

# MECHANISM OF SHARE TRANSFER THROUGH COURT DECISION FOR SHAREHOLDERS IN A STATE OF ABSENCE (AFWEZIGHEID)

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## Abstract

There are many problems found in the civil aspect these days, which are diverse and complex, so comprehensive arrangements are needed to fulfil all civil rights in humans as one of the subjects of civil law. This research will specifically discuss the state of *Afwezigheid* as a shareholder of a limited liability company where the assets owned are in the form of shares. To carry out the civil rights of an absent person (*Afwezig*), a determination of *Afwezigheid* is required by the local District Court, which then appoints *Balai Harta Peninggalan* (BHP) as a Special Manager (*Bewindvoerder*) to carry out management of the absent person's assets. This research is a normative legal study using secondary data, applying statute approach, conceptual approach, and historical approach. The data were collected through literature review of books, laws, and regulations relating to the state of *Afwezigheid* and its position under the Civil Code and Law Number 40 of 2007 on Limited Liability Company. The findings indicate that the absence (*Afwezigheid*) of a shareholder must be established by a court ruling, with BHP managing the shareholder's rights and assets. However, the lack of clear technical procedures for share transfer creates legal uncertainty in practice.

## 1. INTRODUCTION

In civil law concepts, the transfer of an object by the owner or on their behalf to another person so that the other person acquires ownership rights over the object is also referred to as *Levering*. There are various methods of transfer, both for movable and immovable objects as stated in Article 511 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*). Article 612 of the Civil Code mentions that the transfer of rights to movable objects is done through actual delivery of the object, both for movable and immovable objects, and ownership rights can only be transferred if in accordance with the applicable laws and regulations.

The ownership of shares in a company is fundamental capital in establishing a Limited Liability Company (*Perseroan Terbatas*), and shareholders obtain the right to receive dividends. Dividends are profit distributions to shareholders that, in practice, are paid in

the form of money, but may also be in other forms such as temporary stock certificates or products or properties of the company. Other rights of shareholders in a limited liability company are distinguished into Individual Rights and Derivative Rights according to Law Number 40 of 2007 of Limited Liability Company (hereinafter referred to as LLC Law). Individual rights of shareholders are rights that are inherent to them and are related to: the right to be offered shares in an amount proportional to their existing shareholding in the same classification of shares (Article 43 paragraph (1) of the LLC Law); the right to purchase shares if the shares to be issued for capital investment are shares that have never been issued in that classification (Article 43 paragraph (2) of the LLC Law); the right to obtain each share issued by the company (Article 51 of the LLC Law); the right to sell and transfer shares (Article 56 of the LLC Law); the right to be given the first offer of shares by the selling shareholder (Article 57 paragraph (1) of the LLC Law); the right to use shares as fiduciary collateral or pledge (Article 60 paragraph (2) of the LLC Law); personal right (Article 61 paragraph (1) of the LLC Law); the right to consent in determining the price of shares (Article 62 paragraph (1) of the LLC Law); the right to receive dividend distribution (Article 71 paragraph (1) of the LLC Law); the right to hold the General Meeting of Shareholders (GMS) (Article 79 paragraph (2) of the LLC Law); the right to request permission from the Head of the Court regarding the request to hold GMS if the Board of Directors or the Board of Commissioners fails to make the invitation within a specified period (Article 80 paragraph (1) of the LLC Law); the right to attend GMS (Article 85 paragraph (1) of the LLC Law); the right to inspect (*Enquererecht*) (Article 138 paragraph (3) of the LLC Law); and the right to request the dissolution of the company (Article 144 paragraph (1) of the LLC Law).

On the other hand, Derivative Rights as known in the LLC Law are granted to minority shareholders to take certain actions in order to safeguard and represent the company against actions taken by other corporate organs, if these actions are suspected to harm the company. These rights are divided into several rights, including: the right, on behalf of the company, for shareholders with voting rights to sue the Board of Directors in a district court for their mistakes or negligence causing harm to the company (Article 97 paragraph (6) of the LLC Law); the right, on behalf of the company, for shareholders with voting rights to sue the Board of Commissioners in a district court for their mistakes or negligence causing harm to the company (Article 114 paragraph (6) of the LLC Law); the right to request the convening of a GMS. Minority shareholders can request the Board of Directors to hold a GMS, representing at least one-tenth of the total shares with voting rights, unless the Articles of Association stipulate otherwise; the right to inspect, which is the right to examine the company in order to obtain data and information if the company or its Directors or Board of Commissioners engage in unlawful acts that harm shareholders, the company, or third parties (Article 138 of the LLC Law); and the right to request the dissolution of the company (Article 144 *juncto* Article 146 of the LLC Law).<sup>1</sup>

Shares, when viewed from the perspective of their transfer, are divided into: (1) Bearer Shares (Bearer Stock), which are shares that are not registered, meaning they can be easily transferred to another investor but still retain the same rights as the shareholder. These shares are generally used by publicly traded limited liability companies (Tbk); (2) Registered Shares (Registered Stock), which are the opposite of bearer shares. These shares are rigid, and the name of the shareholder is clearly written regarding the share ownership.

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<sup>1</sup> Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 tentang Perseroan Terbatas, arts. 84–85.

The transfer of shares must go through a specific procedure and is generally used by privately held limited liability companies.<sup>2</sup>

Regarding the transfer of ownership rights over shares, as stated in Article 55 of the of the LLC Law, it is regulated that the method of transferring ownership rights to shares must be carried out in accordance with applicable laws and regulations. Furthermore, Article 57 of the LLC Law mentions that the Articles of Association may regulate conditions regarding the transfer of rights to shares, which include: the obligation to first offer the shares to shareholders of a certain classification or other shareholders; the obligation to obtain prior approval from the Company's Organ; and/or the obligation to obtain prior approval from the relevant authority in accordance with applicable regulations.

Then, in Article 584 of the Civil Code, it is stated that:

"Ownership of a property can only be obtained through possession, through accession; through prescription; through inheritance, either according to law or a will, and through designation or delivery based on a civil event for transferring ownership rights, carried out by a person entitled to freely dispose of the property."

The condition for the transfer of ownership rights to shares applies when the share transfer is carried out according to general conditions. Of course, this cannot be properly applied if a shareholder, who holds a portion of the shares and intends to transfer them, can no longer be located (*Afwezigheid*). In this situation, can the principles outlined in Article 612 of the Civil Code in conjunction with Article 57 of the LLC Law be applied?

*Afwezigheid*, in civil law studies, refers to a condition where a person leaves their place of residence and their whereabouts are unknown, also known as a state of absence. This state of absence can be divided into two categories: a temporary action and a declaration that the person is presumed to have passed away. A state of *Afwezigheid* does not terminate a person's status as the holder of rights and obligations, but it creates legal uncertainty, especially in terms of the transfer of ownership rights. In the Civil Code, the effect of *Afwezigheid* on a person's legal status is distinguished in three periods, which are: (1) the period of temporary measures (*Voorlopige Voorzieningen*) (Articles 463–465 of the Civil Code); (2) the period when the presumption of death regulation is issued (*Vermoedelijk Overleden*) (Articles 467 and 470 of the Civil Code); and (3) the period of transfer of rights to the heirs definitively (*Definitieve Erfopvolging*) (Article 493 of the Civil Code).<sup>3</sup>

With a state of *Afwezigheid*, a legal issue arises concerning the legal status of the person, which will relate to the interests of others, such as the family left behind, and certainly intersect with various legal aspects including the inheritance of the individual's assets and their marriage, the legal status of a person in a state of *Afwezigheid* must first be declared through a court decision, which will then be followed up with a registration by the Civil Registry Institution. The aim is to provide the greatest legal certainty regarding the legal status of the individual, ensuring that legal acts performed by the person and/or their heirs related to ownership/wealth can still be carried out.

The problem formulation for this research is what is the legal mechanism governing the transfer of ownership rights over shares through a court ruling in cases where shareholders are in a state of absence (*Afwezigheid*)? This study seeks to examine and provide a comprehensive legal analysis of the mechanism by which ownership rights over

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<sup>2</sup> Ditha Paramita, "Keadaan Tidak Hadir (*Afwezigheid*) dan Akibat Hukumnya Menurut Hukum Perdata Indonesia" (Skripsi, Fakultas Hukum, Universitas Indonesia, 2007), 6, Universitas Indonesia Library.

<sup>3</sup> *Ibid.*, 2.

shares are transferred through a court ruling in circumstances where shareholders are declared to be in a state of absence (*Afwezigheid*).

## 2. METHOD

The research method used is normative research. In this study, data and research materials will be obtained from literature, legal regulations, and existing written works. This research is conducted descriptively, providing an overview of the phenomena related to the issues being studied. From an application perspective, this research is focused on a specific issue. From the perspective of the discipline used, this research is monodisciplinary, examining the issue using a single discipline of Civil Law.

In this study, the author uses two types of legal materials to analyze the results of this writing, namely: (1) primary legal materials, which are regulations that are closely related to the legal issues discussed; and (2) secondary legal materials, which are materials that provide explanations about primary legal materials, such as legal books, including theses, dissertations, and literature related to the legal issues discussed.<sup>4</sup>

## 3. RESULTS AND DISCUSSION

### 3.1 Legal Subjects in the Civil Code

The definition of a person (*persoon*) in Western civil law, according to Professor Subekti, is "a bearer of rights or a subject in law."<sup>5</sup> From this definition, it is understood that humans or individuals are legal subjects because within the individual there are rights to engage in legal transactions. The Western civil law, as contained in the provisions of the Civil Code, views all humans or individuals as fundamentally having equal standing regarding their rights and obligations in law. These rights and obligations exist from birth until death. However, there are exceptions as determined by law, meaning not all individuals or humans are considered legally competent to perform legal actions.

Soenjoto Wirosoemanto in his book "*Azas-azas Hukum Perdata\** (Principles of Civil Law) states that: "Humans, as holders of rights or having personal legal status, are recognized by the law because humans are naturally personal entities, thus their status as personal entities is not granted by law."<sup>6</sup> This provides an understanding that humans are legal subjects from the moment of birth until death if they meet the legal requirements for capacity to act. If an individual does not meet the legal capacity requirements, they cannot perform actions within legal transactions.

According to J. Satrio, the definition of *persoon* is "anyone who can support legal rights and obligations. A person is also referred to as a Legal Subject. The main requirement for an individual to be a true legal subject is that the person must be legally competent to engage in legal transactions by fulfilling the requirements set out in the Civil Code.

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<sup>4</sup> Dhimas Nur Muhammad Ruata and Wiwin Yulianingsih, "Akibat Hukum Seseorang yang Ditetapkan dalam Keadaan Tidak Hadir (Afwezigheid) dalam Jual-Beli Saham," *Jurnal Pendidikan Tambusai* 7, no. 2 (August 2023): 6. <https://jptam.org/index.php/jptam/article/view/9045>

<sup>5</sup> Subekti, *Pokok-Pokok Hukum Perdata*. (Jakarta: Intermasa, 1994), 13.

<sup>6</sup> Soenjoto Wirosoemanto, *Azas-Azas Hukum Perdata* (Solo: Fakultas Hukum Universitas Sebelas Maret, 1977), 37.

In Book I of the Civil Code, two types of legal subjects are recognized: (1) Natural Person, which is an individual who is given authority and has the position of a subject; and (2) Legal Entity, which is a legal subject that does not have a physical form as a natural being but is considered capable of having rights and obligations in legal transactions, just like a natural person. (Article 1653 of the Civil Code).

### 3.2 Capacity to Act in Western Civil Law

The factors affecting a legal subject include capacity to act, gender, and age. The capacity to act between individuals who meet the legal requirements to act according to the law is, of course, different from those who do not meet the legal requirements. This capacity to act determines whether a person can perform a legal action or not. When a legal subject is capable of performing a legal action, the subject must have a legal standing in legal transactions. Regarding legal standing, J. Satrio states: "What is meant by legal standing (*Rechtstoestand* or *Burgelijke Staat*) of a person is the authority of an individual to possess and exercise certain civil rights, or in other words, concerning someone's legal authority and its implementation."

Capacity to act (*Handelings Bekwaamheid*) is regulated in the Civil Code as follows: Capacity to act according to facts (*Feitelijke Handelings Bekwaam*), which refers to the ability to engage in legal transactions because the person has the ability to perform an action whose consequences are regulated by law; and Capacity to act according to the law (*Juridische Handeling Bekwaam*), which refers to the ability to perform legal actions because the law prescribes it.

### 3.3 Understanding the State of Absence (*Afwezigheid*)

Generally, in everyday language, absence refers to a situation where a person leaves their residence or is not present at a location. According to R. Soetjo Prawirohamidjojo, "The state of being absent does not halt a person's legal rights; it does not stop their status as a *persoon*. However, such a condition can create legal uncertainty. Therefore, lawmakers considered it necessary to regulate the issue of absence (*Afwezigheid*)."

Based on Article 44 paragraph (4) of Law Number 23 of 2006 on Civil Administration, "If there is uncertainty about a person's whereabouts due to disappearance or death without the body being found, civil registration by the Civil Registry Officer can only be carried out after a court ruling."<sup>7</sup> From this article, it can be understood that this condition is similar to the concept of *Afwezigheid* regulated in Article 463 of the Civil Code. However, the Civil Administration Law does not provide the causes and conditions under which a person is declared absent. Furthermore, Article 23(i) of Law Number 12 of 2006 on Citizenship states that "A person who has resided outside the Republic of Indonesia for five consecutive years, not for government service, without a valid reason, and intentionally fails to declare their intention to remain an Indonesian citizen before the five-year period ends, and every five years thereafter, is considered absent if they do not submit a declaration of their intention to remain an Indonesian citizen, provided that the Indonesian representation has notified the individual in writing".

Abdulkadir Muhammad explains in his book that the reasons for someone being declared absent are due to accidents, war, natural disasters, rebellions, mental illness, and other causes. To fulfill the condition of *Afwezigheid*, the following elements are considered:

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<sup>7</sup> *Undang-Undang Republik Indonesia Nomor 23 Tahun 2006 tentang Administrasi Kependudukan, art. 24.*

there must be an individual; the individual is not at their residence; the person is traveling or has left their residence; with or without permission; and the person's whereabouts are unknown.<sup>8</sup> If these elements are met, the situation can be declared as *Afwezigheid* through a court ruling based on the provisions of Western civil law or the Civil Code. The time required to meet the condition of *Afwezigheid* is ten years or more.

### **3.4 Legal Basis Regarding Absence (*Afwezigheid*)**

In the Civil Code, the state of absence (*Afwezigheid*) is regulated in Articles 463 to 466 (State of absence), Articles 467 to 471 (Statement of possible death), Articles 472 to 488 (Rights and obligations of possible heirs and others with an interest after the declaration of possible death), Articles 489 to 492 (Rights concerning a living absent person and sanctions), and Articles 493 to 498 (Effects of absence related to marriage).<sup>9</sup>

Regulations about the duties and authorities of the Inheritance Administration Office (*Balai Harta Peninggalan/BHP*) in cases of absence are: Articles 463 to 498 of the Civil Code; Articles 61 and 64 of *Staatsblad* 1872 No. 166; Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 7 of 2021 on the Organization and Work Procedure of the Inheritance Administration Office; Decree of the Minister of Justice No. M.47-PR.09.03 of 1987 on the Appraisal Committee and Price Determination of Absent and Uncontrolled Assets; Decree of the Minister of Justice No. M.22-PR.09.02 of 1990 on Guidelines for the Appraisal Committee in Determining the Priority Land Rights for Absent and Uncontrolled Assets; Regulation of the Minister of Law and Human Rights No. M.02-HT.05.10 of 2005 on the Application for Permission to Sell Absent and Uncontrolled Property Under the Administration and Supervision of the Inheritance Administration Office; and Regulation of the Minister of Law and Human Rights No. 27 of 2013 on Amendments to Regulation of the Minister of Law and Human Rights No. M.02-HT.05.10 of 2005 on the Application for Permission to Sell Absent and Uncontrolled Property Under the Administration and Supervision of the Inheritance Administration Office.

### **3.5 Mechanism for the Transfer of Shares Through Court Decision for Shareholders in a State of Absence (*Afwezigheid*)**

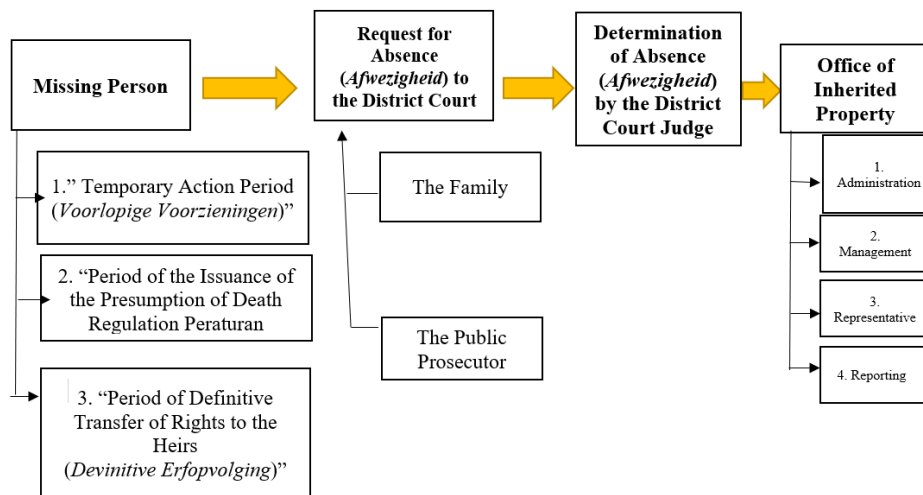
The procedure of *Afwezigheid* can be explained as follows:<sup>10</sup>

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<sup>8</sup> Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung: Citra Aditya Bakti, 2014), 56.

<sup>9</sup> *Kitab Undang-Undang Hukum Perdata*, arts. 83–89.

<sup>10</sup> MJ. Widijatmoko, "Pemegang Saham Perseroan Terbatas AFWEZIGHEID & RUPS" (MjWinstitute, Jakarta, 2024), Forum Diskusi.



Picture 1. Three Stages/Levels of Absence *Afwezigheid*

Temporary Action (*Voorlopige Voorzieningen*) is implemented when there are urgent reasons to manage all or part of the absent person's assets. This temporary action is requested to the District Court by parties with interests in the absent person's assets, such as: spouses, creditors, fellow shareholders, and others, including the prosecutor. During this temporary action, the judge orders the Inheritance Administration Office to manage all assets and interests of the absent person. This is regulated under Articles 467–471 of the Civil Code, where the person whose whereabouts are unknown has been absent for more than 5–10 years.

Issuance of the Presumption of Death (*Vermoedelijk Overleden*)” is when a person can be declared as “presumed” dead, if:

- a. Absent for 5 years, if no power of attorney was left, starting from the day the person left with no news received or from the last communication received.
- b. Absent for 10 years, if a summons has expired, starting from the day the person left with no news received from the last communication.
- c. Absent for 1 year, if the person was part of the crew or passengers of a ship or airplane, starting from the last known news or from the departure date.
- d. Absent for 1 year, if the person is lost in a fatal event involving a ship or airplane, starting from the event date.
- f. According to Government Regulation No. 9/1975, if one party has been absent for 2 consecutive years, the remaining party can file for divorce.

Definitive Transfer of Rights to Heirs (*Definitieve Erfopvolging*) occurs when certainty about the absent person's death is established. If no news of death is received, definitive inheritance only occurs after 30 years from the declaration of presumed death as per the court's decision or after 100 years from the absent person's birth.

Duties and authorities of the Inheritance Administration Office in Absence (*Afwezigheid*) is as follows:<sup>11</sup>

- a. Prepare a record of assets that are declared absent (*Afwezigheid*) if necessary.
- b. Notify the local Prosecutor's Office about the court's decision regarding absence.
- c. Inform the Financial Audit Agency (*Badan Pemeriksa Keuangan/BPK*) of the court's decision on absence.
- d. Announce the absence in newspapers and the official state gazette.

<sup>11</sup> *Ibid.*

- e. Request a certificate from the District Court that issued the decision regarding absence, confirming whether anyone objects to the decision.
- f. Request proof of legal residence from the absentee's tenant/applicant.
- g. Prepare a lease agreement between the Inheritance Administration Office and the tenant in front of a notary.
- h. Collect monthly rental payments from the tenant, starting from the date the person is declared absent by the District Court.
- i. Request an application to purchase the absent person's estate from the tenant/applicant.
- j. Process the application according to the applicable regulations.
- k. Deposit the proceeds from the sale of the absent person's estate in a government bank account for 1/3 of a century (33 years).
- l. Transfer the proceeds to the state when the conditions in item (k) are met.
- m. Report to the Ministry of Law and Human Rights of the Republic of Indonesia, through the Directorate General of General Legal Administration, with a copy to the BPK.

Procedure for selling absent property (*Afwezigheid*) is as follows:

1. A person/entity may be declared absent (*Afwezigheid*).
2. Family/Power of Attorney/Prosecutor submits a request for absence to the District Court.
3. The District Court issues a decision declaring absence.
4. A person/entity is declared absent.
5. The Inheritance Administration Office is appointed as the representative of the absent person/entity and manages the absence.
6. The Inheritance Administration Office issues permission to sell the absent property.
7. The process is handled by the Ministry of Law and Human Rights and the District Court.
8. The Ministry of Law and Human Rights and the District Court issue approval to sell the absent property.
9. The Inheritance Administration Office is authorized to sell the absent property.
10. A Notary or Land Deed Official (*Pejabat Pembuat Akta Tanah/PPAT*) conducts the sale transaction of the absent property. The product is the Sale and Purchase Deed (*Akta Jual Beli*).

### 3.6 Legal Consequences of Absence in Share Transactions

The legal declaration of absence carries consequences that extend beyond the realm of family law, such as inheritance and marriage, and reaches into the sphere of corporate law. When a shareholder is declared absent, their inability to manage or exercise shareholding rights may disrupt the company's internal governance, impede decision-making processes, and ultimately hinder the company's overall growth and development. This condition creates a legal vacuum in which ownership rights remain attached to the absent individual, yet the exercise of those rights becomes uncertain or practically impossible.

Such circumstances raise pressing questions regarding the mechanisms available for ensuring legal certainty and protecting both the company's interests and those of other shareholders. Merely describing the statutory provisions on absence is insufficient; it is



equally important to analyze how these rules function in practice. For instance, courts may be called upon to issue rulings concerning the transfer of ownership rights over shares, or to appoint representatives to safeguard the absent shareholder's interests. Similarly, legal practitioners may develop interpretative approaches or contractual arrangements to address ambiguities not clearly resolved by legislation.

However, these practical applications are not without challenges. Potential legal uncertainties may arise in determining the extent of authority granted to representatives, the legitimacy of corporate decisions taken without the absent shareholder's participation, or the enforceability of share transfers conducted under judicial supervision. These issues underscore the need for a deeper legal analysis that not only considers doctrinal perspectives but also examines jurisprudence, case studies, and comparative practices to reveal how the law is applied and interpreted in real-world contexts.<sup>12</sup>

### 3.7 Legal Protection for Shareholders in a State of Absence (*Afwezigheid*)

In protecting the rights of a person declared to be in a state of absence, as well as safeguarding the legal consequences for other legal subjects, a court ruling is required to formally establish such status, as decreed by the local District Court. Pursuant to Articles 463–465 of the Civil Code, this ruling further mandates the appointment of the Inheritance Administration Office to administer the absent person's assets and interests.

The Inheritance Administration Office, acting as the legal representative of the absent person, is entrusted with several responsibilities, including: Sealing the estate of the absent person if deemed necessary; recording the assets entrusted to them for safekeeping or management, in accordance with the court's decision; and submitting an annual accountability report to the local Prosecutor's Office, as the supervisory authority of the District Court that issued the appointment. This reporting mechanism is intended to ensure that the management of the absent estate complies with prevailing legal requirements.

While these provisions set out a clear framework for the protection of absent persons and their estates, the discussion requires a more evaluative approach. It is necessary to critically examine whether the current system provides adequate protection in practice. For instance, questions may arise regarding the sufficiency of Inheritance Administration Office's supervisory mechanisms, the effectiveness of annual reporting in preventing mismanagement, or the extent to which the interests of both the absent person and third parties (such as heirs or corporate stakeholders) are safeguarded.

Moreover, potential gaps or weaknesses in the existing framework merit further analysis. These may include the limited resources and institutional capacity of the Inheritance Administration Office, ambiguities in the scope of its authority over corporate shares, or the possibility of conflicts between the absent person's presumed interests and the operational needs of the company. By identifying and assessing such challenges, the analysis will not only highlight areas requiring legal reform but also contribute to the broader discourse on balancing individual protection with legal certainty in corporate transactions.<sup>13</sup>

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

### 3.8 Illustrative Case Studies

In practice, the Inheritance Administration Office is often appointed by the court to manage the assets of individuals declared *afwezig* (absent). For example, in Central Jakarta District Court Decision No. 22/Pdt.P/2017/PN Jkt.Pst, the court established the status of *afwezigheid* for an individual whose whereabouts had been unknown for years and appointed the Inheritance Administration Office to administer the person's estate. Although the case did not directly involve shares, the same principle applies where corporate shares are among the assets of the absent individual. Such cases highlight legal uncertainty, particularly when shares must be managed or transferred. Courts generally limit their orders to asset administration, not ownership transfer, creating dilemmas for companies that must undertake corporate actions.

The concept of *afwezigheid* originates from Dutch law. In practice, when an individual is declared absent, Dutch courts may appoint a curator to manage the assets. However, if the assets include shares in a *besloten vennootschap* (BV), the curator's authority to transfer such shares is limited without additional court approval. This situation is similar to Indonesia, though Dutch law provides clearer instruments granting the curator room to act, thereby ensuring a higher degree of legal certainty.

Potential issues highlighted by cases include: corporate deadlock (If a majority shareholder is declared *afwezig*, the company may face deadlock in making strategic decisions, such as in the General Meeting of Shareholders.); ambiguity in share transfer (While Inheritance Administration Office has the authority to administer assets, it is not always clear whether this extends to the transfer of ownership of shares without further judicial authorization) and Conflicts of Interest (In certain cases, heirs may contest Inheritance Administration Office's management of the estate, particularly when the assets have significant economic value).

These cases demonstrate that although a legal framework exists, its implementation often gives rise to new questions. This opens space for further research into: whether specific regulations should govern shares owned by absent persons; oversight mechanisms over the Inheritance Administration Office need strengthening; and how to balance the protection of the absent shareholder's rights with the company's need for legal certainty and the rights of other shareholders.

## 4. CONCLUSION

The transfer of shares ordinarily requires a valid mechanism, most commonly a sale executed through a notarial deed. However, the absence of a shareholder creates an impediment to fulfilling the procedural requirement of offering shares to other parties, thereby obstructing the transfer process. To address this situation, the law requires a court decision to formally establish the status of absence (*afwezigheid*). This ruling not only confirms the legal status of the absent shareholder but also authorizes the appointment of the Inheritance Administration Office to represent the absent person's interests. Within this framework, the Inheritance Administration Office plays a central role in managing and safeguarding the shareholder's rights, including the administration of shares, compliance with corporate procedures, and, when necessary, seeking court approval for the transfer of ownership rights.

Accordingly, the mechanism of share transfer in cases of *afwezigheid* involves a sequence of procedural and legal steps: a court ruling declaring the shareholder absent; the appointment of the Inheritance Administration Office to represent the absent shareholder;

the management of the absent shareholder's rights by the BHP, subject to judicial oversight; and the execution of a transfer deed before a notary, in compliance with both corporate law and the court's directives. By outlining these stages, it becomes evident that the role of the court extends beyond mere confirmation of absence; it forms an integral part of the transfer mechanism itself. Thus, the legal framework seeks to strike a balance between protecting the rights of the absent shareholder and ensuring legal certainty for the company and its remaining shareholders.

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