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RECONSTRUCTING THE VALIDITY OF SHARE TRANSFERS IN INDONESIAN LIMITED LIABILITY COMPANIES ABSENT SPOUSAL CONSENT

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The transfer of shares within an Indonesian Perseroan Terbatas sits at a doctrinal crossroads seldom examined outside its constituent statutes. Law Number 40 of 2007 concerning Limited Liability Companies, as amended by Law Number 6 of 2023, classifies a share as a movable object and prescribes an exhaustive procedure for its transfer. Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, requires spousal consent for any legal act concerning joint marital property. The apparent friction between these regimes generates genuine uncertainty for notaries, corporate counsel and the shareholding public regarding the validity of a share transfer executed without a partner's agreement. This study examines the proprietary character of shares as movable objects under Indonesian positive law and evaluates its bearing on the validity of such transfers. Employing normative legal research grounded in the statute approach and the conceptual approach, the analysis proceeds through grammatical and systematic interpretation, culminating in the application of the maxim lex specialis derogat legi generali. The findings establish that a share constitutes a distinct species of movable, incorporeal property whose transfer is governed exclusively by company law; spousal consent forms no part of the formal validity requirements fixed by the Limited Liability Companies Law. Disputes concerning the marital status of the underlying value remain fully cognisable within family law, yet they leave the corporate transaction itself untouched. Applying the specific regime consistently secures certainty for market participants, protects good-faith third parties and preserves the efficient circulation of capital that modern company law is designed to sustain.

Keywords: *Share Transfer; Movable Property; Joint Marital Property; Lex Specialis; Limited Liability Company.*

1. Introduction

The expansion of investment activity has reshaped the composition of household wealth across Indonesia. Land, gold and bank deposits, once the near-exclusive vessels of family savings, now share space with modern financial instruments, a share in a Perseroan Terbatas foremost among them. A share is not a parcel of earth or a bar of bullion; it is a claim, a bundle of entitlements representing participation in the capital of a body corporate.[1] Ownership of a share carries both economic and corporate rights: entitlement to dividends, the right to attend and vote at the General Meeting of Shareholders, and a residual claim upon liquidation.[2] Law Number 40 of 2007 concerning Limited Liability Companies, as amended by Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (the 'Companies Law'), gives this claim firm statutory footing. Article 60(1) declares, without qualification, that a share is a movable object conferring the rights specified in the statute. The legislature's classification is deliberate: shares occupy a distinct place within the law of property, carrying their own logic and their own consequences.[3]

Classifying an object as movable carries wide juridical weight, governing possession, transfer, encumbrance and the protection owed to third parties. The Indonesian Civil Code has long divided objects along this axis.[4] That division supplies the operative rules for the mode of delivery, the proof of title, the creation of security interests, and the shelter afforded to a bona fide acquirer.[5] Article 511 of the Civil Code places share certificates and interests in commercial partnerships squarely within the category of movables by force of statute; Article 60 of the Companies Law repeats the point in modern dress, leaving no room to doubt that a share is an incorporeal movable. Company law doctrine confirms the same conclusion: a share is an economic entitlement capable of assignment, inheritance, gift, pledge or transfer according to the mechanisms fixed by statute and by the company's articles of association.[6]

This characterisation performs genuine economic work. The mobility of shares allows capital to circulate swiftly, giving enterprise ready access to funding.[7] Efficient capital mobility ranks among the structural conditions for commercial growth, since a shareholder may redeploy an investment to another venture without disturbing the corporate vehicle that continues to trade. Company law achieves certainty over shareholder identity through the

[1] Gunawan Widjaja, *Hak Individual dan Kolektif Para Pemegang Saham* (Forum Sahabat 2008) 41.
[2] Ahmad Yani and Gunawan Widjaja, *Seri Hukum Bisnis Perseroan Terbatas* (RajaGrafindo Persada 2006) 17.
[3] Robert Anderson, 'A Property Theory of Corporate Law' (2020) 2020(1) Columbia Business Law Review 1, 9.
[4] Subekti, *Pokok-Pokok Hukum Perdata* (Intermasa 2014) 61.
[5] Riduan Syahrani, *Seluk Beluk dan Asas-Asas Hukum Perdata* (Alumni 2013) 92.
[6] Salim HS, *Perkembangan Hukum Jaminan di Indonesia* (RajaGrafindo Persada 2017) 165.
[7] Reinier Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, Oxford University Press 2017) 18.

Register of Shareholders or, for a public company, the securities administration system.[8] That administrative certainty protects the company, its shareholders, its creditors and any third party acquiring shares through a lawful channel. Every mechanism just described points toward a single orientation: the legal character of a share is built for the frictionless conduct of commerce and the certainty of commercial transactions.

Difficulty surfaces once a share is acquired during marriage, for it is then drawn into the category of joint marital property under Article 35(1) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 (the 'Marriage Law'). Property acquired during marriage becomes joint property; inherited property, gifts and property brought into the marriage remain under the separate control of each spouse unless the parties agree otherwise. The joint-property regime exists to protect the economic equilibrium between husband and wife across the life of the marriage, treating the fruits of the union as a shared undertaking to be enjoyed in common.

The picture grows more intricate under Article 36(1) of the Marriage Law, which requires spousal consent for any act concerning joint property. The provision's breadth invites competing readings. Some construe it as reaching every species of joint property without regard to the character of the object concerned, an interpretation that would make spousal consent a precondition for the validity of any share transfer effected during marriage.[9] Certain notarial practices adopt that cautious posture, requesting a spouse's signature to forestall future dispute.[10]

That reading calls for closer scrutiny against the full body of norms governing share transfer. The Companies Law regulates the transfer of shares through a deed of transfer, registration in the Register of Shareholders, and whatever supplementary conditions the articles of association may impose. Nowhere does it list spousal consent among the formal conditions of validity. The silence raises a genuine question of statutory hierarchy: does a general

[8]Paul L Davies, *Gower and Davies' Principles of Modern Company Law* (9th edn, Sweet & Maxwell 2012) 748.
[9]Putra Hutomo, 'Legal Standing of Spouse Consent in Sale and Purchase Agreement of Shares from Perspective of Separation of Company's Assets to Create Legal Certainty in Investment in Limited Liability' (2024) 23(3) Pena Justisia: Media Komunikasi dan Kajian Hukum 2217, 2224.
[10]Arman Nefi, 'Keabsahan Akta Notaris Melalui Tindakan Hostile Takeover Pada Perseroan Terbatas Terbuka' (2024) 10(1) Justisi 1.

provision on joint property automatically graft an additional validity requirement onto a transaction that a specific statute has already regulated in full?

The question gains urgency from the sheer scale of contemporary share trading. Transactions on the Indonesia Stock Exchange occur on every trading day, settled through an electronic order-matching system with a daily value running into the trillions of rupiah, on data recorded within the capital market's own administrative apparatus. The system rests on certainty of account-holder identity and finality of settlement, a design mirrored in the transfer of other movables, a motor vehicle among them, where the change of ownership tracks a registration document recognised by the relevant state authority.

Prior scholarship has tended to begin its inquiry from the marital-property side of the equation, tracing consequences for husband and wife. This study inverts the sequence, taking the proprietary character of a share as a movable object as the point of departure and working outward toward the relationship between property law, company law and family law. The novelty *(novelty)* of the approach lies in that inversion, together with its use of Indonesia Stock Exchange settlement practice to illustrate how the administration of share transfer functions within a modern economy.

Two questions organise the inquiry that follows. First, what is the proprietary character of a share as a movable object under Indonesian positive law? Second, what does that character imply for the validity of a share transfer executed without a spouse's consent? Answers to both questions are offered in the hope of clarifying the relationship between the statutory treatment of shares as movables and the statutory treatment of joint marital property, and of contributing to the wider doctrinal conversation joining company law and family law in the service of legal certainty for parties transferring shares.

2. Research Method

This study proceeds by normative legal method, treating law as a system of norms ordering rights, duties and relations among legal subjects.[11] Normative research seeks the legal argument, principle and doctrine capable of answering the issue under examination,[12] a method

[11] Peter Mahmud Marzuki, *Penelitian Hukum* (rev edn, Kencana 2021) 55.
[12] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (RajaGrafindo Persada 2015) 13.

suited to a problem born of divergent readings of the rules governing shares acquired during marriage, and in particular the relationship between the Companies Law and the Marriage Law.

The inquiry draws on the *statute approach*, the *conceptual approach* and the *case approach*, and on primary, secondary and tertiary legal materials. Primary materials comprise the Civil Code; Law Number 40 of 2007 concerning Limited Liability Companies as amended by Law Number 6 of 2023; Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019; and Law Number 8 of 1995 concerning the Capital Market as amended by Law Number 4 of 2023 and Law Number 4 of 2026. Materials were gathered through library research, tracing sources bearing on the problem under study.

Analysis proceeds qualitatively through grammatical, systematic, historical and teleological interpretation.[13] Grammatical interpretation recovers the meaning each norm carries on its face. Systematic interpretation situates each norm within the national legal order, drawing the Civil Code, the Companies Law and the Marriage Law together into a coherent whole. Historical interpretation traces the purpose behind the provisions governing shares and joint property. Teleological interpretation uncovers the legal end each regime pursues, yielding a construction consonant with certainty, utility and justice.[14]

3. Results and Discussion

3.1 The Proprietary Character of Shares as Movable Objects under Indonesian Positive Law

Property law forms one branch of the civil law governing the relationship between a legal subject and an object as the target of a right. Its rules matter because they fix the owner's rights and duties, the manner of acquiring a right, the manner of transferring it, and the protection afforded to the holder.[15] The Civil Code sorts objects into several classifications, each carrying its own legal regime. Among the classifications with the widest legal consequence stands the division between movable and immovable objects, a division bearing on possession, transfer, the creation of security, proof of title and protection of the third party

[13] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Liberty 2007) 170.
[14] Maria Farida Indrati S, *Ilmu Perundang-undangan* (Kanisius 2020) 279.
[15] Subekti (n 4) 59.

acquiring rights over the object.[16] The same classification anchors the legislature's later treatment of the newer species of property that commercial life continues to generate.[17]

Article 499 of the Civil Code defines an object as every good and every right capable of being held under a right of ownership. Indonesian civil law thus reaches beyond physical corporeality, drawing rights of economic value into the category of things capable of ownership. Modern commerce has produced objects lacking physical form yet carrying substantial economic value, a share prominent among them. A share is not merely a certificate; it stands for a right of ownership over a portion of a company's capital, carrying economic and corporate entitlements for its holder. The migration of share administration from paper certificate to electronic register leaves the underlying legal character untouched: the object remains one deserving legal protection.

The Civil Code's category of movables is not confined to objects capable of physical relocation. Article 511 draws various rights of economic value into the category of movables by force of statute, share certificates and interests in commercial partnerships included. Since the Civil Code's earliest years, the legislature has treated shares as movables of a distinct kind, set apart from tangible movable objects. That classification carries weight, for it fixes the legal regime governing possession and transfer of shares as an object of ownership.[18]

The Companies Law restates the point. Article 60(1) provides that a share is a movable object conferring the rights specified in the statute, an unambiguous acknowledgement of the share's proprietary character and of the legal consequences attaching to the rights a shareholder holds.[19] Property law and company law meet here without friction: nothing in the Indonesian legal order casts doubt upon the status of a share.

This recognition rests on a firm theoretical footing within company law doctrine.[20] A share represents capital placed and paid into a company, and its holder occupies the position

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[16]Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Citra Aditya Bakti 2014) 142.
[17]Riduan Syahrani (n 5) 97.
[18]M Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika 2016) 258.
[19]John Armour, Henry Hansmann and Reinier Kraakman, 'Agency Problems and Legal Strategies' in Reinier Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, Oxford University Press 2017) ch 1.
[20]Rasheldy Putri Adiwinata, Putra Hutomo and Yuliana Setiadi, 'Perlindungan Hukum bagi Pemegang Saham Minoritas dalam Pengambilan Keputusan Rapat Umum Pemegang Saham (RUPS) dalam Perseroan Terbatas' (2025) 4(11) Journal of Innovation Research and Knowledge 8331, 8340.

of shareholder with the entitlements the Companies Law and the articles of association confer:[21] the right to attend and vote at the General Meeting of Shareholders, the right to a dividend when the company earns a profit, the right to information concerning the company's affairs, and a residual claim upon the assets remaining after liquidation once every obligation has been discharged. These entitlements travel with the share, following it into the hands of whoever next acquires ownership.[22]

The character of a share cannot be severed from the separate legal entity principle underlying the Perseroan Terbatas. A company is a legal subject possessing its own assets, rights and obligations, distinct from its founders and its shareholders, a separation long accepted across modern company law.[23] Adolf Berle and Gardiner Means, writing at the dawn of the modern corporate economy, traced the very divide between capital ownership and enterprise control that this separation produces, a divide still central to explaining why a share and the assets of the company that issued it are never the same thing.[24] Company assets belong to the corporate body; a share remains the property of its holder, a movable object capable of transfer according to statute.[25]

This character shapes the substance of share ownership. A shareholder holds the authority to use, enjoy the economic benefit of, transfer, bequeath, donate or encumber a share by whatever mechanism the law provides, an authority flowing directly from the ownership attaching to a share as a movable object. Transferring a share does not move the company's assets to another party;[26] only the identity of the rights-holder changes. The company remains owner of everything under its control, and a change of shareholder alters neither the corporate body's identity nor its title to its own assets.[27]

The transfer mechanism itself confirms the movable character of a share. Article 56 of the Companies Law requires a deed of transfer, a copy or notice of which must reach the

[21] Lina Salma, Mutiara Sinta Agustin and Chintia Sari, 'Kedudukan dan Perlindungan Hukum Pemegang Saham Minoritas dalam Perusahaan Terbuka' (2025) 2(1) MISTER: Jurnal Ilmu Hukum 1.
[22] Kraakman and others (n 7) 6.
[23] Reinier Kraakman and others (n 7) 5-6; see also Paul L Davies (n 8) 155.
[24] Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Macmillan 1932) 4-8.
[25] Paul L Davies, 'Shareholders and Company Law' (2006) 69(1) Modern Law Review 1, 31.
[26] Ananda Rizky Suharto, 'Prinsip Piercing The Corporate Veil Pada Perseroan Terbatas Sebagai Badan Hukum' (2020) 6(2) Yustisia Merdeka: Jurnal Ilmiah Hukum 1.
[27] Paul L Davies (n 25) 25-27.

company for entry in the Register of Shareholders.[28] The requirement reflects company law's concern for certainty in the administration of shareholding, the foundation on which a company determines who may exercise the rights a share carries. Registration also shields a person acquiring shares through a lawful channel.[29]

The Companies Law permits the articles of association to restrict transfer within defined limits. Article 57 allows the articles to require a prior offer to designated shareholders, the consent of a corporate organ, or the approval of a competent authority under the applicable regulations. Each permitted restriction is one the legislature has expressly enumerated; the enumeration is exhaustive, aimed at preserving the stability of the company's ownership structure and safeguarding the interests of the company and its shareholders. Where a statute lists the grounds on which a right may be restricted, the maxim *expressio unius est exclusio alterius* supplies the governing logic: mention of one ground excludes what the legislature has left unmentioned, spousal consent among the omissions.

The mobility built into a share serves the purpose for which the Perseroan Terbatas exists, namely gathering capital from a plurality of contributors. Free movement of shareholding lets a shareholder manage an investment according to economic judgement without disturbing the company's own operations.[30] Every change of shareholder alters only the identity of the rights-holder; every legal relationship the company bears toward third parties stays fixed upon the corporate body. The arrangement marks a sharp line between a shareholder's right over the share held and the company's right over the whole of its own assets, a line distinguishing the Perseroan Terbatas from business forms in which the wealth of the enterprise and the wealth of its founders remain entangled.[31]

The ready transferability of a share answers to the economic function the instrument performs. A share is an investment vehicle permitting the swift movement of capital from one holder to another without touching the company's own continuity. Frank Easterbrook and

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[28] Budi Santoso, 'Pengalihan Saham dalam Perseroan Terbatas Menurut Undang-Undang Perseroan Terbatas' (2019) 6(1) Jurnal RechtsVinding 1.

[29] Bella Ratna Syafierra, Paramita Prananingtyas and Sartika Nanda Lestari, 'Analisa Hukum Aksi Korporasi Berupa Right Issue Tanpa Hak Memesan Efek Terlebih Dahulu pada Perusahaan yang Terdaftar di Bursa Efek Indonesia' (2017) 6(2) Diponegoro Law Journal 1.

[30] Marco Maugeri, 'Fiduciary Ownership and Transfer of Shares' (2016) 1 Osservatorio del Diritto Civile e Commerciale 63, 78.

[31] Jennifer Hill, 'The Rising Tension Between Shareholder and Director Power in the Common Law World' (2015) 23(4) Corporate Governance: An International Review 344, 359.

Daniel Fischel's account of the economic structure of corporate law captures the underlying logic: rules lowering the cost of transferring an interest in an enterprise increase the value of that interest to everyone who might hold it, present or future.[32] Rapid capital turnover lets an investor manage a portfolio according to shifting business judgement, while the company gains a more dynamic ownership structure suited to its own commercial development. The economic value of a share rests, in the end, on its holder's capacity to transfer ownership through the mechanism the law has fixed.

The status of a share as a movable object is bound up with the evolution of shareholding administration. Early company law recognised ownership through a physical certificate handed to the shareholder. Advances in information technology moved administration toward electronic recording, whether through the register of shareholders or, for a public company, a collective custodial system. The change in administrative form leaves the legal character of a share untouched, since the object of the right transferred remains a claim upon a portion of the company's capital. Proof of ownership evolves with technology; the entitlements attaching to a share continue to receive statutory protection regardless of the medium recording them.

The shift in administrative technique reveals where the essence of share transfer truly lies: in the movement of a right, not in the movement of a tangible thing. Ownership passes once the statutory conditions governing transfer and administration have been satisfied. Clarity concerning shareholder identity determines who may exercise the corporate and economic rights a share confers. A company recognises as the lawful rights-holder only the person whose name appears in the Register of Shareholders or the relevant securities administration system, a rule furnishing certainty to company and acquirer alike.

Certainty over shareholder status matters for the protection owed to third parties. A company must know with precision who may attend the General Meeting of Shareholders, cast a vote, receive a dividend, or exercise any other right the Companies Law confers.[33] Uncertainty over shareholder identity risks disputes capable of disrupting the company's operations, the very reason the Companies Law devotes such attention to the administration of

[32] Frank H Easterbrook and Daniel R Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1991) 62-63.
[33] John Armour, 'Shareholder Rights' (2020) 36(2) Oxford Review of Economic Policy 314, 320 <https://doi.org/10.1093/oxrep/graa005>.

share-transfer records. Legal protection arrives through the mechanism of registration, not through the addition of a requirement the statute never states.[34]

The movable character of a share also marks it off from immovable property. Transferring an interest in land or a building ordinarily demands a more elaborate procedure, tied to the state registration system securing certainty of title over real property. A share transfer follows a different logic, since the object transferred is a right over a portion of a company's capital, its conditions fixed specifically by the Companies Law and the articles of association. The divergence confirms that the regime governing shares cannot be collapsed into the regime governing immovables.

The legislature has built a transfer mechanism balancing the interests of the shareholder, the company and third parties. Article 56 fixes the deed of transfer and the duty of registration; Article 57 opens space for the articles of association to impose defined restrictions; Article 58 secures a right of first refusal for shareholders in specified circumstances; Article 59 fixes the consequence of the company's silence where approval of a transfer has been sought within a stated period. Read together, these provisions form a complete system governing the transfer of shares, fixing with precision the conditions a transfer must satisfy before the company will recognise it.

Read as a whole, the Companies Law regulates the proprietary character of a share and the mechanism of its transfer in full. Every condition bearing on the validity of a transfer appears expressly in the statute or in the articles of association. A share is thus an object of law governed by the regime of company law while retaining, at the same time, its character as a movable object under the law of property. That dual footing supplies the platform for the analysis that follows: the relationship between the Companies Law's treatment of share transfer and the Marriage Law's treatment of joint marital property, and the bearing that relationship carries upon the validity of a transfer executed without a spouse's consent.

3.2 Implications for the Validity of Share Transfers Executed Without Spousal Consent

Assessing the validity of a share transfer executed without spousal consent calls for an account of how property law, company law and family law relate as parts of a single legal

[34] Stephen M Bainbridge, 'Director Primacy and Shareholder Disempowerment' (2006) 119 Harvard Law Review 1735, 1758.

order. Each regime carries its own object, its own purpose and its own scope. Property law governs the relation between a legal subject and an object as the target of a right. Company law governs the formation, management and legal relations arising from the existence of a company as a legal person. Marriage law governs the relation between husband and wife and the legal consequences that marriage produces. These differing scopes require every provision to be read against the purpose for which it was enacted, lest the meaning of a norm be stretched beyond its proper field and legal certainty suffer for it.

The Marriage Law treats property acquired during marriage as joint property under Article 35(1); Article 35(2) leaves property each spouse brought into the marriage, together with gifts and inheritance, under separate control unless the parties agree otherwise. The distinction turns on the source of acquisition. A share acquired during marriage falls, in principle, within joint property where it was purchased with income or wealth generated during the marriage, a status bearing on the economic relationship between husband and wife as co-owners of the family's wealth.[35]

Article 36(1) of the Marriage Law requires the consent of both spouses for any act concerning joint property, a rule protecting each spouse's economic interest against unilateral diminution of the joint estate. The provision preserves a balance of rights and duties across the marriage and furnishes a legal footing for resolving disputes over the management of joint property. Its operation is internal: it governs the relationship between husband and wife concerning the control and enjoyment of what they hold in common.[36] The maxim *res inter alios acta aliis neque nocet neque prodest*, a thing done between others neither harms nor benefits a stranger to it, captures the provision's proper compass: an arrangement binding as between spouses need not, without more, bind the company or a third party standing outside the marriage.

That internal rule must be read together with the provisions governing share transfer in the Companies Law. Articles 56 through 59 regulate the transfer of shares in detail: a deed of transfer, registration in the Register of Shareholders, and any further condition the articles of association may impose where a restriction genuinely exists. These conditions are the ones the

[35]Dian Agung Wicaksono, 'Kedudukan Saham sebagai Objek Harta Bersama' (2021) 8(1) Jurnal Arena Hukum 1.
[36]Nurhayati, 'Implikasi Harta Bersama terhadap Kepemilikan Saham' (2020) 9(2) Jurnal Media Hukum 1.

legislature has expressly fixed to produce a transfer the company will recognise, each bearing directly on the certainty of share ownership records.

A systematic reading of the Companies Law turns up no norm requiring a spouse's consent as a formal condition of share transfer. The legislature has instead left room for the articles of association to fix particular restrictions tied to the company's interest, the interest of other shareholders, or an interest the applicable regulations protect. Spousal consent appears nowhere among the conditions the statute expressly formulates for share transfer. The maxim *ubi lex non distinguit, nec nos distinguere debemus*, where the law draws no distinction, the interpreter should draw none either, counsels against reading into Article 60 or Articles 56 to 59 a qualification the legislature chose not to write. The Companies Law has built its own, self-contained mechanism fixing the conditions for a valid transfer.

The Companies Law's standing as the specific regime governing shares carries real weight in resolving the relationship between the two statutes. A share is an object born of the regime of company law, and every stage of its existence, from creation through ownership, transfer, encumbrance, to extinction, is governed specifically by the Companies Law.[37] That scope differs from the scope of the Marriage Law, which governs family relations and the legal consequences touching joint property. The difference in legislative purpose supplies the ground for applying the maxim *lex specialis derogat legi generali*, the principle placing a specific rule ahead of a general rule where both address the same object from different vantage points.

Lex specialis derogat legi generali ranks among the foundational maxims of legal science, preserving the coherence of a legal system whenever two norms address a single object from differing angles. The maxim answers a structural need: without it, two provisions with differing scope but a shared subject matter would sit in permanent tension, breeding the very uncertainty a legal system exists to prevent. Its operation reflects a conception of law as an ordered, layered structure rather than a loose assembly of independent commands, one in which a norm crafted for a particular field earns priority over a norm addressed to the general run of cases, precisely because the legislature drafting the specific rule has already reckoned with the peculiar object, subject and needs that field presents. Preferring the specific norm is not a device for discarding the general one; it expresses the rationality of a system that resolves each

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[37] Bagir Manan, *Hukum Positif Indonesia* (FH UII Press 2004) 56.

legal relationship according to the regime purpose-built to govern it, an instrument securing legal certainty, consistent application and protection for the interests of parties caught within a given relationship.[38]

Understanding *lex specialis derogat legi generali* requires attention to the sectoral character of specific legislation. A dedicated statute answers to features of a legal relationship that a general rule cannot fully capture. Company law offers a clear illustration of that need, since the relations arising within a company differ in kind from ordinary civil relations. A share is more than an economic value; it is a legal instrument generating a defined set of corporate rights, voting rights, dividend rights, the right to attend the General Meeting of Shareholders, and further rights the Companies Law enumerates exhaustively. Every legal act touching a share must accordingly be assessed against the company-law regime governing ownership, transfer, registration and consequence. Applying a general norm to a relationship a specific norm has already regulated in detail risks precisely the uncertainty the specific statute was drafted to dispel.[39] Modern legal doctrine treats such specialisation as the natural product of an increasingly complex legal order, one in which every field of law develops a governance mechanism suited to the character of its own relationships.

The relevance of the maxim sharpens once an object of law sits at the intersection of more than one regulatory regime. A share may form part of an individual's wealth, wealth acquired during marriage included, yet the rules constituting a share as an object of law do not originate in the law of marriage. The status of a share as a movable object, the mechanism of its transfer, the administrative conditions attached, registration in the register of shareholders, and the consequence for the company, all trace back to the Companies Law as the specific regime. Acknowledging that specificity follows logically from *lex specialis*, which assigns company law the authority to determine the validity of a share transfer. A dispute over the division of joint property still finds its remedy through the mechanisms of family law, without touching the validity of a legal act already completed under company law. Keeping the two regimes apart reflects, rather than undermines, the coherence of the Indonesian legal order, since each statute operates within the field of competence the legislature assigned it, an

[38] Fajar Sugianto, 'Asas Lex Specialis Derogat Legi Generali dalam Sistem Hukum Indonesia' (2014) 29(1) Yuridika 1, 18.
[39] M Yahya Harahap (n 18) 247, 258.

approach aligned with the ends law is meant to serve: legal certainty, protection for a good-faith third party, and the smooth conduct of legal relations within economic and investment activity.[40]

Applying the maxim leaves the Marriage Law fully in force. The Marriage Law continues to govern the relationship between husband and wife over joint property and the consequences that follow should one spouse act to the other's detriment. Read together, the two statutes address different terrain. The Companies Law fixes the conditions for a valid transfer as against the company and third parties; the Marriage Law fixes the rights and duties running between husband and wife over what they hold in common. That separation of scope gives each statute a defined function within the national legal order.

The construction sits comfortably with the movable character of a share. Ownership of a movable object generally confers on its holder the authority to perform whatever legal act the law permits, provided the act satisfies the conditions the law prescribes. A share, as a movable object, may be transferred, inherited, donated or pledged according to statute. Every feature just described confirms that the passage of title to a share turns on satisfying the mechanism the regime of company law provides, and not on a condition the statute governing share transfer never states.

The Indonesia Stock Exchange furnishes a vivid illustration. Share trading proceeds on every business day through an electronic system matching offers to sell against offers to buy according to market mechanism. Settlement runs through the securities administration system, which secures the passage of ownership from seller to buyer once every settlement obligation has been discharged, built upon the identity of the account-holder recorded within the capital market's administrative apparatus. The regulations governing securities trading nowhere require spousal consent as part of settlement. The regulatory focus rests on certainty of securities ownership, the validity of transaction instructions, and protection for every participant in the capital market.[41]

A parallel illustration appears in the transfer of a motor vehicle, itself a movable object. Ownership passes through a sale agreement followed by amendment of the registration record according to the applicable rules. The administrative system exists to secure certainty over the

[40]Philipus M Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia* (Bina Ilmu 1987) 72, 75.
[41]Kraakman and others (n 7) 35.

vehicle's owner and to protect whoever acquires it through a lawful transaction. The relationship between husband and wife over a vehicle's status as joint property can still generate its own legal consequence should a dispute arise, a consequence that leaves the vehicle's transfer mechanism, fixed by the applicable regulations, entirely undisturbed.

Legal certainty ranks among the chief ends the regulation of share transfer seeks to secure. Clear conditions protect the company, the shareholder, the investor, the creditor and any third party acquiring shares lawfully. Grafting onto the Companies Law a condition the statute never expresses risks genuine uncertainty over the validity of a share transaction, a risk felt most acutely by a third party who has acquired shares in good faith after satisfying every condition the statute lays down. Such uncertainty could unsettle the stability of share ownership that underpins commercial activity conducted through the corporate form.[42]

The analysis of the Civil Code, the Companies Law and the Marriage Law together yields a clear conclusion: the proprietary character of a share as a movable object places its transfer within the regime of company law, a regime that has already fixed the conditions for a valid transfer in specific terms. The regime governing joint property retains full binding force over the relationship between husband and wife and the consequences flowing from the management of what they hold in common. The validity of a share transfer as against the company and third parties turns on satisfying the conditions the Companies Law and the company's articles of association prescribe.[43] A dispute over the use of joint property remains a civil matter within the relationship between husband and wife, one that leaves the mechanism of share transfer, as the Companies Law has fixed it, undisturbed.

4. Conclusion

A share stands as a movable object recognised in express terms across the Indonesian legal order, through both the Civil Code and the Companies Law. That standing carries a clear consequence: a share is an object of ownership possessing economic value, capable of being held, transferred, inherited, donated, pledged or otherwise conveyed through the mechanism

[42]Muhammad Fauzan, 'Kepastian Hukum dalam Pengalihan Saham Perseroan Terbatas' (2021) 3(2) Jurnal IUS 1.
[43]Xinmin Liu, Fang Ma and Jiahui Kang, 'The Validity of the Share Transfer Contracts in Limited Liability Companies in China: An Empirical and Comparative Study' (2023) 34 International Company and Commercial Law Review 1.

the applicable regulations provide. The proprietary character of a share also reveals a close affinity with the separate legal entity principle, requiring that a shareholder's ownership of a share be kept distinct from the company's ownership of its own assets. Transferring a share moves no asset of the company to another party; it changes only the identity of the legal subject holding the right the share confers. The validity of a transfer turns on satisfying the conditions Articles 56 through 59 of the Companies Law prescribe, together with whatever condition the company's articles of association may add.

The relationship between the Companies Law and the Marriage Law reveals two statutes operating within different fields. The Companies Law governs, specifically, the legal status of a share, the rights of a shareholder and the mechanism of share transfer; the Marriage Law governs the relationship between husband and wife and the consequences touching joint property. Articles 35 and 36 of the Marriage Law protect the economic interest each spouse holds in the joint estate; the Companies Law includes no requirement of spousal consent among the formal conditions for a valid transfer. A systematic reading of both statutes places the validity of a share transfer, as against the company and third parties, on satisfaction of the conditions the Companies Law prescribes. A dispute over the use of joint property may still produce its own civil consequence between husband and wife under the Marriage Law, a consequence that leaves the mechanism of share transfer, specifically regulated by the Companies Law, unaltered. *Ex facto ius oritur*: law arises from the fact of a regime built expressly to govern it, and it is that regime, and not an inference drawn from a neighbouring field, that fixes the validity of the act.

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