

The Change of Directors by New Shareholders After Acquisition Under the Limited Liability Company Law

Suwinto Johan^{1*}, Dativa Averina Santie²

Article

Abstract

Keywords:

Acquisition; Company Law; Directorship

Article History

Received: Nov 10, 2022;
Reviewed: Dec 05, 2022;
Accepted: Dec 13, 2022;
Published: Dec 14, 2022;

The dismissal or replacement of a company's board of directors has become a frequently discussed thing in the business world. A new shareholder replaces the board of directors or the shareholder rejects the board of directors' accountability report as a reason for the replacement of the board of directors. The Board of Directors is an important part of a company. This study aims to discuss the position of directors, the process of dismissal or replacement of directors, and compensation due to directors been replaced. This study uses a normative juridical method. This study concluded that the directors are organs of the company not workers in the company. The relationship between directors and companies is based on the Limited Liability Company Law, the Capital Market Law, and the Anti-Monopoly and Business Competition Law. This relationship does not refer to the Labor Act. The position and process of replacing the board of directors based on the Limited Liability Company Law. Fired directors may receive compensation as stipulated in the agreement between the board of directors and the company. The Company can be represented by the board of commissioners as agreed in the General Meeting of Shareholders.



Copyright ©2021 by Author(s); This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions. (How to Cite: "Johan, S., Santie, D. A., (2022). The Change of Directors by New Shareholders After Acquisition Under the Limited Liability Company Law. *Hang Tuah Law Journal*, 6(2), 135-143. <https://doi.org/10.30649/htlj.v6i2.110>")

Introduction

Elon Musk is the CEO and owner of Tesla Inc., an electric vehicle manufacturer. Space X is also owned by Elon Musk. Elon Musk, who will be the richest person in the world in 2022, has officially acquired Twitter for 44 billion, or 668 trillion rupiahs in November 2022. Elon Musk fired 4 Twitter executives namely Chief Executive Officer, Chief Financial Officer, Chief Legal Officer, and a general counsel (Perwitasari, 2022). There were 2 executives escorted by security personnel on the way they left Twitter headquarters in San Francisco. Elon Musk also plans to terminate about 75% of Twitter's employees post-acquisition (Riyanto, 2022). Elon Musk wants to turn Twitter into a super app. Twitter has great potential for the long term. At the moment Twitter only has

^{1,2} Faculty of Business, President University, Indonesia

Correspondence: Suwinto Johan, Faculty of Business, President University, Jebabeka City, Cikarang, Bekasi, West Java, 17550, Indonesia. Email: suwintojohan@gmail.com

less than 10% active users, however, these users make up 90% of Twitter's total global revenue (Welle, 2022). Twitter has suffered losses in recent times.

Acquisitions of technology companies have been rife in the last 5 years, as well as the financial industry. Acquisitions in the financial industry are regulated by the Financial Services Authority. Protection of investors, authorities, and the public before alignment (Sukmadilaga, et.al., 2021). Over the past 10 years, there have been many acquisitions in the financial industry. Supervision of the acquisition of the financial industry has gone well, but for the technology industry there is no adequate regulation. A company conducting legal action such as a merger or acquisition must pay attention to certain legal aspects, such as minority shareholder rights, employee status, and transfer of company assets, etc.

This research has a new discussion of shareholders' rights in firing or replacing directors when an acquisition occurs. The events discussed occurred in the United States and were reviewed with Indonesian laws and regulations, including Law No. 40 of 2007 concerning Companies and Law No. 13 of 2003 concerning Manpower. There are very few studies that specifically discuss the position of directors. There are still many studies that focus on the implications of acquisitions and mergers on the interests of employees or workers (Akbar, 2017). Directors are not employees, but directors will have broad implications. Acquisition transactions also occur in Indonesia, but the board of directors is still maintained for a certain period after the acquisition. This is adjusted to the previous period of appointment of directors. The acquisition of the company refers to Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Anti-Monopoly Law).

Acquisition is one of the company's growth strategies (Johan, 2011). Acquisition is a form of takeover of shares in another company by new shareholders (Irawan & Candraningrat, 2020). The merger and acquisition process requires a long process (Johan, 2021a). This acquisition can cause a market reaction. Market reactions can take the form of both positive and negative (Sholichah & Johan, 2022).

The acquisition of the company has implications for the workers of the acquired company. The implications for these workers point to Law Number 13 of 2003 concerning Manpower (Manpower Law) (Terok, 2018). In addition, the Manpower Law, the relationship between companies and workers also refers to Law No. 40 of 2007 concerning Limited Liability Companies (Limited Liability Company Law) (Pradhani, et.al., 2020). Mergers and acquisitions have an influence on employees and shareholders, mergers and acquisitions also have an influence on consumers (Manengal, 2016). Among other things is the acquisition or merger of financial institutions, consumers who have savings will have an influence.

The acquisition in addition has implications on the company's share price. Other corporate actions also have implications for the share price, namely the replacement of directors and other decisions. However, the replacement of the board of directors of one of the SOEs, namely Garuda Indonesia, did not have a significant influence on the share price (Pratama & Difa, 2020). The acquisition of a public company refers to Law No. 8 of 1995 concerning the Capital Market (Capital Market Law).

The audit committee and the board of commissioners have an influence on the company's performance (Agustin, et.al., 2022). The Board of Directors has an influence on the company's profitability based on research on companies that listed their shares on the Indonesia stock exchange in 2013-2017 (Juliansah et al., 2019). The Board of

Commissioners has the function of supervising the activities of the board of directors in the company (Johan, 2022b).

According to Elon Musk, Twitter's board of directors has relayed inaccurate data regarding Twitter users and accounts (Dem, 2022). Directors who submit incorrect information can be detrimental to the company and shareholders. The Board of Directors can apply the business judgement rule in running the company (Silitonga, et.al., 2022). Business judgement rule is a decision taken by the board of directors based solely on the company's business considerations. However, this business judgement rule cannot be applied in the submission of data to prospective shareholders. The Board of Directors must have the values of integrity, professionalism and prudence in running the company in good faith for the benefit of the company, not shareholders (Priyono, et.al., 2022).

The responsibility of the board of directors for the running of the company is carried out annually through the forum of the General Meeting of Shareholders (GMS). The Board of Directors will be granted acquits and discharges at the General Meeting of Shareholders (GMS) every year. This holds the board of directors accountable for the company's performance as long as every decision taken has been reflected in the company's performance report (Johan & Ariawan, 2020).

The impact of shareholder changes on personnel is significant. Changes in shareholders typically result in management changes at the organization. Changes in management will also affect the organization's culture, style of doing business, and organizational structure. Employees are concerned whenever there is a change in shareholders. According to Law No. 13 of 2003 Concerning Employment, employees have the option of continuing with the same shareholders or terminating their employment. The employee will receive compensation and severance pay for termination of employment if they decide to leave.

Based on these problems, this paper will first export the status of board directors in a limited liability company. Then, can a new shareholder fire the directors of a company acquired under the laws and regulations in Indonesia? The latter will be analyzed about the board of directors entitled to compensation from the new holder, in the event of dismissal. This study aims to discuss the position of directors, the process of dismissal or replacement of directors, and compensation due to directors been replaced.

Method

This research uses normative legal methods based on background. This research examines primary research materials, secondary research materials and other research materials. This research focuses on legal norms and principles related to the position of directors of limited liability companies. The study also examines the synchronization of existing laws and regulations vertically and horizontally. The research examines laws and regulations related to employment agreements and financial effects on companies as employers.

The research reviewed the board of directors, shareholders and companies' normative research examines primary research materials, secondary research materials and other supporting research materials (Marzuki, 2017). The primary research material is the Indonesia Constitution 1945. Secondary research materials consist of scientific research articles, books, proceedings or research seminars. Meanwhile, other research materials are information in various communication media (Johan, 2022a).

Result and Discussion

1. Board of Directors Status of Limited Liability Company

Each limited liability company has 3 organs, namely the general meeting of shareholders, the board of commissioners and the board of directors. The general meeting of shareholders appoints the board of commissioners based on Article 94 of the Law No. 40 of 2007 concerning Companies and the board of directors. The Board of Commissioners oversees the board of directors. The Board of Directors runs the company. The Board of Directors is responsible for the day-to-day running of the company (Johan, 2021b). The responsibility of the board of directors is given at the annual general meeting of shareholders (Johan & Ariawan, 2020). The duties of the board of directors are regulated in Article 92 of the Limited Liability Company Law. A person can be appointed as a director based on the requirements set forth in Article 93 of the Limited Liability Company Law.

The Board of Directors is not an employee of the company. The Board of Directors is one of the organs of the company. The Board of Directors is appointed by the shareholders through the General Meeting of Shareholders (GMS). The Board of Directors is supervised by the board of commissioners. The Board of Directors may be temporarily suspended by the board of commissioners and permanently terminated by the shareholders through the GMS.

The Board of Directors does not have an employment contract with the company. The Board of Directors is subject to the articles of association of the company. Authority of the Board of Directors as stipulated in the Limited Liability Company Law. The Board of Directors is not a worker in the company, so the relationship between the Board of Directors and limited companies is based on the Limited Liability Company Law and not the Manpower Law.

The appointment of the Board of Directors is not bound by the employment contract as stipulated in the Law Number 13 of 2003 concerning Manpower Law and the Law Number 11 of 2020 concerning Job Creation Law. The Board of Directors may be reappointed indefinitely. The Board of Directors may also be terminated by shareholders without the need for compensation.

The position of the Board of Directors and commissioners is a unique position in the company. This position is only regulated in the Limited Liability Company Law. In addition to the Board of Directors and commissioners, the position of independent committees is also unique. This is not specifically regulated in the Act. However, several implementing regulations related to the capital market regulate the formation of independent committees, there are Regulations of the Financial Services Authority (in Indonesian it is called POJK) POJK Number 55/POJK.04/2015 concerning Formation and Work Implementation Guidelines for the Audit Committee, POJK Number 58/59/60/POJK.04/2016 concerning Board of Directors and Board of Commissioners of the Indonesian Stock Exchange/Indonesian Clearing and Guarantee Corporation/Indonesian Central Securities Depository and POJK No.13/POJKL.03/2017 concerning the use of Public Accountant Service and Public Accounting Firms in Financial Services Activities Chapter 5 concerning the Role of the Audit Committee.

Directors who run the company's operations. The Board of Directors will determine the running of the company in accordance with the work plan approved at the GMS. In addition, the board of directors must also achieve the company's long-term goals, as stipulated in the company's articles of association. The position of directors is

very important for a company. As stipulated in the Limited Liability Company Law, the board of directors represents the interests of the company internally and externally.

2. New shareholders may fire directors of companies acquired under Indonesian laws and regulations

The Board of Directors is appointed by the shareholders through the GMS and the Board of Directors is the company's organ responsible for the management of a limited liability company in accordance with Article 1 of the Limited Liability Company Law. The Board of Directors is appointed based on the decision of the GMS. The GMS may appoint, terminate and replace members of the board of directors based on Article 94 paragraph 5 of the Limited Liability Company Law. The appointment of directors must notify the Minister based on Article 94 paragraph 7 of the Limited Liability Company Law. The period of appointment of the board of directors is regulated in the Company's Articles of Association and Article 94 of the Limited Liability Company Law. If the appointment of members of the board of directors does not meet the requirements, it must be canceled based on Article 95 of the Limited Liability Company Law.

The responsibility and authority of the board of directors is regulated in Article 97-101 of the Limited Liability Company Law. The Board of Directors is the party who represents the company in court. Limited Liability Company is a legal entity. The responsibilities of the board of directors will be discussed and decided in the GMS. If the responsibility of the board of directors is accepted, the board of directors will continue. On the other hand, if the responsibility of the directors is rejected, the directors can be terminated from their positions.

In addition to liability, the board of directors may also be replaced by new shareholders as a result of changes in shareholders. Changes in shareholders may occur as a result of mergers and acquisitions. The new shareholder will appoint the people he trusts to run the company. This party will be appointed to the company's board of directors.

Because a company's performance falls short of shareholders' expectations, its owner will sell the business. The management of the company is the entity primarily in charge of its performance. The board of directors is the organization's administration that is most accountable. The corporation is sold by the shareholders to new investors. Management of the business will be replaced by new investors. Investors will put management in place who can bring the company around. Thus, new shareholders will take the position of the previous management or directors.

This is a typical occurrence. The old management will be replaced by the new shareholders. The new shareholders will appoint directors for the company who they believe will perform well. Other factors to take into account besides performance include communication and a new shareholder culture.

In addition to acquisitions, the board of directors will be diminished in the event of a merger between two corporations. When directors and president directors exist in both firms with the same organizational structure, the number of directors will decrease or be eliminated as a result. Two president directors may not coexist in the amalgamated firm.

The previous directors may occasionally still be employed after a brief changeover period. The experienced Directors have a legacy corporate culture. Throughout the transition, the new directors will join them and work together. The company won't have

any vacancies or new directors who are confused, and the old directors will feel appreciated.

The changeover between the previous and new directors will allow firm employees to transfer seamlessly. The new board of directors won't surprise the workforce. Due to the fact that there are two directors in one firm, charges will be incurred. Additionally, this will lessen the impact of higher losses brought on by variances between the cultures of the previous and new directors.

3. The Board of Directors is entitled to compensation from the new holder, in the event of dismissal

Provisions regarding the salaries and allowances of directors are determined by the GMS based on article 96 of the Limited Liability Company Law. Compensation for dismissal of directors is not regulated by laws and regulations. This can be regulated based on an agreement between the board of directors and the company represented by the company's major shareholder or commissioner based on the decision of the general meeting of shareholders.

The directors' allowance can be in the form of compensation due to the dismissal of the company. This allowance arrangement as long as it does not conflict with the Limited Liability Company Law, this can be made a special agreement. The Board of Directors does not constitute the relationship between the company and the board of directors on the basis of the relevant regulations can be described in figure 1.

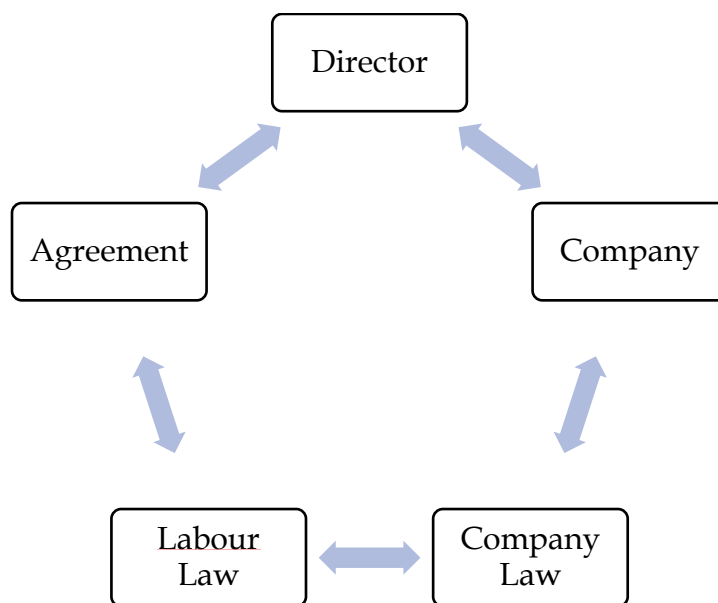


Figure 1 Director and Company Relationship

If the term of office has not yet ended, the replaced Board of Directors may receive compensation for the remaining time in office. Directors may also be given work honors while holding the position of director. In contrast to employee compensation generally, this compensation is unique. The value of the pay will be determined by the terms of the agreement between the company and the directors or by the outcomes of discussions between the directors and the company, as represented by the commissioners or shareholders. The word "termination of employment" is not recognized by the Board of Directors, although generally, the contract is not extended or the directors are not reappointed.

The termination of a director will be handled differently from that of an employee in the past. In order to prevent the individual from having the position of a pure director upon appointment to the board of directors. in order for this person to be fired in accordance with labor law regulations. If a former employee is appointed to the board of directors, they no longer have the position of an employee but rather that of a director. The Limited Liability Company Law, not the Manpower Act, will be followed in order to terminate the board of directors.

A director who decides to leave the company does not have the same rights as an employee who leaves the company. A service fee or award money will be given to an employee who resigns. Directors who leave their positions freely or on their own initiative will not be paid by the business.

Conclusion

The Board of Directors is not an employee of the company. The Board of Directors is appointed by the shareholders through the General Meeting of Shareholders. Appointment of directors based on the company's articles of association and the Limited Liability Company Law. The Board of Directors may be replaced or dismissed by shareholders at any time without the need to notify them in advance. The Board of Directors may be fired by shareholders through the GMS. In addition, the compensation of the fired directors is regulated in an agreement that has been approved by the GMS or representing the GMS, including the president commissioner or the board of commissioners. Replacement of directors by new shareholders as a result of the acquisition or merger of companies can be carried out. As long as this is in accordance with the prevailing laws and regulations, including the Limited Liability Company Law, the Capital Market Law, the Anti-monopoly Law and Business Competition. The relationship of the board of directors with the company cannot refer to the Labor Act. The Board of Directors is not a worker and is not bound by an employment contract as stipulated in the Job Creation Law. The Board of Directors is part of the employer in this regard.

References

- Agustin, R., Hotang, K. B., & Soleha. (2022). Pengaruh Komite Audit, Dewan Komisaris, dan Dewan Direksi Terhadap Kinerja Perusahaan Perbankan. *Jurnal Akuntansi Dan Audit*, 01(01), 1-13.
<https://ejournal.stietribhakti.ac.id/index.php/JAATB/article/view/198/138>
- Akbar, A. A. (2017). Corporate Liability on the Crime of Producing, Distributing, and Utilizing Non-Standard Vaccines. *Hang Tuah Law Journal*, 1(2), 180-195.
<https://doi.org/https://doi.org/10.30649/htlj.v1i2.96>
- Dem, C. (2022). Elon Musk Resmi Beli Twitter, CEO Lama Langsung Ditendang. *CNBC Indonesia*.
<https://www.cnbcindonesia.com/tech/20221028084519-37-383166/elon-musk-resmi-beli-twitter-ceo-lama-langsung-ditendang>
- Irawan, I. K. R., & Candraningrat, I. R. (2020). Analisis Reaksi Pasar Sebelum Dan Sesudah Pengumuman Akuisisi Di Bursa Efek Indonesia (Bei). *E-Jurnal Manajemen Universitas Udayana*, 9(2), 699-717.
<https://doi.org/10.24843/ejmunud.2020.v09.i02.p15>

- Johan, S. (2011). Implementasi Strategi Bisnis dan Korporasi Melalui Merger dan Akuisisi. *ULTIMA Management*, 3(1), 68–81. <https://doi.org/10.31937/manajemen.v3i1.176>
- Johan, S. (2021a). Merger and Acquisition Integration Model A Practical Approach. *Jurnal Strategi Bisnis*, 30(1), 35–46. <https://doi.org/10.14710/jbs.30.1.35-46>
- Johan, S. (2022a). Sanksi Administratif Denda Pendekatan Laporan Keuangan Atas Pelanggaran Persaingan Usaha Tidak Sehat. *Masalah-Masalah Hukum*, 51(1), 20–28. <https://doi.org/10.14710/mmh.51.1.2022.20-28>
- Johan, S. (2022b). The Function of Commissioner Based on the Principles of Good Corporate Governance. *Journal of Private and Commercial Law*, 6(1), 60–73. <https://doi.org/10.15294/jpcl.v6i1.36356>
- Johan, S. (2021b). Pertanggungjawaban Fiduciary Duty Direksi Perseroan Terbatas. *Seminar Nasional Hasil Penelitian & Pengabdian Kepada Masyarakat "Urgensi Pengembangan Penelitian Dan Pengabdian Kepada Masyarakat Dalam Konteks Budaya Indonesia Sebagai Wujud Ketangguhan Bangsa*, 92–101.
- Johan, S., & Ariawan, A. (2020). Pertanggungjawaban Direksi Setelah Pemberian Acquit and Discharge. *Acta Comitatus Jurnal Hukum Kenotariatan*, 5(3), 586–600. <https://doi.org/10.22437/ujh.3.1.107-137>
- Juliansah, E., Marota, R., & Maimunah, S. (2019). Pengaruh Penerapan Good Corporate Governance Terhadap Return on Equity (ROE) Pada Perusahaan Manufaktur Otomotif dan Komponen Yang Terdaftar di Bursa Efek Indonesia Periode 2013-2017. *Jurnal Online Mahasiswa (JOM) Bidang Akuntansi*, 6(3), 1–14. <https://jom.unpak.ac.id/index.php/akuntansi/article/view/1544>
- Manengal, Y. (2016). Merger Bank dan Akibatnya Terhadap Nasabah Penyimpan Dana Menurut Undang Undang No. 10 Tahun 1998. *Lex et Societatis*, IV(2), 169–175. <https://doi.org/10.35796/les.v4i2.1.11438>
- Perwitasari, A. S. (2022). Resmi Akuisisi Twitter, Elon Musk Pecat Eksekutif Twitter. *Kontan.Co.Id*. <https://internasional.kontan.co.id/news/resmi-akuisisi-twitter-elon-musk-pecat-eksekutif-twitter>
- Peter Mahmud Marzuki. (2017). *Penelitian Hukum edisi revisi*. Prenada Media Group.
- Pradhani, B. E., Yahman, & Widoyoko, W. D. (2020). Akibat Hukum Merger Bank Bukopin Dengan Bank Kookmin Terhadap Tenaga Kerja Bank. *Dekrit*, 10(1), 25–34. <https://journal.pasca-ubharasby.id/index.php/dekrit/article/view/51>
- Pratama, V. Y., & Difa, F. (2020). Mood Investor Atas Pengumuman Pergantian Dewan Komisaris Dan Dewan Direksi (Studi Pada PT Garuda Indonesia Tbk). *Jurnal Manajemen Dirgantara*, 13(1), 19–27. <https://jurnal.sttkd.ac.id/index.php/jmd/article/view/149/143>
- Priyono, E., Surono, A., & Sadino, S. (2022). Doktrin Business Judgment Rule Dalam Memberikan Perlindungan Hukum Kepada Direksi Bumn (Studi Kasus PT Pln). *Jurnal Hukum Dan Kesejahteraan*, UAI, 7(2), 29–43. <https://doi.org/10.36722/jmih.v7i2.1264>
- Riyanto, G. P. (2022). Elon Musk Pecat 4 Petinggi Twitter, Salah Satu Digiring Keluar Gedung. *Halaman Kompas.Com*. <https://tekno.kompas.com/read/2022/10/28/08543807/elon-musk-pecat-4->

petinggi-twitter-salah-satu-digiring-keluar-gedung?page=all

- Sholichah, H., & Johan, S. (2022). The Effect of First Case Covid-19 Announcement on Average Trading Volume Activity of Pharmaceutial Sector Companies. *Jurnal Manajemen Bisnis Dan Kewirausahaan*, 6(2), 218–224. <https://doi.org/10.24912/jmbk.v6i2.11673>
- Silitonga, E. F., Sunarmi, & Siregar, M. (2022). Penerapan Prinsip Business Judgement Rule Terhadap Pertanggungjawaban Perdata Direksi Perseroan. *Locus: Jurnal Konsep Ilmu Hukum*, 2(1), 78–88. <https://jurnal.locusmedia.id/index.php/jkih/article/view/25>
- Sukmadilaga, A., Kartikasari, R., & Rahmawati, E. (2021). Optimalisasi Hak Pemegang Saham Atas Kewenangan Ojk Dalam Pelaksanaan Akuisisi Lembaga Jasa Keuangan Bank Pada Masa Pandemi Covid-19. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 12(2), 83–101. <https://doi.org/10.28932/di.v12i2.3501>
- Terok, R. H. (2018). Perlindungan Hukum Tenaga Kerja Dalam Penggabungan Perusahaan Berdasarkan Undang Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan. *Lex Privatum*, 6(9), 29–36. <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/25822>
- Welle, D. (2022). Sah Beli Twitter, Elon Musk Pecat CEO dan Eksekutif Lainnya. *Detik.Com*. <https://news.detik.com/dw/d-6374415/sah-beli-twitter-elon-musk-pecat-ceo-dan-eksekutif-lainnya>