Ideological Critique of Instrumental Communication in Shareholder Loan Discourse at the General Meeting of Shareholders: Monologue Logic in Business Law

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Abstract. Communication construction in a General Meeting of Shareholders (GMS), in principle, is an embodiment of creating an agreement to accommodate the common interests of all shareholders in carrying out joint business activities. However, it is undeniable that there is a binary opposition in the distribution of shares that dominate the inferior pole, which results in an imbalance of the interests of the shareholders. In the event that there is talk of borrowing from the majority shareholder, there is often *a grand narrative* against the minority shareholder in order to accept the will of the majority shareholder as the lender. In this discourse, in the end, there was neglect of the distribution of year-end dividends to minority shareholders who hegemony approved the GMS decision. This study uses legal research methods using Derrida's Deconstruction approach and the Instrumental Communication approach. The results of the research show that there is a monologue logic that takes advantage of the gaps in Law Number 40 of 2007 concerning Limited Liability Companies. Thus, minority shareholders in the formation of instrumental communication, contain an element of compulsion. Therefore, it is necessary that an agreement based on monologue logic is a false agreement.

Keywords: Loans, Monologic Logic, and Shareholders.

1. Introduction

Private Law is a law that is horizontal in nature that regulates the relationship between individuals (individuals) which leads to the creation of an agreement between individuals. Agreement is one of the principles in private law. Based on article 1320 of the Civil Code, in making an agreement or contract there are 4 legal conditions that must be met, namely; 1). Agree those who bind themselves; 2). Contracting skills; 3). A certain thing; 4). Halal reasons. The result of not reaching an agreement in the Agreement is that the Agreement can be canceled [1] .

In the Civil Code there are also several principles in making an Agreement or an agreement including; The basis of freedom of contract (*freedom of contract)* , the basis of consensualism, the basis of personality, the basis of legal certainty *(pacta sunt servanda)* which essentially explains the freedom of individuals to enter into an agreement as long as it is in accordance with the applicable provisions or principles [2] .

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The agreement is based on the interaction of the parties that builds good and effective communication between the parties [3] . Communication is a reciprocal activity carried out by each related individual to convey and obtain information in achieving something certain. In communicating, a tool is needed in the form of language in conveying the information [4] . However, often the use of inappropriate language creates ambiguity which causes disinformation to be received by the interlocutor. Therefore, language skills are a factor that influences whether or not information is conveyed in a communication.

Communication plays an important role in reaching an agreement in the realm of private law [5] . Communication becomes a crucial part when making an agreement because correct and accurate language skills are needed so that the aims and objectives to be achieved by the communicating parties can be achieved and do not cause ambiguity. Good and correct language skills are key in the communication process [6] . A proper understanding of the issues agreed upon and the ability to convey ideas clearly prevent misunderstandings that could lead to conflicts in the future.

In fact, in a communication, many parties deliberately obscure or block the information being conveyed so that effective communication is not achieved, causing disformation that causes harm to the opposing party.

One of the communication models to reach an agreement, for example in the General Meeting of Shareholders (GMS) held at the Company. provisions regarding the GMS itself are accommodated in Law Number 40 of 2007 concerning limited liability companies. The GMS itself is one of the Company's Organs that has authority that is not given to the Board of Directors or the Board of Commissioners, namely; a. appoint and dismiss members of the Board of Commissioners and the Board of Directors; b. Evaluating the performance of the Board of Commissioners and Directors; c. approve changes to the articles of association; d. accept and approve annual reports and approve financial reports; e. determine the use of the company's net profit, including the distribution of dividends; f. determine the amount of remuneration for members of the Board of Commissioners and Board of Directors; g. give approval for the Company's plans that have a material impact on the company [7] .

Based on article 78 UUPT GMS consists of annual GMS and Extraordinary GMS. The function of the GMS is to affirm the company's Annual Report which contains, among other things, the company's financial statements [7] , reports on the company's business activities, reports on the implementation of environmental and social responsibilities and details of problems during the company's activities. the holding of the GMS is attended by Shareholders, Directors and Commissioners. Then on the agenda of the GMS the directors will submit the Annual GMS Report on the company's activities during the Company's financial year ends. Currently, in the practice of limited liability companies there are two types of shareholders, namely majority shareholders and minority shareholders.

The majority shareholder is a party that owns more than 50% or half of the Company's shares [8] . In this case, it appears that the majority shareholder has strong

control over the Company due to the influence of the shares it owns. This gives them significant power over important decisions, including the right to decide about dividend distribution. As a group that owns larger shares, majority shareholders have greater influence over the company's financial policies and can influence how company profits will be distributed to shareholders [9] .

However, shareholders have a moral obligation to ensure the smooth operation of the company. Therefore, in company practice, it is possible for a shareholder to provide assistance in the form of a loan as operational funds for the company.

Loan from majority shareholder is a situation where the majority shareholder in a company decides to provide a loan to the company. thus, the majority shareholders use their position of control to provide funds to the company in the form of loans, which will later be considered as debt that must be repaid by the Company.

Situations like this can create complex dynamics between majority and minority shareholders. Minority shareholders may feel they do not have sufficient influence to influence or overrule this decision [9] . They may feel that these loans may affect the overall well-being of the company and their dividend rights. This could raise concerns about conflicts of interest, especially if the majority shareholder benefits from these loans, while minority shareholders feel that they do not have sufficient control to protect their interests. In fact, pursuant to Article 52 paragraph (1) letter b of the Limited Liability Company Law , it states that shares entitle shareholders to receive payment of dividends and the remaining assets resulting from liquidation. Thus, even though the Company is making loans to the majority shareholders, the minority shareholders' rights regarding dividends may not be intervened. However, in reality there is often interference with the dividend rights of minority shareholders when the company's General Meeting of Shareholders (GMS) is held . Minority shareholders often experience neglect of the dividend distribution at the end of the year who hegemony approves the resolution of the General Meeting of Shareholders (GMS) .

Transparency, clear communication, and protection of the rights of minority shareholders are very important in this regard. It is important for company management to ensure that all shareholders, especially minorities, have access to adequate information and the opportunity to provide input before decisions regarding these loans are taken. Thus, situations such as loans from majority shareholders can be dealt with more fairly and openly, maintaining the integrity of the relationship between all shareholders.

Therefore, in order to maintain the originality of this study, we compared it with several previous studies.

Research conducted by Sudaryat [10] entitled "Responsibility of Majority Shareholders who Concurrently Serve as Directors for Third Party Losses Due to Actions Against Company Law" which was published in the Bina Mulia Hukum Journal, Volume 4, Number 2 of 2020. In this research, according to Sudaryat, the majority shareholder who also serves as the Board of Directors can be held personally liable (not limited) when the company's assets are insufficient to pay off losses to third parties for acts against company law committed by directors who also serve as

the majority shareholder by applying the principle of breakthrough. shareholder responsibility *(piercing the corporate veil)*

Regarding the research above, there are similarities in the object of study, namely the position or role of the majority shareholder in a company who also serves as the company's directors. Therefore, there is a visible difference that is to be studied and examined, namely regarding the "role of the majority shareholder" - which in this study, is in the form of unlawful acts committed by shareholders who are also directors of the company.

Research conducted by Dwi Rahmawati, Bismar Nasution, Suhaidi, Mahmul Siregar [11] with the title "Legal Protection of Minority Shareholders in the Limited Liability Company Law" which was published through the Journal of Legal Studies, Volume 2 Number 1 of 2021. As for Dwi Rahmawati, Bismar Nasution, Suhaidi, Mahmul Siregar as researchers, explained about legal protection for shareholders minority shares in the Limited Liability Company Law include: minority shareholders have the right to propose holding a General Meeting of Shareholders (GMS) , have the right to sue the directors and the board of commissioners, have the right to apply for a company audit and have the right to propose dissolving the company through the General Meeting of Shareholders (GMS)) . Then it is also explained that the derivation of the principle of justice in providing legal protection for minority shareholders when there is a conflict of interest between the majority shareholder and the minority shareholder is derived from the principle of distributive justice in providing a portion of legal protection for minority shareholders in proportion to the composition of the number of shares deposited. In the research mentioned above, the focus of the study lies in the form of protection provided by law to minority shareholders.

2. Problems

In this study, the researcher proposes the formulation of the problem regarding the existence of an agreement at the General Meeting of Shareholders (GMS) regarding the discourse on lending by shareholders as a communication model.

3. Method

This study uses a legal research method that uses literature based on secondary data. However, because the focus of this study leads to an imbalance of communication in a Shareholders' Meeting (GMS), the Researcher uses a linguistic approach—especially communication, to show the emergence of monologue logic in the communications of shareholders.

4. Discussion

Language and communication are two things that cannot be separated in human life, both natural and scientific. Language, as a concept, has various forms of

understanding between as a means of communication, as a means of expressing messages, or as a characteristic of humans in relation to culture. That is, both language and communication are a unit in human beings to understand social relations. The function of communication is the process of conveying messages to the interlocutor to convey certain intentions that can be understood. However, in relation to the development of science, in the 18th century, there was a separation of each branch of science from its parent. Thus, each field of knowledge is as if separate and has independent concepts.

Thus, there is no single science, which is able to escape from the influence of language and language (communication) including the Science of Law. Legal Studies —historically, has had a direct influence from Logical Positivism, in its function of creating meaningful language as a consequence in the process of proof.

Legal Studies, in the form of its *praxis* , has a function to bring about an understanding of the problems it is facing. In the realm of private law, all legal relations will always be based on communication based on authoritative texts and legal knowledge. As is the case with the object under study, there is an agreement that appears at the General Meeting of Shareholders (GMS) to determine something. However, the determination process, which will have a formal form in the form of a General Meeting Of Shareholders (GMS) decision, is basically the result of a communication between the parties to agree on a settlement of certain problems in the field of the company.

When, we realize that language is a means or tool so that everyone is able to communicate, then—in relation to law, there is an unconsciousness—because of the process of purifying the science of law, of the non-neutrality of language. Because of this, the pattern of legal work—in the context of language and communication, will always ignore everything that is subjective. So, it is not surprising when Margarito Thursday [12] emphasized that the Science of Law does not have concepts capable of discussing and studying subjective matters.

Language and communication as one of the studies in the Social Sciences, it is also impossible to let go of the sociological aspect in the scrolling of every text, sign and symbol—both in spoken and written forms, over the domination of understanding of a knowledge of the interlocutor (communicant). Therefore, a communication that is created is nothing but an effort to convey a knowledge that is understood to others as a truth. This means that even in social relations, the desire to feel superior in a dialogic relationship is a subject of study which is also a serious concern. As stated by Jurgen Habermas [13] , that in a knowledge hidden interests which are a unit.

So that, in a moment of dialogue, it will not only examine the agreement as a discourse—which is only understood and discussed by Private Law, but will also participate in the emergence of the Power Relations discourse and efforts to emerge symbolic domination from parties who have a dominant position—in terms of these are the Majority Shareholders, against the inferior binary opposition as the dominated party, in this case the Minority Shareholders.

Self-awareness—in his study by Piere-Felix Bourdieu, as a *habitus* within Majority Shareholders starts from the absence of a legal certainty regarding the

existence of Minority Shareholders in the Limited Liability Company Law. This self-awareness will meet the articulation of mastery of *capital* and *fields* from *the locus* of the General Meeting of Shareholders (GMS). That is, the dominant position has become a false awareness in constructing an interest-based knowledge through language strategies in communication discourse at the General Meeting of Shareholders (GMS). Self-awareness of differences in the composition of shares, is not only a self-awareness of the majority shareholders, but also a self-awareness of the Minority Shareholders. That is, both parties have the same *habitus* of being thrown into a *grand narrative* (the truth being taken for granted).

Knowledge—as a truth, which is expressed by Majority Shareholders to Minority Shareholders, in the view of Michel Foucault with the Power-Knowledge Relations Theory, is a *regime of truth* to perpetuate power as the majority will become symbolic domination for other parties. Thus, the things expressed by the excess power holders, will be displayed hegemonically, to become the truth.

As, the object of study in this study is Shareholder Loans which are not based on a certainty about the ability or not to apply a calculation of interest on the loan. Interest that arises on a loan - of course logically will arise from the Majority Shareholders, as something that does not violate the law. The imposition of interest on a loan will only be problematic legally when it is associated with whether there is a tax imposition on it, as stated in the Tax Court Decision Number: PUT.46740/PP/M.XI/12/2013 in the 2009 tax year.

However, as a result of an imbalance in communication in reaching an agreement at the General Meeting of Shareholders (GMS) , a monologue logic will emerge regarding the desire to determine an interest rate. In this case, due to their superior position of the Majority Shareholders - the holders of power and knowledge, have a dominant position and excess of an advantage, namely dividends and interest. Therefore, the legislators of the Limited Liability Company Law have an inability to predict patterns of behavior of manipulative power over the possibility of the emergence of aspects of loss for " *the Other* ".

The imbalance of binary opposition between Majority Shareholders and Minority Shareholders - in addition to the emergence of dividend differences, will always be associated with "voting rights" in the policy-making process - including the borrowing of dividends with or without interest, at a General Meeting of Shareholders (GMS). This implies that the shareholding structure is a representation of the identity of the owners to determine the priority of the company's social objectives and to maximize shareholder value, e.g. government-owned companies tend to follow political objectives rather than corporate objectives[14].

The determination of such policies, in relation to the shareholding structure, when associated with the "voting rights"-although the Limited Liability Company Law guarantees, of Minority Shareholders, is not about quality but only about quantity. Therefore, the discourse that occurs is the process of infiltrating the interests of Majority Shareholders in a General Meeting of Shareholders towards Minority Shareholders is through communication as a language strategy of power.

The language strategy of power is reflected in Article 84 paragraph (1) of the Limited Liability Company Law, which emphasises that each share has only one vote. This means that the legitimacy of voting rights is determined by the quantity of shares. Thus, the language strategy—in the form of communication, will be used as a symbolic instrument to gain power. Where, in Bourdieu's thinking, the language used in human communication activities is the human habitus itself. The dominant view is related to communication activities through transmission dominance which explains the process of transmitting messages from communicators to communicants. Meanwhile, it is a common sense that language itself is never value-free. Therefore, in Bourdieu's view, every conversation—in the GMS room, there is always a dominating party—in this case the Majority Shareholders as the Superior Binary Opposition, and there is a dominated party—in this case the Minority Shareholders as the Inferior Binary Opposition.[15].

The link between language, which functions through communication, and power, according to Fairclough, stems from self-awareness of power ownership [16] based on the normativity of Article 84 paragraph (1) of the Limited Liability Company Law. Thus, language is not only a means of communication, but also a means of power. Therefore, the exercise of power through language does not only occur in the public sphere but also in various contexts[17], including communication in the process of policy formation through the General Meeting of Shareholders.

Furthermore, explained by Foucault, that self-awareness of the mastery of knowledge means that there is a power to normalise through disciplinary efforts[18]. This means, if it is related to the object of this research, that self-awareness of share ownership in quantity will give rise to "voting rights" which in quantity are also linear with the number of shares. As a result, when language is paired with quantitative power, there will be an instrumental communication model. Whereas, in research conducted by Waljinah[19], instrumental communication will place a person in a conditioned state with a monologue logic model[20]. Thus, based on the knowledge of Article 84 paragraph (1) of the Limited Liability Company Law, Majority Shareholders have the strength and power, quantitatively, to carry out language strategies in communication to dominate and marginalise the interests of Minority Shareholders in the policy-making process, especially on the discourse of Dividend Borrowing for the benefit of the company, with or without interest.

Academics and legal practitioners, of course, can construct arguments based on legal principles, namely *rechtweigening* or judges being prohibited from refusing cases as a result of *ius curia novit* , to fight for the rights of Minority Shareholders through a civil lawsuit. However, the problem is the work patterns of cognitive-interpretive activities of law enforcers will always be under the shadow of legal positivism [14] lexically-grammatically through a closed logical system.

5. Conclusion

Imbalance in the composition of shares in a Limited Liability Company will give rise to a pseudo agreement that is constructed through instrumental communication based on monologue logic. As a result, awareness of possible loss aspects will become an

unconsciousness in a *grand narrative* based on the uncertainty of legal action. The self-awareness of the Majority Shareholders through the process of semiosis (interpretation) of Article 84 paragraph (1) of the Limited Liability Company Law, gives rise to a "class battle" in the General Meeting of Shareholders. Thus, Minority Shareholders as marginalised parties become victims of a power-based symbolic domination through the inability to balance themselves in the communication process to fight for "voting rights" towards the policy-making process in a Limited Liability Company.

It is necessary to revise the State Regulation No. 40/2007 about Limited Liability Company must be done, so clause about shareholders loans can be arrange more proper and clearer since regulation about shareholders loans at the present only found at Indonesian tax regulation.

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