



Interim Share Dividend Distribution in the Indonesia Limited Company Law No. 40 of 2007 in Perspective Utilitarianism Theory and Hierarchy Theory

Adityadarma Bagus Priasmoro Suryono Putro¹; Budi Susanto²; Rachmi Sulistyarini²

¹ Master of Law, Faculty of Law Brawijaya University, Malang, Indonesia

² Lecturer Faculty of Law Brawijaya University, Malang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i4.2586>

Abstract

Based on Article 72 of the Indonesia Limited Company Law, companies are allowed to distribute dividends before the company closes the annual book and the General Meeting of Shareholders (GMS) by giving temporary dividends (interim). In this case, if the company suffers a loss at the closing of the annual book according to the Indonesia Limited Company Law, the shareholders must return the dividends they have received. If the shareholders do not return it, the directors and commissioners must be joint responsibility to cover company losses. Based on these reasons, the researcher examined the useful aspects of the interim dividend arrangement in Article 72 of the Indonesia Limited Company Law based on Jeremy Bentham's Utilitarianism theory and found the form of norms regarding the return of interim dividends in Indonesian legislation using Hans Kallsen's Hierarchy theory. This research is a normative study with a conceptual approach. The results of the study suggest that; Article 72 paragraphs 1 to 4 of the Indonesia Limited Company Law can benefit the public because Bentham places benefits on individual happiness on a materialistic basis and practical social goals that can balance various interests. However, paragraphs 5 and 6 discussing the return of interim dividends that have been distributed, if, at the end of the closing of the book the company suffers a loss, in terms of the principle of benefit, Bentham does not provide benefits because it cannot provide a happiness effect for many people. The form of regulation on the distribution and return of interim share dividends in Indonesia is Statutes and Bylaws (C & B). C & B are a creative dimension in the form of living law or actions taken by the community. In terms of civil law, C & B has the same position as the law but cannot apply to the public.

Keywords: *Interim Share; Dividend Distribution; Legal Utility; Legal Norms*

Introduction

The capital market can be used as an alternative to getting funds within the company because the capital market is a meeting place for parties with a surplus of funds with those with a deficit of funds in transactions (Mas Rahmad, 2019). One of the attractive of a person to become a stock investor is profit sharing or what is known as dividends. Dividends are "an amount of the profits that a company pays to shareholders" (Oxford University Press, 2005).

Dividends are the distribution of profits to shareholders on a pro-rata basis (M. Yahya Harahap, 2016). Generally, the distribution of dividends is in the form of cash, but can also be distributed in the form of shares or other forms according to the company's Statutes and Bylaws (C & B). Meanwhile, the distribution of dividends is regulated in Article 71 paragraph (2) and (3) of the Indonesia Limited Company Law where dividends distributed to shareholders are the entire net profit of the company minus the allowance for reserve funds (M. Yahya Harahap, 2016).

Based on Article 72 paragraph (1) "the company can temporarily distribute dividends, the meaning of which is dividends distributed before the Company's financial year ends as long as it is stipulated in the articles of association of the Company (Rudhi Prasetya, 2013). In the distribution of interim dividends, the company has requirements that must be met. These requirements are contained in Article 72 paragraph (2) and (3) of the Indonesia Limited Company Law.

Meanwhile, subjects who can receive interim dividends are stated in Article 72 paragraph (4) of the Indonesia Limited Company Law states that: "Those entitled to determine the distribution of interim dividends are based on the decision of the board of directors which has the approval of the board of commissioners".

In 2020, there were a lot of companies that distributed interim dividends to their investors, listed on the Indonesia Stock Exchange that distributed cash dividends in the period of August and September 2020, there were 73 companies (Pusatis, 2020). When the company finds a loss after the distribution of the interim dividend, then based on Article 72 paragraph (5) of the Indonesia Limited Company Law which states: "shareholders are required to return the interim dividend to the company".

Although Article 72 paragraph (6) states that: "the board of directors and the board of commissioners are jointly and severally responsible for the decision to pay interim dividends to shareholders before the end of the financial year." If based on Article 72 of the Indonesia Limited Company Law, it can be concluded that the company is allowed to issue interim dividends to shareholders before entering the company's financial year ends. This must be stated in the articles of association of a company.

The distribution of the interim dividend profit must not interfere with the course of the company's activities as well as the company's obligations to creditors, the interim dividend distribution must be determined through the approval of the board of directors decided by the board of directors

However, Article 72 paragraph (5) of the Indonesia Limited Company Law states that: "If after the financial year ends it turns out that the Company suffers a loss, the interim dividends that have been distributed must be returned by the shareholders to the Company".

The word "must" from Article 72 paragraph (5) has obliged the shareholders who receive the interim dividend to be obliged to return the dividend to the company. The obligations borne to the shareholders of the interim dividends can become the basis for the company to be able to withdraw the interim dividend profit to the dividend recipients.

However, the limitations and the absence of regulations governing the company's further actions to shareholders unable to return dividends that have been distributed (interim) have made steps that the company can take to get dividends again encountered obstacles. This limitation collides with the regulations governing custodian banks related to their customer accounts. As contained in Article 47 paragraph (1) of the Indonesia Capital Market Law No. 8 of 1995, which explains:

Custodians or their affiliated parties are prohibited from providing information regarding a client's Securities account to any Party, except to:

- a. The party appointed in writing by the account holder or the account holder's heirs;
- b. Police, prosecutors, or judges for criminal case trials;
- c. Courts for court in civil cases at the request of the Parties to the case;
- d. Tax Officials for tax purposes;
- e. Bapepam, Stock Exchange, Clearing Guarantee Institution, Issuer, Securities Administration Agency, or other Custodian in carrying out their respective functions; or
- f. Parties providing services to Custodians, including consultants, legal consultants, and accountants.

With this regulation, the company's steps to get its interim dividend back will be longer. Based on Article 47 paragraph (1) letters b and c of the Indonesia Capital Market Law, "information on new customer securities accounts will be given when involved in a criminal or civil court case". Taking the steps of a criminal or civil court will require a lot of money and time. So that taking this route seems ineffective. This applies to shareholders who refuse to return their interim dividends, but shareholders who intend to return their interim dividends also face a few obstacles. The absence of statutory rules or regulating procedures can be an obstacle for shareholders.

Companies that suffer a loss or dividend calculation are smaller than when the time was distributed in the middle of the closing book year, the company does not withdraw the excess dividend to investors, but the company compensates for the loss with reserve capital taken from the previous year's positive profit. As carried out by PT Indomobil Sukses International Tbk (IMAS) in 2018 (Kontan.co.id, 2018), PT Indo Tambangraya Megah Tbk. (ITMG), PT Perusahaan Gas Negara Tbk. (PGAS) in 2019 and PT Indika Energy Tbk. (INDY) (Market Bisnis.com, 2020)

From the legal material above, it can be assumed that Article 72 of the Indonesia Limited Company Law does not contain the principle of legal benefit because some companies do not heed the existing regulations regarding the distribution of interim dividends, especially when the dividend calculation at the end of the annual dividend is smaller than the time of distribution.

With the aforementioned problems, the writer wants to analyze the principle of benefit from these rules by using the analysis knife of the theory of utilitarianism which was initiated by Jeremy Bentham, according to him something is considered a benefit if it gives happiness (happiness), fair or unfair assessment, good or bad of law rests on whether the existing law can give happiness to the times where the purpose of the law is to provide the greatest benefit and happiness to as many members of the community as possible. So, the concept puts benefit as the main goal of the law. The measure is the greatest happiness for as many people as possible. In addition to the theory of utilitarianism, the researcher wants to examine the form of regulation of article 72 procedures by using the legal hierarchy theory initiated by Hans Kallsen.

Research Method

This type of research is normative or commonly referred to as doctrinal research that uses a conceptual approach, this approach originates from the doctrine and views of legal science, namely the theory of the principle of legal usefulness initiated by Jeremy Bentham and the theory of legal hierarchy initiated by Hans Kallsen, to build related arguments. principles of benefit as well as the realization of procedures from the regulation of article 72 of the Indonesia Limited Company Law on the distribution of interim share dividends.

Research Result and Discussion

A. Principle of Benefits in Article 72 of the Indonesia Limited Company Law

The principle of benefit used in this study is the idea of Jeremy Bentham who considers that the main purpose of the law is a benefit (Nazaruddin Lathif, 2017). Bentham said, "The aim of the law is The Greatest Happiness for the greatest number" (S.H.R. Otje Salman, 2010). The measure of legal usefulness that Bentham uses is happiness.

The essence of happiness according to Bentham is a life that is protected from misery (Lilik Rasyidi & Ira Thania Rasyidi, 2004) and everything is said to be beneficial if it includes hedonic calculus indicators, namely intensity and duration, certainty, and propinquity. According to fecundity (fertility), according to the extent (range) of feelings (Richard Schoch, 2009). In this case, the researcher wants to measure the principle of the usefulness of the arrangement for the distribution of interim share dividends in Article 72 of the Indonesia Limited Company Law.

Article 72 of the Indonesia Limited Company Law regulates the distribution of interim share dividends as well as the provisions. Article 72 paragraphs 1 to 6 of the Indonesia Limited Company Law, states:

1. The Company may distribute interim dividends before the Company's financial year ends as long as it is stipulated in the Company's articles of association.
2. The interim dividend distribution as referred to in paragraph (1) may be made if the total net assets of the Company do not become less than the total issued and paid-up capital plus the mandatory reserve.
3. The interim dividend distribution as referred to in paragraph (2) may not interfere or cause the Company to be unable to fulfill its obligations to creditors or interfere with the Company's activities.
4. The distribution of interim dividends is determined based on the decision of the Board of Directors after obtaining the approval of the Board of Commissioners, with due observance of the provisions in paragraphs (2) and paragraph (3).
5. If after the financial year ends it turns out that the Company has suffered a loss, the interim dividends that have been distributed must be returned by the shareholders to the Company.
6. The Board of Directors and the Board of Commissioners are jointly and severally responsible for the loss of the Company if the shareholder is unable to return the interim dividend as referred to in paragraph (5).

Dividends are the portion of profits after deducting retained earnings which are distributed by the company to shareholders. (Sudirman, 2015) In general, dividends distributed at the end of the book closing period are usually referred to as final dividends, however, it turns out that there are temporary dividends which are commonly referred to as interim dividends where the dividends are declared and distributed before the company's annual profit has not been determined by the GMS. . The basis for determining the distribution of the interim dividend is the appointment of the board of directors (I Hariyani & S.D. Purnomo, 2010).

Starting from Jeremy Bentham's theory, to find out the principle of benefits of Article 72 of the Indonesia Limited Company Law on Interim Dividend Distribution using the main keywords, namely "The Good (kindness)" and "The Greatest Number" (Jeremy Bentham, 1907) in more detail we will examine it according to the verse by verse theme in it.

1. *The Good (Kindness)*

In connection with the good, Bentham states that a crime or goodness can be measured based on 2 indicators, the first is the level of severity of the substance of the act and the second is measured based on its consequences (K. Berten, 2007). In connection with that, in Article 72 Paragraph (1) of the Indonesia Limited Company Law the question arises, what is the level of need for the interim dividend distribution rules in Article 72 Paragraph (1) of the Indonesia Limited Company Law for companies or shareholders?

In economic theory, needs are divided into three, namely primary, secondary, tertiary (Maskur Anhari, 2015). In the opinion of the author, the interim share division is included in the level of secondary needs. Because, if the company does not distribute dividends using the interim model, the company will not lose investors massively, but when investors distribute dividends using the interim model it will be easy to attract investors. Likewise with shareholders, when a company does not distribute shares using the interim model, investors/shareholders will not sell their shares because shareholders can still be given the certainty of receiving the final dividend. this means that in the theory of Bentham the good as stated in paragraph 1 regarding the distribution of interim dividends is a medium level.

In addition to being measured based on the level, Bentham measures the goodness based on the results it causes with the hedonic calculus principle (Roslyn Weiss, 1989). Based on this, the dividend distribution carried out by the company indirectly has advantages and disadvantages, while the advantages are:

- a. Investors tend to prefer companies that distribute dividends stably in a short period and are made multiple times in one closing book period.
- b. Investors prefer companies that have a track record of paying dividends because they reflect their stability in a positive way.
- c. Benefits without Selling: investors get profit from dividends without selling their shares.
- d. Information signal: able to provide strong traction about the company's prospects

And the disadvantages of paying dividends are:

- a. When the company pays dividends, it can decrease the profit on its hold.
- b. Limiting Company Growth because the Company will have less money to invest in business growth.
- c. Dividend payments require a lot of record-keeping on the part of the company. (Nurul Masruri Bagus Nufiati & Suwitho, 2015)

It means that we understand that paragraph 1 materially has negative and positive impacts for both the company and shareholders, although there are drawbacks, there are more advantages than disadvantages. After paragraph 1 allows the distribution of temporary dividends, Article 72 Paragraphs 2 to 4 of the Indonesia Limited Company Law discusses the technical or way of distributing interim dividends (Ipotnews, 2018), if viewed from Bentham's theory, then The Good) in this paragraph is accountable and transparent.

The question is how important is this aspect in the interim dividend distribution process? In this case, the technical regulation regarding the distribution of interim dividends must exist, because if it is not regulated in detail there will be potential for fraud in the form of the company's authority to distribute dividends as was done by PT Merck Tbk. (MERK) originally announced a dividend distribution of 1.46 trillion rupiahs and later revised it by only distributing 1.14 trillion rupiahs dividends because there was an error in calculating the company's profit. At this point, it can be concluded that the good that this article is trying to achieve is at a heavy or high level.

Furthermore, concerning the consequences of the existence of Article 72 paragraph (2) to (4) the Indonesia Limited Company Law, it has a significant impact on protection for investors or other go public companies. Because errors/frauds arising from miscalculations to distribution will have an impact on macro stock price fluctuations.

Article 5 regulates the return of interim share dividends when the company experiences a loss at the end of the book closing. From the sound of Article 72 paragraph (5) the Indonesia Limited Company Law above clearly stipulates that if at the close of the company's books it turns out that the company has suffered losses and dividends have been distributed as interim dividends to shareholders, then based on the Limited Liability Company Law, shareholders are required to return the dividends that have been received to the company.

The good stated in this article is to protect the principal capital of the company, in connection with the level being at a high level because it is viewed from the aspect of the consequences if the company's losses reach the main capital, the company will collapse and all shareholders will suffer losses.

Furthermore, if the shareholders do not return the dividends they have received, then in Article 72 paragraph (6) the Indonesia Limited Company Law the board of directors and commissioners are obliged to return it. From there we can understand that the burden imposed by the Limited Liability Company Law as stated in paragraph (6) is a transfer of responsibility from shareholders to the board of commissioners and directors if the shareholders do not return the dividends they have received.

The good contained in this paragraph remain to maintain the company's capital. Furthermore, in terms of consequences, it turns out that there are two consequences, namely the company's capital is maintained and the bad consequences of the presence of directors and commissioners must bear the losses based on the principles of fiduciary duty and business judgment rule.

2. The Greatest Number

Bentham's theory greatest number says that kindness is not only beneficial to individuals but must be useful to many people (Agus Surachman, 2018). This assumption will be used to measure paragraph by paragraph in Article 72 of the Indonesia Limited Company Law with Hedonic calculus.

The good in Article 72 paragraph (1) is the fulfillment of the secondary needs of the parties. In this case, the distribution of interim dividends indirectly, besides being beneficial for the company and shareholders, can provide benefits to the macroeconomy because dividends will increase the income of shareholders. Furthermore, another effect is that each company will compete with each other to be able to distribute interim dividends to shareholders to attract as many investors as possible.

Indirectly, Article 72 paragraph (1) of the Indonesia Limited Company Law here provides certainty that the company is allowed to distribute dividends before closing the books at the end of the year, for example in December the company closes the books at the end of the year and holds a GMS and distributes dividends in March, in June the company distributes dividends again, in October the company distributes dividends again from here meaning the company distributes dividends not only once, and the company has distributed dividends before holding the GMS, in this case, it is called interim share dividends, so that shareholder satisfaction goes along with the length of time. (duration) in investing the funds in the company will increase (fecundity) and the company can attract potential investors to buy shares of the company concerned.

At this point, it can be concluded that the greatest number in this verse has been fulfilled. Article 2 through 4 of the Indonesia Limited Company Law contain elements of the good in the form of

transparency and accountability, the regulation in this paragraph is viewed from the aspect of the greatest number, it provides benefits for the company, investors, government, and the economy in general, it is proven that this regulation can protect against fraud committed by certain companies where the fraud committed will have a wide impact on widespread stock fluctuations.

Regarding the terms and technicalities for the distribution of interim share dividends that have been regulated in paragraphs 2 to 4 of article 72 of Law No.40 of 2007 concerning Company Law, here it can provide legal certainty so that the company feels that there is the ease in carrying out the distribution of interim share dividends as well as the certainty of receiving dividends for shareholders because of the open system that is implemented. This certainty triggers the company to continue to grow and be creative (Fecundity) to maintain shareholder satisfaction. Thus the good (kindness) number in Article 72 paragraphs (2) to (4) of the Indonesia Limited Company Law here can provide great benefits to the stakeholders of this regulation.

In connection with The good (goodness) stated in Article 72 paragraph (5) to protect the company's principal capital with a high level, we measure its usefulness with hedonic calculus Article 72 paragraph 5(0) which is not by the legal objectives formulated by Bentham where the law must be able to provide a guarantee of happiness to all objects for the law (Agus Surachman, 2018), whereas when shareholders are asked to return the dividends they have received indirectly, there will be disappointment or dissatisfaction of shareholders and will reduce the level of confidence of investors in the company.

As if the company is not credible or the company finds it difficult to collect from shareholders so that the company makes alternative solutions by covering losses by using reserve funds owned or by accumulating losses and with the calculation of profit in the following year.

As run by PT. Indomobil Sukses International Tbk (IMAS) in 2018 (Kontan.co.id, 2018), PT. Indo Tambangraya Megah Tbk. (ITMG), PT. Indika Energy Tbk. (INDY), and PT Perusahaan Gas Negara Tbk. (PGAS) in 2019 (Market Bisnis.com, 2020). The company did not withdraw the excess dividend to investors, but the company made up for the loss with reserve capital taken from the previous year's positive profit. PT Astra Indonesia in its C & B stated that:

If the profit and loss calculation in a financial year shows a loss that cannot be covered by a reserve fund, then the loss will still be recorded and included in the profit and loss calculation and in the following financial year the company is deemed not to have made a profit as long as the loss is recorded and included in the profit calculation. the loss has not been completely covered, thus without reducing the provisions of the prevailing laws and regulations.

PT. Astra Indonesia's C & B means if the company suffers a loss after distributing the interim share dividend and records the loss in the profit and loss calculation for the following financial year (PT. Astra Indonesia, 2015).

Likewise at PT Adira Dinamika Multi Finance Tbk. If there is a loss after distributing the interim share dividend, PT Adira Dinamika Multi Finance Tbk closes it with the reserve fund for the previous financial year and if the reserve fund still cannot cover it. PT Adira Dinamika Multi Finance Tbk will record a loss in the income statement for the following year. This settlement technique is contained in the amendment to the Articles of Association of PT Adira Dinamika Multi Finance Tbk No. AHU-AH.01.10-18269 dated 22 May 2012, the Articles of Association of the Company contain:

If the balance sheet and income statement from one financial year show losses that cannot be covered by compulsory reserve funds, then the loss will still be recorded in the balance sheet and income

statement. the balance sheet and income statement have not been completely covered without prejudice to the provisions of the laws and regulations. " (PT. Adira Dinamika Multi Finance, 2014).

Sociologically perspective, Article 72 paragraph (5) of the Indonesia Limited Company Law states the return of interim share dividends by shareholders When the company at the end of the book closes cannot be executed, so the company makes alternative solutions according to their respective conditions and pours out alternative solutions taken in the Company's C & B with guidance in Article 72 paragraph (6) of the Indonesia Limited Company Law concerning the responsibilities of the board of directors and the board of commissioners.

Article 72 paragraph (6) of the Indonesia Limited Company Law is a transfer of responsibility from shareholders to the board of directors and commissioners if the shareholder is unable to return the interim dividend. The responsibilities of the Board of Directors and the Board of Commissioners for the distribution of interim dividends must be based on the implementation of the principle of fiduciary duty and the business judgment rule, in which the distribution of interim dividends is part of the dividend policy, which is related to the issue of using profits which are the rights of shareholders and the profits can be divided as dividends. / profits or retained earnings to be reinvested (Phyca Chyntia Agustina, Ety Susilowati & Siti Mahampang, 2016).

The distribution of interim dividends in several publicly listed companies is carried out by applying the Principle of Information Disclosure, namely by announcing the distribution of interim dividends through the website of the Public Company or the Issuer's website; newspaper, and website of the Stock Exchange (M. Nasir & R. Sari, 2014).

Several Public Companies, when distributing interim dividends are carried out to pay income tax and for paying part of the final dividend so that the expenses at the end of the company are reduced and lighter (Suherma et.al., 2015). These Public Limited Companies, in the practice of interim dividend distribution, have fulfilled the obligations, conditions, and procedures as contained in the Indonesia Limited Company Law, the Indonesia Capital Market Law, the Indonesia Financial Services Authority (FSA) Law No. 21 of 2011, and FSA's regulations No. 31 of 2015.

In general, it can be concluded that the regulation regarding interim dividends as stipulated in Article 72 of the Indonesia Limited Company Law is based on Jeremy Bentham's utility theory. In terms of the interim dividend distribution system contained in Article 72 paragraphs (1) to paragraph (4) can provide benefits to many people because Bentham places benefits on individual happiness on a materialistic basis and practical social objectives that can balance various interests.

However, Article 72 paragraphs (5) and (6) discussing the return of interim dividends that have been distributed at the end of the book closing the company suffers a loss, if it is considered the usefulness principle of Bentham's theory, Bentham cannot provide benefits because the benchmarks of legal benefits that can give the effect of many people's happiness have not accommodated in that paragraph. If we measuring the strengths and weaknesses of the regulation, there will be greater advantages for both shareholders and the company, but the regulations related to returns have more drawbacks, both for the company and shareholders.

B. Form of Procedure Setting Article 72 of the Indonesia Limited Company Law

Free Trade that has followed the tendency of current globalization can affect the law in every country, including Indonesia (Bismar Nasution, 2009). Among the laws affected is the Indonesia Limited Company Law that continues to develop along with the development of economic culture.

The rules discussed related to the Limited Company in Article 36 to Article 56 of the Indonesia Trade Law are simple so that it cannot follow the flow of globalization. To answer this, the Indonesia Limited Company Law No. 1 of 1995 is promulgated. As for the reason for the replacement of its contained in the contribution and general explanation (M. Yahya Harahap, 2016).

Then there is another change in the presence of the Indonesia Limited Company Law No. 40 of 2007 on his contribution also contained the reasons for the replacement (Habib Adjie, 2008). With existing reasons, it is expected that the Indonesia Limited Company Law No. 40 of 2007 can be facilitative accommodating, and prescriptive and anticipatory to advance economic activities that can accommodate the development of globalization.

Limited companies are one of the legal subjects (Ahmad Yani & Widjaya Gunawan, 2000). Provisions regarding the legal subjects are regulated in Article 519 of the Indonesia Civil Code, Legal Entities. Legal entities are a body of associations that can have rights and commit actions such as humans and have their wealth, can be sued or sued in law (Subekti, 2001).

Limited Companies are legal entities fellowship in terms of capital that all capital is as basic capital and be acknowledged in stock. The company cannot carry out legal activity on behalf of itself. In the laws of the Company, some organs have the rights and obligations and their authority (Subekti, 2001). Article 1 paragraph (2) of the Indonesia Limited Company Law mentions its 3 organs, namely: Board of Commissioners, Directors, and General Meeting of Shareholders (GMS).

The Board of Directors is an organ that has the right and obligation to carry out activities for and on behalf of the Company under the supervision of the Board of Commissioners (Yani & Gunawan, 2000). The Board of Commissioners is an organ that provides advice and supervision to the Board of Directors according to the purpose and purpose of the company. One of the main tasks and functions regulated in the Indonesia Limited Company Law is about the distribution of interim dividends that must be based on the provisions of the Board of Directors and Commissioners while taking into account the provisions in Article 72 paragraph (2) and paragraph (3) of the Indonesia Limited Company Law.

Furthermore, the Board of Directors and Board of Commissioners must carry out a loss in the event of a loss of the Company, when the shareholders do not return the interim stock dividends that have been accepted as referred to in Article 72 paragraph (5). Dividends are generally distributed after the end of the year of a company with a decision of the GMS (final dividend), the company is allowed to distribute dividends before the GMS is usually called interim dividends (M. Yahya Harahap, 2016). Usually, interim dividend payments are carried out routinely like every three months or four months in the current year. The nature of interim dividends is only the temporary determination of the final dividend still refers to the decision of the GMS.

Interim dividend settings in the Indonesia Limited Company Law are new arrangements that have never been arranged in the Indonesia Trade Law and the Indonesia Limited Company Law No. 1 of 1995 even though actually in practice it is common. In other words, it seems that the invitation will want to provide a legal basis for the interim dividend distribution that has been used in practice so far (Rudi Prasetya, 1995). Because the distribution of interim dividends is carried out based on the Board of Commissioners and Board of Director's approval. If the company's financial year ends the company suffers from losses, interim dividends that have been received by shareholders must be returned to the Company, and if the shareholders do not return the Board of Directors and the Board of Commissioners responsible.

The fundamental issue of the responsibility of the Board of Commissioners and Directors in the distribution of interim dividends is a transition automatically responsibility for replacing losses to the company if the shareholders do not return dividends that have been received.

The phenomena of legal events above are legal norms. According to Hans Kallsen, the norm has a level ranging from the highest level called the Ground Norm. It is used by the foundation for other legal norms. Each legal norm that has a lower level must hold to a higher legal norm, so on until the last is the norm (Muhtadi, Muhtadi, 2014). In connection with the form of regulating procedures, Article 72 of the Indonesia Limited Company Law will be sought by the legal basis based on the Hierarchy theory of Hans Kallsen. Because the law is a setting in the system in Indonesia in more specifically the theory of hierarchy used is the application of Hans Kallsen hierarchy in law in Indonesia.

The application of Hans Kallsen's, Hans Nawiasky's, and Adolf Merk's theory in Indonesia can be seen from the Indonesia Formation of Legislation Law No. 12 of 2011. Types and hierarchies of laws and regulations consist of: The Republic of Indonesia Constitution of 1945; People's Consultative Assembly provision; Law/Government Regulation Substitutes Law; Government regulations; Presidential regulations; Provincial regulation; and regency/city regulations (Bayu Dwi Anggono, 2018).

For this reason, in finding the form of regulation of the dividend distribution of interim shares will be traced from the highest norms to the lowest norm as described above. The first level and as the Ground Norm of the interim dividend settings philosophically is the arrangement of stumbling in Article 33 paragraph (1) the Republic of Indonesia Constitution states: "The economy is compiled as a joint venture based on family principles".

Furthermore, Article 33 paragraph (4) of the Republic of Indonesia Constitution states that: "The national economy is organized based on economic democracy with the principle of togetherness, the efficiency of justice, sustainable, environmentally sound, independence, and by maintaining the balance of the progress and unity of the national economy".

Furthermore, the second level was the law contained in the Indonesia Limited Company Law. This law is generally regulating related to limited companies. Then the interim dividend settings are specifically regulated in Article 72 of the Indonesia Limited Company Law. One of the precise paragraphs in paragraph (2) to paragraph (4) regulates the procedure for the distribution of interim dividends starting from the determination up to the distribution. Paragraph (5) and paragraph (6) regulates related to the return of interim dividends when the company suffered a loss at the end of the company's book close.

In this case, paragraph (2) to paragraph (4) have provided technical guidelines regarding the procedure for distributing interim shares, only in paragraph (5) to paragraph (6) have not been regulated in a technical procedure in detail related to how to refund dividends to the Company and the form of the responsibility of the Board of Commissioners and Directors if the Shareholders do not Return the dividend he received. Until here it has not been determined by the norm regarding the return of interim dividends by shareholders to the Company.

Therefore, it is necessary to seek the form of arrangements to the norm that is under the law. The researcher found the following rules:

- a. Indonesia Capital Market Law only contains general capital market provisions and dividend distribution in general.
- b. Indonesia Finance Minister's Regulation No. 5/PMK.02/2013 concerning Tax Payment Technical for Companies or Shareholders.

- c. FSA's Regulation No. 31/POJK.04/2015 concerning technical openness and clarity of information related to the announcement of dividend shares both interim or final dividends.
- d. Director General of Tax's Circular Letter No. SE-12/PJ.43/1993 concerning Article 23 Income Tax / Article 26 for Dividend Payments or profits from the domestic company, contains the technical payment of dividend tax both final and interim.

But these rules none mention how the procedure is specifically distributed interim shares and returns if the company loses at the end of the company's book close. So therefore it is necessary to find specific norms below it again.

In the search conducted by the researcher, the only clear and detailed regulations mention how the distribution and return of interim dividends if there is a loss in the company as stipulated in the C & B from each of the Company as the following example:

- a. PT Intermedia Capital Tbk's C & B states if the company in the calculation of profit rates suffered losses and cannot be closed with a reserve fund, then the loss is noted on the following year's books. In the sense of PT Intermedia Capital Tbk transferred loss responsibility to the company (MDIA, 2015).
- b. PT Bank Mandiri Tbk's C & B states the company distributed interim shares and when at the end of the Company's book closed, the shareholders must return, and if the shareholders do not return the board of directors and commissioners must be terminated to cover the losses (PT Bank Mandiri, 2018).
- c. PT Adira Dinamika Multi Finance Tbk's C & B states the company distributes interim shares, and if in the final period of the company's book close losses, the replacement of losses is taken from the compulsory reserve fund, does not involve the shareholders, the Board of Commissioners and Directors (PT Adira Dinamika Multi Finance, 2014).
- d. Circular decision of all shareholders outside the General Meeting of Shareholders of PT Mora Telematika Indonesia ("PERSEROAN"), in this decision PT Mora Telematika Indonesia ("PERSEROAN") distributed interim shares and if there was a loss after the end of the company's book closed, it was about to close funds Reserves, if the reserve fund cannot cover the loss, it is recorded in the company's book next year (Mortelindo, 2019).
- e. PT. Astra Indonesia Tbk's C & B. The company distributes interim shares and if there is a loss after the end of the company's book close, it will be closed using a reserve fund, if the reserve fund cannot cover the loss, it is recorded in the company's book next year (PT. Astra Indonesia, 2015).
- f. PT Elang Mahkota Teknologi Tbk's C & B states the company distributes interim shares and if there is a loss after the end of the company's book close, the Board of Commissioners and Directors must carry out a joint responsibility term if the shareholders do not return it (Emtek, without years).

The treatment of children suspected of committing criminal acts is often very repressive. The judicial process against children often loses its essence as a mechanism that must end to protect the best interest of the child. The juvenile criminal justice process often presents itself as a mechanism that is only oriented towards formal law enforcement and is not oriented towards children's interests (Koesno Adi, 2009).

The question then is, can the Company's C & B be considered a legal norm in Hans Kallsen's theory? To assess this, it is necessary to review further how Hans Kallsen's perspective of law creation theory is. In this connection, the existence of a creative dimension cannot be denied, as there is an inevitable element of wisdom involved in the publication of lower-level norms. In other words, the establishment of lower-level norms by upper-level norms is never finished. That is, the higher-order

norms cannot bind for every detail of the act of practicing it. There must always be a scope for wisdom, sometimes wider, sometimes narrower, so that the higher-level norms, in terms of the act of implementing it (the act of norm creation or pure implementation), have the character of the framework to be filled through action.

Referring to this theory, the Company's C & B is a creative dimension as intended by Hans Kallsen. In this case, the author does not conclude that the Company's C & B is part of legal norms in the legal system in Indonesia, but the Company's C & B is a creative dimension that can take the form of living law or actions taken by the community.

The Company's C & B itself is a form of agreement between the board of directors and the board of commissioners whose contents are by the condition of the company. In this case, the provision of article 1338 paragraph (1) of the Indonesia Civil Code, states that: "All agreements that are legally made are valid as laws for those who make them. This means that both parties are obliged to obey and carry out the agreed agreement as in compliance with the Law." It can be concluded that in civil terms the AD / ART has the same position as the laws but cannot apply publicly.

However, if it is observed further that the neglect of the two sides in regulating the procedure for returning the interim dividends that have been distributed indirectly will cause many problems, one of which is the diversity of returns and responsibilities of the board of directors and board of commissioners of the company that have been exemplified above. The procedures for the return should be regulated like the technical distribution in Article 72 paragraphs (2) to paragraph (4) of the Indonesia Limited Company Law, which makes transparency and accountability will be achieved.

From the analysis above, we can conclude that the form of legal norms associated with dividend management is graded and layered in its hierarchical arrangement. However, about the return of interim dividends, if the company incurs a loss at the end of the yearbook closing, no dynamic explains the rules on it and provides a detailed explanation. So the company formulates practically in the company's C & B. Which is the company's C & B according to Hans Kallsen is a creative dimension that can be in the form of living law or actions taken by the community and civilization. From civil law perspective, the company's C & B has the same position as laws but cannot be applied automatically to the public.

Conclusion

Based on Jeremy Bentham's utilitarianism theory, the interim dividend distribution system contained in Article 72 paragraph (1) to paragraph (4) the Indonesia Limited Company Law makes benefit to many people. Because Bentham places benefits on individual happiness on a materialistic basis and practical social goals that can balance various interests. However, Article 72 paragraphs (5) and paragraph (6) the Indonesia Limited Company Law discussing the return of interim dividends that were distributed when the company closed the book at the end of the book, the company suffered a loss. Based on the principle of benefit in Bentham's theory concluded not able to provide benefits because the benchmark of legal usefulness could affect people's happiness. many have not been accommodated in that paragraph.

The form of the arrangement for the distribution and return of interim share dividends is the company's C & B. Which is the company's C & B is creative dimensions in the form of living law or actions taken by the community. In civil terms, the company's C & B has the same position as the law but cannot apply to the public.

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