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**JURIDICAL ANALYSIS OF SHARE OWNERSHIP OF  
UNDERAGE CHILD IN THE BANKRUPTCY OF THEIR  
PARENTS AS A GUARDIAN IN PT. ARGA DUMILAH  
(Study of Supreme Court Decision Number 19/Pdt.Sus-  
GLL/2020/PN.SMG)**

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**ABSTRACT**

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*Juridically, Parents represent Minors to carry out all legal actions both inside and outside the court. One of them is that parents are obliged and responsible for the management of their children's assets, both for the ownership of these assets and for all the results of the goods that they are allowed to enjoy . Parents are not allowed to transfer their rights or pledge their children's property except for the interests of the child. Ownership of shares in the name of Minors is a form of investment as capital in a limited liability company and ownership rights to shares are obtained by inheritance. This research uses a normative juridical legal research method with a descriptive qualitative research model, and prioritizes the main data in the form of primary, secondary and tertiary legal materials. This study refers to legal theories, legal norms, legal principles and legal theories contained in legislation and court decisions.*

**Keywords : Share Ownership, Minors, Bankruptcy, Guardian.**

**Journal History**

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**INTRODUCTION**

The existence of a husband and wife who were declared bankrupt as debtors at PT. Bank China Construction Bank Indonesia, Tbk and several other banks such as PT. Bank Negara Indonesia, Tbk by pledging a plot of Land Title Certificate Number: 1101 covering an area of 493 m<sup>2</sup> on Jalan Sri Nalendro IV Number: 21 RT/005-RW/004 dated 11 November 1994 which is further described in the Measurement Letter Number: 4330/1994 dated August 8, 1994, issued by the

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Surakarta Municipal Land Office on behalf of Sadeli Setiawan. The bankruptcy of the debtor is reaffirmed that he has debts to 11 creditors, one of which is the debtor as a shareholder in PT. Arga Dumillah becomes the Individual Guarantee against the debts of PT. Arga Dumillah to PT. BNI, Tbk and Individual Guarantees against the debts of PT. Puraya Dirgama Widagda (the parties are the majority shareholders in the company).

In connection with the application for Suspension of Debt Payment Obligations (PKPU), the Panel of Judges has appointed a Curator Team as the PKPU Management for Debtors who have been declared bankrupt as described in Supreme Court Decision Number 14/Pdt.Sus-PKPU/2018/PN.Smg. During the management of the bankruptcy estate/debtor bankrupt assets, the Curator is deemed to have been negligent in carrying out his duties and responsibilities as referred to in Article 69 of Law Number 37 of 2004 concerning PKPU. This is reaffirmed by the lawsuit filed by the Minors regarding the ownership of shares in his name which the Curator entered into the bankruptcy estate/bankruptcy assets of the Debtor who is the parent of the Minor and unilaterally sold the Edelweiss Hotel Building covering an area of 3,205 m<sup>2</sup> along with several assets owned PT. Arga Dumillah. It is known that the Debtor as a Shareholder in PT. Arga Dumillah and Minors own shares on behalf of PT. Arga Dumillah.

Minors as Plaintiffs in case Number: 19/Pdt.Sus-GLL/2020/PN.Smg filed a lawsuit represented by parents or guardians who carry parental power for Minors. In connection with that, both parents of the Minors who are still alive appoint one of the cousins of the Minors as guardians for the Minors who represent the Minors in filing a lawsuit in court or carrying out legal actions outside the court with a Court Decision for Minors. Number: 127/Pdt.P/2020/PN.Mgg.

However, the judge rejected the decision because it was not in accordance with the provisions of Article 47 Paragraph (1) of the Marriage Law *jo* . Article 49 Paragraph (1) of the Marriage Law which explains that children are under the authority of their parents, as long as the parents are not revoked from their power. In other words, the appointment of guardians for minors can be carried out on the legal basis of the revocation of parental power because they have been very negligent in carrying out their obligations to the child and behaved badly. Thus, the authors are interested in discussing the legal status of minors who obtain share ownership on behalf of PT. Arga Dumilah and the legal consequences because her parents have been declared bankrupt.

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## METHOD

In this study, the researcher uses a research method with a normative juridical approach to analyze the form of legal norms, legal rules, and principles (principles) of the juridical analysis.<sup>1</sup>

This research uses socio-legal research methods by conducting research in the field with a direct interview method to the residents of Wadas village. Empirical studies are studies that view law as reality, covering social reality, cultural reality, etc., the empirical study of the world is *das sin* (what is reality). Empirical legal research focuses on behaviors that develop in society, or the workings of law in society. So the law is conceptualized as actual *behavior* which includes actions and their consequences in social life relationships. Therefore, the approaches and often used in empirical legal research include on The approach of sociology of law, The approach of legal anthropology, The approach of legal psychology.<sup>2</sup>

Juridical Analysis of the Share Ownership of Minors in the Bankruptcy of their Parents as Guardian at PT. Arga Dumilah (Study of Supreme Court Decision Number 19/Pdt.Sus-GLL/2020/PN.Smg).<sup>3</sup>

## DISCUSSION

### **The legal position of minors as shareholders in a Limited Liability Company**

Shares and capital are one of the interrelated and inseparable requirements in establishing a limited liability company because the capital in a limited liability company consists of the entire nominal value of shares, but it is also possible that the laws and regulations in the capital market sector regulate the company's capital consisting of shares. no face value. Based on Article 32 Paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, the substance of which originally stipulates the nominal amount of limited liability company capital is Rp. 50,000,000 ,- (fifty million rupiah), then underwent a change in the Job Creation Law which stipulates that the amount of authorized capital of the company is determined based on the decision to establish a limited liability company or there is no minimum amount rule for the authorized capital of the company's establishment.

The establishment of a company cannot be carried out without the fulfillment of the authorized capital requirements determined by the company's Articles of Association. Fulfillment of the authorized capital requirement aims that at the time the company is established it already has capital, namely the authorized capital determined based on the decision to establish a limited liability company (*Autorized*

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<sup>1</sup> Ronald Dwokrin in Bismar Nasution "*Normative and Comparative Law Research Methods*" , Paper, presented at the Interactive Dialogue on Legal Research and Legal Writing Results in Accredited Magazine, Faculty of Law USU, Medan, on February 18, 2003, p. 1.

<sup>2</sup> Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, (Malang: Intrans Publishing, 2022), p. 48.

<sup>3</sup>Ali Zainuddin, *Legal Research Methods* , Sinar Graphic, Jakarta, 2010, p.10.

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*Capital*), issued capital (*Subscribe Capital*), and paid-up capital (*Paid Up Capital*). will be a guarantee for third parties to the company. <sup>4</sup>Authorized capital is the maximum number of shares that can be issued in accordance with the company's Articles of Association. Changes in authorized capital will result in changes to the Articles of Association based on the General Meeting of Shareholders, where changes in the amount of authorized capital which have been previously determined in the Articles of Association must obtain approval from the Minister.

Issued capital is part of the authorized capital whose ownership has been determined in the deed of establishment or amendments thereto, as a shareholder. The capital 100% (one hundred percent) must be deposited into the company's treasury as *paid capital* by the founders, the cost of carrying out the company's business activities and the cost of reserves or cash deposits of the company for the implementation of the company's business activities in the future. <sup>5</sup>Shares are certificates that show proof of ownership of a company and shareholders have claim rights to the profits and assets of the company. Shares are securities that show part of the company's ownership for investors who invest by buying a portion of shares in the company so that investors are entitled to profits obtained by the company in the form of dividends.

The acquisition of rights to shares is a legal act to own shares from business activities carried out by a limited liability company or the right of each founder or shareholder to take shares of shares since the company was established based on the provisions of the Limited Liability Company Law, the Company's Articles of Association, the Capital Market Law and other implementing regulations. Meanwhile, the transfer of rights to shares in a company is a legal act in which the ownership of shares has been transferred due to certain reasons by taking into account the provisions stipulated in the Limited Liability Company Law and the Articles of Association of the company concerned. Therefore, the rights arising from share ownership based on Article 52 of the Limited Liability Company Law explains that shares give the owner the right to attend and vote at the GMS, receive dividend payments and the remaining assets resulting from liquidation, and exercise other rights based on the Law. -Company Law.

Shareholders are legal subjects or owners of each share issued by the company and are legally capable parties to exercise their rights as above, but what if a shareholder is a Minor? Talking about legal skills means that a person can act or have the ability to carry out legal actions that will have legal consequences and can be legally accounted for in the future. In addition, shares as one of the movable

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<sup>4</sup>Yenta Iasika Simanjuntak, *Juridical Analysis of the Validity of the Agreement on Establishing a Limited Liability Company by Husband and Wife and the Transfer of Shares from Joint Assets*, Thesis, University of North Sumatra, Medan, 2017, p. 49.

<sup>5</sup>Binoto Nadapdap, *Limited Liability Company Law Based on Law Number 40 of 2007*, Permata Aksara, Jakarta, 2014, p. 57.

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objects that can be attached to shareholders or any person can obtain ownership rights to an object by means of attachment, expiration, inheritance, law, will, appointment or delivery based on a civil event for transfer property rights as regulated in Article 584 of the Civil Code. If the ability to carry out a legal action is associated with a minor, then the parent can represent the minor to carry out a legal action inside and outside the court, as well as manage his/her property as regulated in Article 47 Paragraph (2) *jo.* Article 48 of Law Number 1 of 1974 concerning Marriage.<sup>6</sup>

However, it does not confirm that directly Minors can become Shareholders because of their non- *legal standing* , moreover they receive rights arising from share ownership for which all their actions will be legally accounted for by themselves. However, Minors may obtain share ownership in the name due to inheritance, where all rights arising from the shares as long as the Minor is still under the control of a parent or guardian appointed based on a judge's determination and through a Power of Attorney to exercise their rights based on approval of the GMS and the Board of Directors of the Company.

#### **Share ownership status on behalf of minors**

Assets come from the word *asset* known as wealth or wealth. Assets are anything that has economic value and can be owned by any individual, company or government that is assessed financially.<sup>7</sup> Assets in legal science are in the form of objects that can be categorized into movable objects, immovable objects, as well as tangible objects and intangible objects. From the types of objects above, there are also material rights which are absolute rights to an object where that right gives direct power over an object and can be defended against anyone.<sup>8</sup> A person can own an object or goods based on the position of power, property rights, inheritance rights, usufructuary rights, land service rights, and liens or mortgage rights. With regard to ownership rights to an object, it can be obtained due to attachment, expiration, inheritance, either according to law or will, and due to appointment or delivery based on a civil event to transfer property rights as referred to in Article 528 of the Civil Code *jo.* Article 584 of the Civil Code.

In terms of material, company shares are movable objects that are issued on behalf of the owner and give rights as referred to in Article 52 of the Company Law to the owner. Furthermore, the Board of Directors of the company is required to hold and keep share ownership in the name of the register of shareholders in a company as referred to in Article 50 Paragraph (1) of the Company Law. One of

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<sup>6</sup>*Ibid* , p. 23.

<sup>7</sup>Sri Wahyuni, et al, *Introduction to Asset Management* , First Edition, CV. Nas Media Pustaka, Makassar, 2020, p. 1.

<sup>8</sup>Shidarta, Abdul Rasyid, and Ahmad Sofian, *Apek of Economic and Business Law* , First Edition, Kencana, 2018, p. 37.

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the conditions for a person to be considered a shareholder in a company is that for the first time each founder of the company is required to subscribe to shares at the time the company is established, where the number of shares is determined based on the amount of authorized capital that has been paid in by the founder and is included in the Articles of Association of the company as referred to in paragraph (1). in Article 7 Paragraph (2) UUPT *jo*. Article 31 Paragraph (1) UUPT. In addition, it is carried out by increasing the company's capital based on the approval of the GMS to the company's treasury as investment capital in a limited liability company, where the shareholders deposit the amount of issued and paid-up capital within the authorized capital limit in accordance with the provisions contained in the Articles of Association, and conduct transactions. shares to other shareholders whose transfer or transfer of rights to shares is announced and contained in a deed of transfer of rights as referred to in Article 41 Paragraph (1) of the Company Law *jo*. Article 42 Paragraph (2) UUPT *jo* . Article 56 Paragraph (1) UUPT. Therefore, changes in the list of shareholders of the company that occur due to the above actions must be notified to the Minister to be recorded in the register of companies as referred to in Article 42 Paragraph (3) of the Company Law *jo* . Article 56 Paragraph (3) UUPT.

In general, the way for Minors to obtain assets or property is to apply inheritance rights related to material rights as referred to in Article 528 of the Civil Code, while one way to obtain property rights to an object is by way of inheritance as referred to in Article 528 of the Civil Code. Article 584 of the Civil Code. In general, inheritance law can be implemented if it has fulfilled several elements, namely the existence of heirs, heirs, and the inheritance of the heirs, both the property that belongs to him and his rights. In Civil Law, the distribution of inheritance can only occur due to death whose delivery can be made based on the provisions of the law or *ab-intestato*, *testament* (will), and testamentary grants. However, the heir can also receive an inheritance from the testator as long as he is still alive through a grant that is authentically loaded with a Notary Deed, so that the heir as the donor is only allowed to make an agreement that he still has the right to use the proceeds from the objects that were donated. withdrawn but can become null and void if it violates the provisions of Article 1667 of the Civil Code - Article 1670 of the Civil Code, and may not make a promise that he or she remains in power to sell or give the grant to another person in the form of a grant as well.

In connection with the transfer of ownership rights to tangible movable objects, it can be carried out by means of real delivery as well as juridical transfer including the right of control over the object by the old owner to the new owner as referred to in Article 612 Paragraph (1) of the Civil Code. Meanwhile, the transfer of ownership rights to tangible immovable objects can be done by way of announcing a deed or making a deed of transfer of rights to an object followed by registration

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or transfer of name to the object which is authentically contained in a Notary Deed as referred to in Article 616 of the Civil Code *jo* . . Article 620 of the Civil Code. The transfer or transfer of ownership rights to movable and immovable objects can also be carried out due to a new relationship, namely the implementation of credit agreements with banks or debts between Creditors and Debtors, where the Debtor (guarantor) submits the object by means of pledging the goods either with the guarantee of Mortgage on immovable objects as well as fiduciary guarantees or pledges against movable objects. This causes the actual object to still be under the control of the guarantor (Debtor) but its legal position is no longer as the owner but as a borrower since the occurrence of the attachment of the guarantee to the credit agreement or debts as stipulated in Law Number 4 of 1996 concerning Mortgage Rights. on Land and objects related to land and Law Number 42 of 1999 concerning Fiduciary Guarantees.

In this case, it is not explained how to obtain share ownership in the name of Minors. However, the author analyzes based on the theories that have been described above that share ownership in the name of Minors which is a type of movable object is carried out by increasing the issued and paid-up capital within the limits of the company's authorized capital by parents as shareholders at PT. Arga Dumillah based on the approval of the GMS as referred to in Article 41 Paragraph (1) UUPT *jo*. Article 43 UUPT. Then, the share of shares that have been taken by the parents as Shareholders based on the approval of the GMS, the approval of the husband or wife, and because the inheritance is given to Minors, which is followed by an application for registration of shares on behalf of the Minors based on the approval of the company's directors, then the company's directors enter shares in the name of Minors into a special list of companies so that there is share ownership in the name of Minors in PT. Arga Dumilah. On the other hand, the rights arising from shares are a legal act, therefore the exercise of their rights is under the authority of parents or parents as Shareholders of PT. Arga Dumilah either alone or in a position of power over movable objects based on inheritance rights to Minors who have blood relations and the legal status of Minors who are not yet capable of carrying out legal actions, then the parents as Shareholders in PT. Arga Dumilah through a Power of Attorney approved by the GMS has the right to exercise the rights arising from the shares for the benefit of the Minors as referred to in Article 85 Paragraph (1) and (2) of the Company Law *jo*. Article 528 of the Civil Code *jo* . Article 1977 of the Civil Code.

This is reaffirmed because the delivery of shares in real and juridical form is given to parents as shareholders by considering the legal position of Minors who are not yet capable of taking legal actions. That way, the shares are under the control rights of parents as shareholders as long as the child is still a minor and not as the owner. Considering that the shares in the name of the Minors are included in the

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bankruptcy estate/bankrupt assets of their parents as Debtors and Shareholders in PT. Arga Dumilah, the authors analyzed that their parents made the transfer or transfer of ownership rights to the shares of Minors due to a new legal relationship, namely the implementation of a credit agreement with the bank as a creditor, where the Debtor (guarantor) handed over the ownership rights to the shares of the Minor which automatically authentically contained in the Fiduciary Guarantee Deed as a guarantee for the settlement of his debts to the creditor if the debtor experiences bankruptcy in the future. In this case, parents as Debtors and Shareholders apply the usufructuary rights to the shares of the Minors so that the position of the parents as guarantor (Debtor) who holds the shares or is under their control is no longer the owner, but as the borrower to use the shares of the Minors. until the credit agreement expires. Thus, the status of share ownership in the name of Minors is under parental control and becomes joint property for Minors and their parents as Shareholders in PT. Arga Dumilah who together can enjoy the results of the shares.

This is caused by the absence of separation of assets made between parents and minors. If there is separation of assets between parents and minors, parents as shareholders are not allowed to transfer rights or pledge share ownership on behalf of minors for their personal interests, unless the interests of the child so desire. Therefore, one way to separate assets between children's and parents' assets which are types of movable objects can be carried out because of inheritance through donations during the life of the parents/heirs. In connection with the action of the Curator Team which includes the ownership of shares on behalf of Minors into the bankruptcy estate/bankrupt assets by considering that the parents as Debtors have more than 1 Creditor and the actions of parents as Shareholders who pledge shares of Minors are contained in the Fiduciary Guarantee Deed and attached to the credit agreement on behalf of the parents as the debtor does not violate the law or are not considered negligent in carrying out their duties.

**Juridical analysis of the sale and purchase of shares of minors due to the bankruptcy of their parents as shareholders in PT. Arga Dumilah (study of Supreme Court decision number 19/pdt.sus-gll/2020/pn.smg)**

In the decision of the supreme court number: 14/Pdt.Sus-PKPU/2018/PN.Smg, the Judge gave legal considerations relating to the PKPU application on behalf of Sadeli Setiawan and Evelyne Hartanto which was submitted and signed by Juniarto and Setiawati Samahita as Directors and Members of the Board of Directors PT. Bank China Construction Bank Indonesia, Tbk and their legal representatives based on the Deed of Statement of the Company's Meeting Resolutions Number 48 dated June 19, 2015 with the attachment of several evidence of the trial in the form of a photocopy of Excerpt of Deed of Marriage Number: 0464/2006 dated June 26, 2006 between Sadeli Setiawan and Evelyne Hartanto and photocopy of Family Card Number: K.3372.03648 on 27 September 2010 issued by Laweyan District,



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Surakarta City. Furthermore, if there is no separation of assets between Defendant I and Defendant II with a marriage agreement, the Defendants are considered to have joint assets, where every legal action that causes losses will be borne simultaneously. Therefore, the judge stated that the PKPU application submitted by the Plaintiff as a creditor was declared to have fulfilled the formal requirements stipulated by law.

Submission of letters of evidence both from the Plaintiffs to prove the arguments of their application and the Defendants to prove their arguments based on the provisions of Article 222 Paragraphs (1) and (3) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely the Debtor has more than one Creditor and the Creditor estimates that the Debtor will not be able to continue to pay his debts that have matured and can be collected by attaching a Warning Letter 3 times, has fulfilled the material requirements in the PKPU application as determined by the Law. . Therefore, the Judge granted the Temporary PKPU application, appointed a Supervisory Judge from the Commercial Judge at the Semarang District Court based on the provisions of Article 225 Paragraphs (3) and (4) of the PKPU & Bankruptcy Law, and appointed 1 or more Management who together with the Debtor will manage the Debtor's assets. , namely Ali Riz, Herryau Tommy Manurung, and Kairul Anwar.

As Management in PKPU as stated in each Statement of Willingness as Management dated July 19, 2018, the Panel of Judges considered that the requested management did not have a conflict of interest with the Plaintiffs and Defendants of PKPU, were independent and were not handling Bankruptcy & PKPU cases for more than 3 years. the case so that it can be determined to be the manager of the debtor's bankruptcy estate and the management is given a fee for his services after the management has finished carrying out his duties. Continuing to the existence of a civil lawsuit filed by a minor as the party whose name is registered in the register of shareholders who own shares in PT. Arga Dumilah and biological children of the Debtors who were declared bankrupt on September 24, 2018 based on the Decision of the Commercial Court at the Semarang District Court Number: 14/Pdt.Sus-PKPU/2018/PN.Niaga SMg *jo.* Number : 21/Pdt.Sus-Pailit/2018/PN Niaga SMG, where the above is related to the bankruptcy cases of the Debtors. The Panel of Judges gave legal considerations to the arguments for the lawsuit filed in the case decision number: 19/Pdt.Sus-GLL/2020/PN.Smg, namely that the Plaintiffs did not have *legal standing to represent the company to file a quo* lawsuit against the company that suffered losses. caused by the negligence of the board of directors and the board of commissioners in carrying out their duties as management of the company and the claim of the plaintiffs is considered unclear ( *abschuur libel* ).

In relation to the *legal standing* of the plaintiffs, the Panel of Judges explained that if the company suffers a loss caused by the mistake or negligence of a member

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of the board of directors or a member of the board of commissioners in carrying out their duties, then the party who is obliged to take full responsibility personally and jointly if it has 2 or more members of the board of directors or a member of the board of commissioners is the relevant Board of Directors or Board of Commissioners. In addition, shareholders whose share ownership is at least 1/10 of the total shares with voting rights can sue a member of the board of directors or a member of the board of commissioners who due to their fault or negligence caused losses to the company through a district court. Then, the board of directors can represent the company both inside and outside the court if the company suffers a loss caused by legal actions taken by shareholders to seek personal gain by binding themselves with other parties in an engagement on behalf of the company as described above has been contained in Article 97 Paragraphs (1), (3), (4) and (6) *jo*. Article 98 Paragraph (1) *jo*. Article 108 Paragraph (1) *jo*. Article 114 Paragraphs (1), (3), (4) and (6) of the Company Law.

Furthermore, the Panel of Judges explained that children named Lawrencio Calvin Setiawan and Gabrielle Charlotte Setiawan who are still underage are not yet capable of acting before the law, therefore based on the provisions of Article 163 HIR it is necessary to appoint a guardian for the child in the trial at the Semarang Commercial Court and its relation as shareholders in PT. Arga Dumilah and the Plaintiffs on behalf of PT. Arga Dumilah. The appointment of the guardian is under the authority of the parents or the appointment of another person by court order. Therefore, the Plaintiffs do not have *legal standing* in filing a lawsuit due to the non-fulfillment of the requirements to file a lawsuit in the provisions of Article 97 Paragraph (6) of the Company Law, where the plaintiffs in terms of share ownership in PT. Arga Dumilah only have 0 shares each. .75 % and 0.50% share. If the two are combined, only 1.25% of the total shares in PT. Arga Dumilah and does not reach at least 1/10 (10%) of the total shares with voting rights.

In addition, the Plaintiffs do not have *legal standing* because the Plaintiffs filed a lawsuit against PT. Arga Dumilah when the shareholders of PT. Arga Dumilah based on the Deed of Minutes of the GMS PT. Arga Dumilah Number 1 dated 31 August 2020 made before a Notary has approved the dissolution process of PT. Arga Dumilah by appointing Azet Hutabarat as Liquidator. In this case, PT. Arga Dumilah has fulfilled the requirements for the dissolution of the company with the cancellation of the bankruptcy based on the decision of the commercial court which has permanent legal force on the bankruptcy estate of the company is not sufficient to pay the bankruptcy costs and the company's bankrupt assets which have been declared bankrupt are in a state of insolvency as regulated in the Bankruptcy Law & PKPU . Therefore, the Semarang District Court dissolved PT. Arga Dumilah at the request of the shareholders, directors or board of commissioners based on the reasons that the company is not possible to continue because it is bankrupt and the

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assets of the bankrupt company are not sufficient to pay the bankruptcy fees as referred to in Article 142 Paragraph (1) letters d and e *jo*. Article 146 Paragraph (1) letter c UUPT. Thus, the dissolution of PT. Arga Dumilah who has announced the dissolution of his company through *Republika* and *Jateng Square* newspapers, and notified the Ministry of Law and Human Rights Number : AHU -AH.01.001111853 dated September 25, 2020, causing the legal entity status of PT. Arga Dumilah no longer exists and the plaintiffs who are on behalf of the shareholders of PT. Arga Dumilah no longer has the legal status of “ *persona standi in judicio* ” to file a *quo* lawsuit .

As for the legal issues in this case, the company as Debtor has been declared Bankrupt in several banks as Creditors along with Sadeli Setiawan and Evelyn Hartanto as Debtors, Shareholders in PT. Arga Dumilah as well as being the Individual Guarantee against the debts of PT. Arga Dumilah has been declared bankrupt by the Commercial Court at the Semarang District Court. Therefore, PT. Bank Negara Indonesia representing the Creditors then appoints the Supervisory Judge and the Curator Team to manage and/or settle the bankruptcy assets/bodel on behalf of each party as the Bankrupt Debtor. However, the Curator Team made errors or omissions in carrying out their duties as management which caused losses to the bankrupt assets. The error or omission is in the form of the Edelweiss Hotel Building and the Company's Assets on behalf of PT. Arga Dumilah has been included in the bankruptcy estate of Sadeli Setiawan and Evelyne Hartanto. Thus, the Plaintiffs in the ownership of shares in the company filed a lawsuit against PT. Bank Negara Indonesia and the Curator Team based on Unlawful Acts in accordance with Article 1365 of the Civil Code and losses suffered by PT. Arga Dumilah.

Based on the description above, the Panel of Judges explained that the plaintiff's lawsuit mixed an unlawful act in Article 1365 of the Civil Code and an unlawful act that violated Article 21 *jo*. Article 68 of the Bankruptcy & PKPU Law is not clearly legible and contradicts the *petitum* of the lawsuit. Furthermore, the Bankrupt Debtor may file an objection letter to the Supervisory Judge against the actions taken by the Curator Team or request the Supervisory Judge to issue a warrant so that the Curator Team does certain actions or does not carry out the actions that have been planned. In connection with these actions, the Curator Team is responsible for the Bankrupt Debtors and Creditors. Then, the Bankrupt Debtor may submit an objection letter that has been determined by the Supervisory Judge to the Panel of Judges in this case until the Panel of Judges orders the Curator Team to issue the Edelweiss Hotel Building and Land along with the Assets on behalf of PT. Arga Dumilah from the Bankruptcy Assets List of Sadeli Setiawan and Evelyne Hartanto as stipulated in Article 21 *jo*. Article 69 Paragraph (1) UUPT *jo*. Article 72 Bankruptcy Law & PKPU *jo*. Article 77 Paragraphs (1) and (4) *jo*. Article 78

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Paragraph (2) Bankruptcy & PKPU Law. In the decision of the supreme court number: 14/Pdt.Sus-PKPU/2018/PN.Smg:

1. Minors become Plaintiffs, where the legal basis regarding all legal actions both inside and outside the Court relating to the interests of Minors is represented by parents or guardians who are appointed by the Judge with Court Determination as referred to in Article 47 Paragraph (2) of the Law. Jo's marriage . Article 50 Paragraph (1) of the Marriage Law *jo* . Article 331 A of the Civil Code *jo* . Article 359 of the Civil Code.
2. In the argument of his lawsuit, the Plaintiff sued the Curator Team and PT. Bank Nasional Indonesia on the grounds that the Curator Team has been negligent in carrying out its duties and responsibilities, namely to enter and sell unilaterally the company's assets and shares on behalf of Minors which are considered bankrupt assets from their parents as Debtors who are declared bankrupt, as well as the negligence of the Board of Directors and Board of Commissioners of PT. Arga Dumilah in carrying out his duties and responsibilities as the management of PT. It was Arga Dumilah who tended to let the company's assets be sealed by the Debtor Curator Team. Based on the lawsuit above, the author analyzes that the Plaintiff filed a lawsuit argument relating to the losses suffered by PT. Arga Dumilah and the losses suffered by the Plaintiff personally due to the actions of the Curator Team. Considering the argument of PT. Bank China Construction Bank Indonesia, Tbk stating that the debtor has personal debts to several creditors and is an individual guarantee against the debts of PT. Arga Dumilah at Bank Negara Indonesia and several other creditors, the authors conclude that the debtor has personal debts to several creditors on behalf of the debtor and PT. Arga Dumilah has debts to several creditors on behalf of the Company so it is clear that there are two interests in this case.
3. In connection with the interests of PT. Arga Dumilah who is bankrupt and is guilty or negligent of the Board of Directors and Board of Commissioners in carrying out their duties and responsibilities in managing the Company so as to cause losses to the Company, the Board of Directors and Board of Commissioners must be fully responsible for the management and losses of the Company and the authorities who own the company both outside and outside the Company. or in court to file a lawsuit for the loss is another member of the Board of Directors, the Board of Commissioners or other party appointed by the GMS who does not have a conflict of interest with the Company and is not a member of the Board of Directors concerned or the member of the Board of Directors concerned has a conflict of interest with the Company as referred to in Article 92 Paragraph (1) UUPT *jo*. Article 97 Paragraphs (1), (2) and (3) UUPT *jo* . Article 98 Paragraph (1) UUPT *jo* . Article 99 UUPT.

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4. In connection with the personal interests of the Shareholders on behalf of the Company causing losses to the Company, the Shareholders concerned must be fully responsible for the losses of the Company and the parties authorized to represent the Company in filing a lawsuit against the losses suffered by the Company due to the actions of the Shareholders or the negligence of the Board of Directors or the Board of Directors. Commissioners are shareholders who own at least 1/10 of the total shares with voting rights as referred to in Article 97 Paragraph (5) and (6) of the Company Law.
5. In this case, the two Minors have the number of shares when combined, only 1.25 % of the total shares of PT. Arga Dumilah so that based on Article 97 Paragraph (6) of the Company Law, the Plaintiffs do not meet the requirements or do not have *legal standing* to represent the company to file a lawsuit and the losses suffered by the Company were caused by the mistakes of the Board of Directors or the Board of Commissioners who did not carry out their duties and obligations as management of PT. Arga Dumilah. If the number of shares has complied with Article 97 Paragraph (6) of the Company Law, the Plaintiff is the party who can file a lawsuit in this case if it is proven that the loss suffered by the Company was caused by the fault of the Board of Directors or the Board of Commissioners who did not carry out their duties and obligations as the management of PT. Arga Dumilah. In connection with the consideration of the Panel of Judges who decided that it only ordered the Curator Team to remove the assets belonging to the Company from the assets of the bankrupt/bankrupt debtor and not to exclude assets belonging to minors from the assets of the bankrupt/bankrupt debtor because it was based on the provision of fiduciary guarantees by the debtor in the form of shares. belonging to the Debtor and the Plaintiff attached to the credit agreement on behalf of the Debtor to several Creditors so that the Curator Team has the right to conduct searches, investigations, and management related to assets of the bankrupt Debtor to pay off its debts to more than 1 Creditor as referred to in Article 24 Paragraph (1 ) PKPU Law *jo.* Article 69 Paragraph (1) PKPU Law.
6. If there is a separation of assets between the assets of the child and the assets of the parents as Shareholders and the number of shares of the two Minors when combined meets the requirements in accordance with the provisions of Article 97 Paragraph (6) of the Company Law, then the ownership of shares in the name of the Minor must be removed from the bankruptcy estate/boedel Bankruptcy Debtor and the Curator Team are found guilty of negligence in carrying out their duties and responsibilities towards the management of the debtor's bankruptcy estate. One way to separate the assets of the child and the assets of the parents can be done by means of inheritance through a grant.

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7. In this case, the Plaintiff filed a lawsuit when the liquidator of PT. Arga Dumilah has announced the dissolution of PT. Arga Dumilah through Republika and Jateng Square newspapers and has been notified to the Ministry of Law and Human Rights Number: AHU-AH.01.001111853 on September 25, 2020 so that the legal entity status of PT. Arga Dumilah no longer exists. Thus, the Plaintiffs on behalf of the Shareholders of PT. Arga Dumilah in submitting the argument for the lawsuit to the Curator Team and Bank BNI no longer has the legal status of "*persona standi in judicio*" which causes the Plaintiffs to be unable to file a lawsuit.

Share Ownership Status on behalf of Minors is under the control of parents or guardians as long as the Child is still a Minor, in this case the right to control shares as a movable object is under the authority of the parent or guardian. This is reaffirmed because there is no segregation of assets between assets belonging to children and assets belonging to parents as shareholders in PT. Arga Dumilah so that share ownership in the name of Minors is a joint family property that can be enjoyed together in accordance with the provisions of the applicable law.

## CONCLUSION

In general, Minors cannot become Shareholders because their legal position is not yet capable of carrying out legal actions, in this case Minors have not been able to carry out the rights arising from shares for which all actions require legal responsibility from themselves as Shareholders. However, Minors may obtain share ownership in the name of a company due to inheritance from their parents based on the approval of their husband or wife, the GMS and the Board of Directors of the Company.

The judge's basis for consideration in the Supreme Court's Decision Number: 19/Pdt.Sus-GLL/2020/PN.Smg is Article 97 Paragraph (5) and (6) of the Company Law for the legal position of the Plaintiff, Article 24 Paragraph (1) of the PKPU Law *jo* . Article 69 Paragraph (1) of the PKPU Law for the duties and responsibilities of the Curator Team, and the actions of the liquidator of PT. Arga Dumilah has announced the dissolution of PT. Arga Dumilah through Republika and Jateng Square newspapers and has been notified to the Ministry of Law and Human Rights Number: AHU-AH.01.001111853 on September 25, 2020 so that the legal entity status of PT. Arga Dumilah no longer exists.

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