

PROTECTION OF CAPITAL MARKET RETAIL INVESTOR INTERESTS AGAINST DUAL CLASS VOTING SYSTEMS

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ABSTRACT

The technology company GoTo has listed its share securities on the Indonesian capital market. GoTo has listed shares with a series or Multiple Voting Shares (MVS) scheme. The Financial Services Authority (OJK) has issued POJK, which regulates MVS. MVS gives rise to shares with voting rights that are different from other shares. This system is known as the dual-class voting system (DCVS). This study aims to discuss how to protect the interests of retail investors who have investments in companies that have MVS. This research uses legal normative. This study concludes that MVS must have a specific validity period, except State-Owned Enterprises (BUMN). The government must own SOEs that influence many people's lives with dual-colored shares. These MVS shares do not have voting rights but still, have the advantage of dividends. The purpose of MVS is for shareholders to protect the company's long-term interests. The government owns Dwiwarna shares intending to safeguard the interests of the national economy. MVS or DCVS affects the long-term running of the company's business to remain appropriate and avoid a hostile takeover.

Keywords: *Dual Class Voting Systems; Multiple Voting Shares; Retail Investor*

1. INTRODUCTION

PT. GoTo Gojek Tokopedia (GoTo) has conducted an Initial Public Offering (IPO) on April 11, 2022. Goto's IPO offers shares with Multiple Voting Shares (MVS). MVS is a type of share with more than one voting right for each share [1]. Shares with MVS are new in Indonesia. However, this is a standard mechanism for technology worldwide [2]. OJK has issued POJK No. 22/POJK.04/2022 regarding the application of stock classification with multiple voting rights by issuers with innovation and high growth rates that conduct public equity securities offerings in the form of shares [3]. The implementation of this MVS still protects public shareholders, where the implementation of the MVS is a maximum of 10 years and can only be extended for a maximum of 1 time with a maximum period of 10 years [4]. MVS shareholders are prohibited from transferring multiple voting rights to other parties for two years after declaring effective shares [5]. Shares with multiple voting rights have voting rights equal to ordinary shares in certain agenda items at the GMS. In addition, at each GMS, the number of ordinary shares present at the GMS is at least 1/20 of the total number of ordinary shares other than multiple shares [6].

POJK regarding MVS aims to protect the interests of company founders in developing their business activities [7]. The founders of the company are interested in wanting to remain in control of the company even though the company has an IPO. However, POJK also protects the interests of ordinary shareholders with restrictions [8]. The issuance of shares with different classes or series aims to keep the company focused on the company's long-term goals and protect the company from forced takeovers. [9]. This grouping of shares can cause losses to shareholders who do not have voting rights [10].

In the world of stocks, we are dealing with series A and series B shares. This is per the company's Articles of Association and Article 53 of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT) [11]. In the Limited Liability Company Law, shares are categorized into four categories of shares, namely shares with voting rights and without voting rights, shares with special voting rights to nominate directors and/or commissioners, shares that are withdrawn by the company, shares that have the right to receive dividends first, shares that have pre-emptive rights over the distribution of the company's remaining assets at the time of liquidation [12].

State-Owned Enterprises recognize the existence of Series A Dwiwarna Shares. The government owns one share of Dwiwarna share, but the government has the right to make crucial decisions related to SOEs [13]. Critical decisions include approving the General Meeting of Shareholders (GMS), approving amendments to the articles of association, proposing candidates for members of the board of directors and commissioners, and approving changes to the company's capital [14]. Previously, the Indonesian government-owned Dwiwarna shares in PT. Bank Mandiri, Tbk.

This study explicitly discusses the protection of MVS securities for retail investors on the Indonesian stock exchange. Research on this matter is still scarce, especially in the Indonesian capital market. MVS Securities or Series Shares have existed in SOEs due to the 1998 crisis, but by the time MVS shares were introduced to technology companies. General investors or the public need to be aware of the implications of MVS shares on the running of a company listed on the Indonesian capital market.

Shares are proof of someone's ownership of a company [15], [16]. Stocks have a function as an investment [17]. Ownership of a company is indicated by the amount owned [18]. Shares that have voting rights and shares that do not have voting rights. The two types of stocks have different prices. Preferred shares are generally shares that do not have voting rights but receive a guaranteed dividend first [19].

Technology companies have widely carried out stock listings with dual-class voting systems. Some companies offer shareholder voting rights linked to the term or period of share ownership or tenure voting systems. Tenure voting systems can give management more power to those who own significant shares of the company [20]. The concept of tenure voting systems contrasts the widely known concept of one share-one vote. Where one share is one vote, the vote is not based on the term of ownership. A company founder or strategic investor will have more voting rights than short-term investors [21]. However, tenure voting systems have no implications for company valuation [22]. The involvement of shareholders in running the company is not reflected in the voting for shareholders at the GMS [23], [24]

Based on the Limited Liability Company Law, legal protection for minority shareholders is regulated in articles 61 and 62. These articles only regulate the protection of minority shareholders in the event of an acquisition. [25]. Shareholders can ask the company to buy their shares if they do not agree to the acquisition.

This study has research questions, namely the economic implications of MVS shares for retail investors, the valuation of MVS shares on the Indonesian stock market, and the voting mechanism at the GMS per the articles of association and UU PT.

2. METHOD

Per the explanation of the background and research questions, the method used in this research is the normative legal method or the legal method of literature. This research studies secondary materials or library materials. Legal normative research or normative literature research includes research on legal norms and principles, research on the systematics of existing laws and regulations, and research on the level of horizontal and vertical synchronization between existing laws and regulations for matters related to the position of investors in public companies [26]. In normative law, this research uses a statutory approach.[27].

Normative legal research materials include primary legal materials, secondary legal materials, and other supporting materials [28]. The primary legal materials used are the 1945 Constitution of the Republic of Indonesia, applicable laws and other regulations related to research. [29]. The secondary legal materials used are literature reviews in books, published legal journals related to the topic of this writing, results of seminars/calls for papers, and scientific articles. Tertiary legal materials explain primary legal materials and secondary legal materials. These other materials include news coverage on the internet and other sources [27].

3. DISCUSSION

Economic Value of MVS Shares

MVS shares are shares that have more voting rights than ordinary shares. MVS shares have voting rights for some issues at the GMS. In general, MVS special voting rights are outlined in the Company's Articles of Association.

MVS is not described in the Articles of Association, but it mentions series A and B shares. Ordinary shares are series A shares, then shares with special voting rights are called series B shares. These special shares are given to the founders of the company and the company's initial investors prior to the IPO. . Series B shares are shares that are granted explicitly for a particular purpose. For example, the government holds Dwiwarna shares in several BUMN, where the government has special rights in appointing directors and commissioners, rights in amendments to the articles of association, and special rights in changes to the type of business and company capital.

Special rights in certain shares result in or eliminate voting rights in ordinary shares. The concept of a one-share one-vote becomes invalid. Series A shares and series B shares do not have the same position. As if the same series B has a higher position. However, series B shares only have a higher position in determining the direction of the company, not having a higher position in terms of the valuation of the monetary value of the stock. In terms of valuation, series A and series B shares have the same position.

Dividends received, and the price of shares traded are the same. The price of series B shares or shares with special rights are not transacted. For example, the government's Dwiwarna share in BUMN is only one share and is not listed on the stock exchange.

In monetary or economic terms, the stock price reference is the price of the A-series ordinary shares. Retail investors do not have an impact due to the A and B series shares. However, in terms of stock structure, there are also series B shares in preference shares with dividend rights first. Previously, this was regulated in the Law on PT.

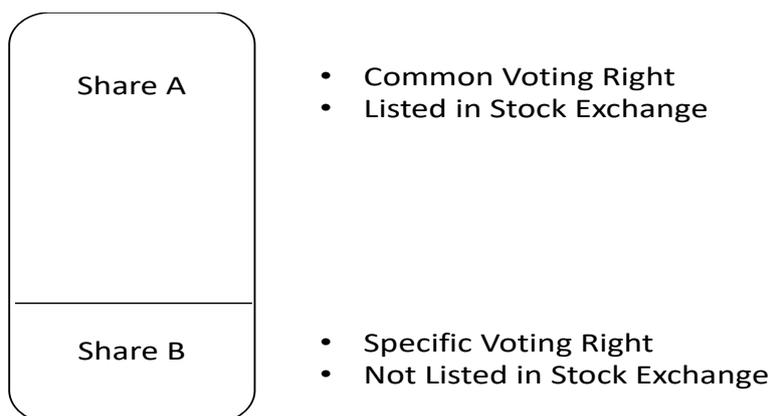


Figure 1 Share A and B Comparison

Valuation of MVS in Indonesia Capital Market

MVS share price has no valuation on the stock exchange because this type of stock is not traded on the stock exchange or is not listed on the stock exchange. Special rights in series B shares or MVS are not specifically valued or valued. Series B shares are shares with a certain number and not much. So this type of stock is not evaluated. Series B shares will have a value equal to the value of series A shares. If series B shares have a validity period and after the expiration date, the price for Series B shares is the same as for Series A shares.

The condition of the Series B shares must be explained in the info memo and the statement of effective registration of the shares. The condition of these shares must be explained based on the POJK. Investors should be aware of the number of series B shares and the time series B can be traded like series A shares. The expiration date of series B shares will increase the number of outstanding shares. The number of outstanding shares will affect the liquidity of shares in the stock market.

MVS shares do not influence decisions regarding dividend distribution. MVS shares have more influence on matters relating to the company's strategy, not from the company's financial side. MVS shares have more rights in non-financial decisions.

MVS voting rights must be regulated in the company's articles of association and a compelling statement before listing shares to the Financial Services Authority or stated clearly in the info memo of a public company so that this information becomes apparent to all capital market people, especially investors who are interested in buying company shares with MVS shares.

Voting Mechanism in GMS per Article of Association and Limited Liability Company Law

Series B shares or MVS shares have special voting rights at the time of the GMS. These special voting rights apply to specific agendas. So that at the time of voting, Series B shares or MVS shares can be classified as shares that have a "veto" right. If MVS shares approve an agenda, it can be classified as approved, but if MVS shares do not approve, then the agenda cannot be carried out. MVS voting rights are the same as "veto" voting rights.

For example, if there is a recommendation for directors to buy common stock, but it is not approved by MVS series or B series shares, then it is certain that the director will not be elected.

However, if a director is proposed by MVS shares or series B shares and is not approved by the share's series A, that person will undoubtedly be elected as a director.

However, there is a note that the GMS must be attended by a certain number of ordinary shareholders as a quorum requirement. This quorum requirement is different from a company that only lists ordinary shares. In public companies, the quorum requirement is 50% more votes present, but in companies with series A and B shares, the minimum number of series A shareholders present is 20%, and series B or MVS series shareholders are required to attend.

Table 1 Comparison of MVS Share and Common Share

No.	Description	DVS or MVS Share	Common Share
1.	Voting Right	Specific Voting Right	Non-Specific Voting Right
2.	Valuation	No Specific Valuation	Market Value
3.	Effective Period	Specific Period	Non-Specific Period
4.	Market Value	Not Listed	Listed

Source: Research Results

Limitation of MVS or DVs

MVS or DVS shareholders have a lock-up period, which is when shareholders are not allowed to sell their shares.

MVS or DVS shares have more voting rights than ordinary shares, but these special voting rights are only valid for a certain period. The special rights are not permanent voting rights, except for the voting rights belonging to the government in BUMN.

The government has an interest in the industrial sector, which influences the lives of many people based on the 1945 Constitution. On this basis, the government is exempt from MVS or DVS shares regulation. In addition, all companies have the characteristics of MVS shares as regulated by POJK regarding MVS shares. Government shares are known as Dwiwarna Shares.

Implication

This study will provide literacy implications for general investors about the IPO of companies with MVS, especially technology companies.

Financial literacy regarding MVS shares must be provided to the entire community. With this financial literacy, investors can anticipate the excess of MVS shares and the shortage of ordinary shares, especially during the GMS decision-making. However, this literacy will also make investors less interested in company shares with MVS shares. MVS shares have no monetary implications but only on decision-making at the AGM. MVS or DVS shares cannot affect the company's dividend yield or the company or the bankruptcy of the company.

Scientifically, MVS or DVS shares will add knowledge to the existing one-share, one-vote concept. MVS shares do not abolish the one-share one-vote concept, but the one-share one-vote concept does not apply as it was at the initial stage of the IPO.

Regulators must carry out regulations and grant litigation for MVS shares. MVS shares differ not only in terms of voting rights but may also take other forms in the future. Regulators need to anticipate various developments in this type of stock.

4. CONCLUSION

Shares with a dual voting system (DVS) exist in several capital markets. The start-up technology industry has offered many shares using a dual voting system or multiple voting shares (MVS) scheme. MVS aims to provide founders and early investors with special voting rights compared to the voting rights of ordinary securities market investors. This particular right is intended so that the company's founder can maintain the company's value and the company's long-term strategy. The regulator or OJK has issued special regulations regarding MVS shares. MVS shares must have a validity period, and the value of MVS shares will be equal to the price of ordinary shares after the specific period ends. These MVS shares will have special rights but no particular valuation. The valuation of MVS stock will be equal to the standard stock price. The share price will be the same as the regular price after the particular same applies. MVS shares have special rights at the AGM but do not have special rights in terms of monetary. This study has several shortcomings, including research that focuses on qualitative and normative. Other research can be developed by conducting interviews on the awareness of the value of MVS shares to retail investors. Retail shareholders need to be educated about this MVS stock.

REFERENCES

- [1] S. Sidik, "Demi IPO GoTo dkk, Bos OJK Godok Aturan Multi Voting Share." 2021.
- [2] R. N. Mulyana, "Ada Skema Greenshoe dan Hak Suara Multipel di IPO GoTo, Begini Penjelasannya." 2022.
- [3] A. Suryahadi, "OJK terbitkan peraturan saham dengan hak suara multiple (SHSM)," 2021. 2021.
- [4] I. F. Ramadhansari, "Lindungi Investor Saham, OJK Atur MVS Hanya Berlaku 10 Tahun." 2021.
- [5] D. H. Forddanta, "Jangan Cemas, Pemegang Saham GoTo Kena Gembok Setelah IPO." 2022.
- [6] P. Gumilar, "OJK Terbitkan Aturan Multiple Voting Share (MVS), Karpas Merah IPO GoTo dkk." 2021.
- [7] A. Suryahadi, "OJK Terbitkan Peraturan Saham Dengan Hak Suara Multiple (SHSM)." 2021.
- [8] P. I. Ramadhani, "Menimbang Aturan Multiple Voting Share untuk Emiten dan Investor." 2021.

- [9] S. Peter and P. M. D. Rasanjani, "Explaining the price gap between voting shares and non-voting shares," *Proc. Int. Conf. Ind. Eng. Oper. Manag.*, 2020.
- [10] M. M. Sawwaf, "Research Proposal : ' Are Shareholders Adequately Compensated for Investing in Restricted Voting Shares of a Family Firm ?,'" *Henley Bus. Sch. Univ. Read.*, 2018.
- [11] E. C. Sagala and W. Suryadono, "Penyelesaian Hukum Terhadap Pemegang Saham Perseroan Terbatas Yang Belum Setor Modal Dasar," *Pap. Knowl. . Towar. a Media Hist. Doc.*, pp. 1–24, 2014.
- [12] R. S. Nugroho, "Mengenal Saham Seri A dan B, Apa Perbedaannya?" 2022.
- [13] R. A. K. Dewi, "Akibat Transformasi Saham pada Holdingisasi BUMN Migas Terhadap Pengendalian PT. PGN Tbk," *Jurist-Diction*, vol. 2, no. 4, pp. 1425–1440, 2019.
- [14] S. Sidik, "Pemerintah Bakal Suntik BSI Pakai Saham Dwiwarna." 2022.
- [15] B. T. Cahya and N. A. Kusuma, "Pengaruh Motivasi dan Kemajuan Teknologi Terhadap Minat Investasi Saham," *J. Ilmu Ekon. dan Keislam.*, vol. 7, no. 2, pp. 192–207, 2019.
- [16] Q. R. Siregar and S. Farisi, "Pengaruh Return On Assets Dan Earning Per Share Terhadap Harga Saham," *Maneggio J. Ilm. Magister Manaj.*, vol. 1, no. 1, pp. 81–89, 2018.
- [17] M. Mulyana, L. Hidayat, and R. Puspitasari, "Mengukur Pengetahuan Investasi Para Mahasiswa Untuk Pengembangan Galeri Investasi Perguruan Tinggi," *JAS-PT J. Anal. Sist. Pendidik. Tinggi*, vol. 3, no. 1, p. 31, 2019.
- [18] M. A. Menajang, "Analisa Yuridis Fungsi Saham Dalam Badan Usaha Perseroan Terbatas Menurut Undang Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Lex Priv.*, vol. 8, no. 1, pp. 13–21, 2020.
- [19] K. Niehoff and P. Laskowski, "Price Differences between Voting and Non-Voting Shares in Crisis and Boom," *Manag. Int. Manag. Int.*, vol. 23, pp. 64–84, 2022.
- [20] P. H. Edelman, W. Jiang, and R. S. Thomas, "Will tenure voting give corporate managers lifetime tenure?," *Tex. Law Rev.*, vol. 97, pp. 991–1029, 2019.
- [21] S. Syafrida, P. E. Latumenten, and W. Suryandono, "Benturan Kepentingan Oleh Pemegang Saham Mayoritas Yang Diangkat Sebagai Direktur Utama Perseroan Terbatas Tertutup (Analisa Akta Anggaran Dasar PT ARS)," *Indones. Notary*, vol. 1, no. 1, pp. 1–46, 2009.
- [22] M. Becht, Y. Kamisarenka, and A. Pajuste, "Loyalty shares with tenure voting: Does the default rule matter? evidence from the Loi florange experiment," *ECGI*, vol. 63, no. 3, pp. 473–499, 2020.

- [23] C. Van der Elst, “Shareholder Engagement and Shareholder Voting Modes: Two of a Different Kind,” *ECGI*, 2019.
- [24] C. van der Elst, “Aligning shareholder voting and shareholder engagement,” *Gov. art aligning Interes.*, pp. 59–74, 2022.
- [25] A. Prayoga and Muskibah, “Perlindungan Hukum Terhadap Pemegang Saham Minoritas Atas Akuisisi Perseroan Terbatas,” *Zaaken J. Civl Bus. Law*, vol. 1, no. 1, pp. 254–270, 2020.
- [26] S. Johan and A. Ariawan, “Consumer protection in financial institutions,” *Leg. J. Ilm. Huk.*, vol. 29, no. 2, pp. 173–183, 2021.
- [27] S. Johan and A. Ariawan, “Keterbukaan Informasi UU Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form,” *Masal. Huk.*, vol. 50, no. 1, pp. 106–118, 2021.
- [28] M. P. Marzuki, *Penelitian Hukum: Edisi Revisi*, Revisi. Jakarta: Kencana Prenada Media Grup, 2017.
- [29] S. Johan, “Knowing Company Secrets Through Employee Posts on Social Media,” *Diponegoro Law Rev.*, vol. 6, no. 2, pp. 203–216, 2021.