributed to several circumstances. First, foreigners doing business in Indonesia are restricted in their activities, but they are free to establish a company (because no restriction exists concerning ownership of shares having rupiah value). As a result of this dual-nature, Indonesian Government Authorities who are to issue the operating licence normally require the company to submit to them the names of the owners of the shares. Second, in the fields of foreign as well as domestic investments, a similar attitude is taken by the Investment Co-ordinating body. Third, a limited company normally is established within a very limited circle, either among friends or among family members or both. Fourth, there is no a sort of stock exchange yet where shares could be anonymously transfered from one hand to another. In order not to run against the policy of the Government of Indonesia regarding the activities of foreigners, the shares that are sold and purchased anonymously could be restricted only for shares of companies which are permitted to be owned by foreigners.

In Indonesia as it is in elsewhere, classes of shares such as preference shares versus ordinary shares are also recognised.

VII. Transfer of Shares

Since the P.T. is usually established in a very limited circle, the transfer of shares to a third party is generally only permitted if the existing share-holders fail or refuse to buy them. The Articles of Incorporation normally provide a very extensive mode as to how a share may be transfered from one hand to another. Under the British Companies Act, a limited mode in the transfer of shares of a private company is also found.

VIII. The rights of a share-holder

Besides the usual right to the profit and the property of the company, I think the two most important rights of a share-holder are the voting right and the right to object to a decision of the share-holders meeting.

Until March, 1971, Indonesia adopted a very limited system of voting right. How many votes a person can cast does not solely depend upon the number of shares he possesses, but also depends upon the number of shares the company plans to issue (i.e. the number of shares constituting the total amount of the authorized capital). If a company plans to issue less than 100 shares, then a person having more than 3 shares may only cast a maximum of 3 votes in a general meeting of share-holders. Thus, whether he has 4 or 5 or 90 shares, he is only permitted by law to cast a maximum of 3 votes. The idea is to protect the minority share-holders at the expense of the majority share-holders. That is the picture if a company plans to issue less than 100 shares. But if the company plans to issue more than 100 shares, then the limit is 6 votes regardless of whether he has 7 or 8 or 111 shares.

The minority share-holders like it, but the majority share-holders do not. By way of compromise the Government of Indonesia now makes it possible for the promoters or the founders of a company to decide among themselves whether to adopt the aboge system or to adopt the more modern one-share-one-vote system. Another important right of a share-holder is the right to object to a decision of a share-holders meeting. I think this right is quite unique as compared to the practice in Singapore. Thus, even though the shareholders meeting is the highest body within the company, yet its decisions are always reviewable by a court of justice if a request to that effect is filed. Practice recently indicates that there is a tendency towards an increase in cases involving decisions of share-holders meetings.

IX. The organization of the company

A limited company in Indonesia normally conducts its business through its organs, and there are mainly three of them:

(i) The general meeting of share-holders

(ii) The Supervisor (or Board of Supervisors)

(iii) The Director (or Board of Directors)

That the general meeting of share-holders is the highest body within a limited company is, I think, quite a common phenomenon throughout the world. In Indonesia the main authority of the general meeting of share-holders is to determine the general policy of the company and to elect the Director (s) and the Supervisor (s). As far as frequency of the meeting is concerned, the law does not specifically mention when this should be conducted, but there is an indication that the meeting should at least be conducted once a year, since the Director (s) is obliged to submit to the general meeting of share-holders an annual report. Similar to the system adopted by the British Companies Act, there are also in Indonesia statutory meetings and extra-ordinary general meetings of share-holders. The Statutory meeting is normally the first meeting held after the establishment of the company. An Extra-ordinary meeting is a meeting that is held because there is a need to do so. The Supervisor (s) is the second highest body within the company. This organ is unique to Indonesia. I believe that Singapore company law is not familiar with this system. The Supervisor is sometime also called

Commissory or *Komisaria* to be more exact. The main function is actually to supervise the daily activities of the director(s). The consent of the Komisrasi is normally required for a loan agreement, or a payment exceeding a certain amount, or a transaction involving the immovable property of the company, The most important power of the Supervisor (s) is, I think, the right to expel the Director (s). In view of this fact, the Supervisor (s) normally is the major share-holder, but practice now indicates that the Supervisor (s) is a person of social standing. This is to ensure better business activities. At a glance, it appears that the most powerful body is the Supervisor (s), but actually it is not so, because the Supervisor (s) is elected and expelled by the share-holders meeting.

The existence of the Supervisor (s) is not compulsory, as a result of which many foreign investors who are not familiar with this system prefer to by-pass it.

The daily activities of the company are conducted by the Director (s). In some companies the Director (s) is a professional manager, whereas in others the Director (s) is the major share-holder. The latter is particularly true if the company chooses as the Supervisor (s) a person of eminent social standing. The main duty of the Director (s) is naturally to manage the company, but the Company Law itself does not specify how this should be done. Nevertheless, the Company Law obliges the Director (s) to make a announcement if the company suffers a loss of more than 50% but less than 75% of the authorised capital. Such an announcement should be made in a special register in the District Court of Justice. As it has been indicated above, the Director (s) is also obliged to submit an annual report of profit and loss to the general meeting of shareholders. The other rights and obligations of the Director (s) are usually provided for in the Articles of Incorporation.

By now, I think, it becomes apparent that under the system of the Company Law of Indonesia, no secretary of the company is required.

X. *Winding Up*

Like the system in Singapore, Indonesia also recognises voluntary and compulsory winding up. When the company has reached its expiration date or when the general meeting of share-holders decide to wind up the company there are two possible forms of voluntary winding up. On the other hand, the company is obliged to wind up if the company suffers a loss of 75% or more of the authorised capital, or if the company suffers an insolvency after it has been declared bankrupt, or if the company is dissolved by the Minister of Justice. With the winding up of the company, I wish to wind up also my brief discussion on the highlights of the Company Law of Indonesia.

CHARLES HIMAWAN S.H.*

* Lecturer in Law, University of Indonesia, Djakarta, Indonesia.