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**LEGAL PROTECTION FOR MINORITY SHAREHOLDERS IN PUBLIC COMPANIES: Analysis Based on Law  
Number 40 of 2007 concerning Limited Liability Companies**

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**ABSTRACT**

A Limited Liability Company is a legal entity in the form of a business entity whose capital consists of shares and whose shareholder partners have limited liability in proportion to the number of shares they own. As a consequence of the GMS decision, the rights and obligations of minority shareholders are the focus of this research. The company's actions were considered inconsistent, discriminatory and unjustified. This research aims to examine the legal protection for minority shareholders in public companies as outlined in Law no. 40 of 2007 concerning Limited Liability Companies in a comprehensive, straightforward and careful manner. It is hoped that this study will produce scientific, practical and scientific benefits for the author and anyone who wants to analyze it. This research method uses normative juridical research, which uses data from literature studies and the documents contained therein, as well as several supporting references. Secondary data consists of primary, secondary and tertiary legal materials, such as literature, scientific works and other library materials that discuss the materials used to create this scientific work. The results of this research indicate that the issue of legal protection for minority shareholders in public companies has been regulated in Law Number 40 of 2007 concerning Limited Liability Companies; however, the law has not been fully implemented. In other words, minority shareholders in public companies still have difficulty obtaining legal protection to obtain equity in the company.

**Keywords:** Legal Protection, Minority Shareholders, Law Number 40 of 2007 concerning Limited Liability Companies

**INTRODUCTION**

Aiming at improving people's living standards, this plan calls for a national economic development strategy that is based on economic democracy and guided by the values of cooperation, effectiveness, justice, longevity, sustainability, ecological awareness, autonomy, and cohesion between economic growth and national cohesion. . One of the tools necessary for this purpose is a legal framework that supports, directs and regulates many ongoing economic development activities. Replacing outdated legal provisions in the field of Limited Liability Companies is one of the legal ingredients needed to support economic development. With these changes, Limited Liability Companies are positioned to become the foundation of family-based economic development in line with economic democracy.

A Limited Liability Company is a separate legal entity that can be owned by multiple people or entities and whose operations are controlled by shareholders. Adding the suffix "limited" to the name "company" indicates that the shareholder's liability is limited to the nominal value of their ownership. Due to its importance to the country's economic growth, it has become a focal point at the court. To overcome the complexity of Company law and to ensure the safety of stakeholders and shareholders, the Indonesian government enacted Law no. 40 of 2007 concerning Limited Liability Companies (UUPT).<sup>1</sup>

This research focuses on the issue of the rights and obligations of minority shareholders, in Law

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<sup>1</sup> <http://repository.uhn.ac.id/bitstream/handle/123456789/4954/Hendy%20Martin%20Butar-Butar.pdf?sequence=1&isAllowed=y>

Number 40 of 2007 concerning Limited Liability Companies it is regulated what the rights and obligations of minority shareholders are, but in practice it has not been possible to realize full legal protection for them, which at the moment carrying out acquisitions or mergers of minority shareholders does not participate in fairness in this policy, they should have the rights and obligations to be able to apply for their shares to be purchased at a reasonable price by the company, but this may not happen. Minority shareholders are often treated as an afterthought by the majority. The rights and obligations of shareholders are closely related to the values of justice, accountability, openness and responsibility of the board of directors.<sup>2</sup>

Violations of the principles of Good Corporate Governance (GCG) in company management cause the economy in the country to be disrupted. The concept of GCG fairness defines equality of minority shareholders and equality of majority shareholders. Every shareholder is given the same rights according to law according to Article 61 of the Company Law. Shareholders have the right to sue their companies in federal district court if they lose money due to unfair or unjustified company actions. Article 138(1) of the Company Law regulates the right to submit an examination to minority shareholders. Investigations into a company may be conducted in response to claims that the company is engaging in illegal activities at the expense of minority shareholders or other parties.<sup>3</sup>

Corporations give priority to dominant shareholders and ignore the rights and responsibilities of minority owners as a result. It is difficult for the Board of Directors to make decisions because there are no restrictions imposed by the interests of the majority shareholders. The voting process is greatly influenced by differences in share ownership, because it is always directly proportional to the number of shares owned by each shareholder. When it comes to protecting the rights and obligations of minority shareholders, the values of justice, accountability, responsibility and openness are more important than ever.<sup>4</sup>

The principle of representing the company is only the directors, the assumption of democracy is that those who have power are the majority shareholders. Most companies ignore the idea of shareholder equality. For example, this can happen when the majority shareholder carries out a unilateral acquisition or merger. When majority shareholders have the power to cancel an acquisition or merger, their lack of approval effectively kills the deal. Minority shareholders do not have the rights or privileges enjoyed by majority shareholders.<sup>5</sup>

Based on the above, the author will explore and examine the legal protection provided to minority shareholders in public companies based on Law no. 40 of 2007 concerning Limited Liability Companies. Thus, the title of this thesis is "LEGAL PROTECTION FOR MINORITY SHAREHOLDERS IN PUBLIC COMPANIES: Analysis Based on Law Number 40 of 2007 concerning Limited Liability Companies".

## RESEARCH METHODS

The research technique is normative juridical, which studies primary legal sources such as laws and court decisions and secondary legal materials such as books and scientific articles. To paint a comprehensive picture of the situation under investigation, a descriptive approach was adopted in this study. The author collects information through research, study and review of various legal materials

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<sup>2</sup> Bismar Nasution, "Penerapan Good Corporate Governance Dalam Penyalahgunaan Kredit" Makalah Disampaikan Pada Seminar Hukum Perkreditan, Diselenggarakan oleh PT. Bank Rakyat Indonesia, Medan, Tanggal 12-13 Maret 2002, hal. 1.

<sup>3</sup> <http://repository.lppm.unila.ac.id/9121/1/Perindungan%20hukum%20terhadap%20pemegang%20saham%20minoritas%20pada%20perusahaan%20terbuka%20di%20indonesia.pdf>

<sup>4</sup> <http://www.jurnal.bundamediagrups.co.id/index.php/iuris/article/viewFile/76/71>

<sup>5</sup> Sofyan A. Djalil, "Good Corporate Governance", Makalah Disampaikan Pada Lokakarya Pengelolaan Perusahaan, Kerjasama Program Pascasarjana Universitas Indonesia dan University of South Carolina, Jakarta, Tanggal 4 Mei 2000, hal. 2

related to the topic raised. Specifically, this data analysis approach makes use of quantitative data, and does so by grouping and selecting data obtained from research according to its truth, before connecting this information with theories obtained from literature studies to arrive at solutions to problems through a combination of direct interviews, written materials, and empirical observation.

## RESULTS AND DISCUSSION

### **Legal protection for minority shareholders in public companies is analyzed based on Law Number 40 of 2007 concerning Limited Liability Companies**

Minority shareholders are given significant legal protection based on Law Number 40 of 2007 concerning Limited Liability Companies, which can be specifically regulated in the company's articles of association. Because company ownership is structured through shares, those who own more have more say in how things run. However, minority stakeholders will lose if the majority shareholder abuses the power they have. The law must safeguard the rights and responsibilities of minority shareholders for the same reasons.<sup>6</sup>

According to several articles, Minority Shareholders of Public Companies are more able to make detailed company policies in accordance with the rights outlined in the Company Law because the Limited Liability Company Law (UUPT) no. 40 of 2007.

1. Article 61 paragraph (1) states that shareholders who suffer losses from the Company can sue the Company in the District Court if they feel that their rights have been violated by the GMS, Directors or Board of Commissioners.
2. Article 62 states that shareholders have the right to ask the company to buy back their shares at a reasonable price if they do not agree with changes to the Articles of Association, Transfer or Guarantees proposed by the company. Any transaction involving more than 50% (fifty twenty percent) of the Company's net assets, such as a merger, consolidation, takeover or spin-off.
3. Article 79 paragraph (2), that the GMS held at the request of the Company's shareholders does not give minority shareholders the right to vote on any matter.
4. Article 97 paragraph (6), confirms that they have the authority to act on behalf of the company in litigation against members of the Board of Directors whose actions or inactions result in financial losses for the company.
5. Article 114 paragraph (6) proves that the corporation suffered losses as a result of the defendant's representation of the company in the case against the commissioner.
6. Article 138 paragraph (3), underlines the need to carry out an examination of the company if there are allegations that the company, its directors or commissioners have committed unlawful acts that are detrimental to the company, its investors or other interested parties.
7. Article 144 paragraph (1), confirms submitting a request for dissolution of the company.

Despite the progress achieved by Law no. 40 of 2007, the policy regarding legal protection for minority shareholders has not yet been fully realized, so that the rights mentioned above do not fully reflect the legal protection for minority shareholders. Shareholders' names must be included in the shareholder register in order for them to exercise this right. Therefore, according to the Limited Liability Company Law, only shareholders whose names are registered in the Company's Register of Shareholders can do so.<sup>7</sup>

The rights and obligations of shareholders do not decrease with the total number of shares owned, instead the only difference is the nature of the shares. So that minority shareholders can still request information from the Board of Directors and the Commission that is material to the company as is required for all members of the GMS. Guarantees should be established in the interests of minority shareholders to ensure that their rights and obligations are protected to the greatest extent possible. Directors and

<sup>6</sup> Tuti Rastuti, 2015. *Seluk Beluk Perusahaan & Hukum Perusahaan*. Bandung: Refika Aditama. Hal 296

<sup>7</sup> Gunawan Widjaja, *Hak Individu & Kolektif Para Pemegang Saham*, Jakarta: Pranita Offset, 2008, hal.1

majority shareholders must be aware that defending the interests of minority shareholders is an obligation that stems from the nature of the legal relationship created by share ownership.<sup>8</sup> The principles of Good Corporate Governance (GCG) that must be fulfilled to protect minority shareholders are:

1. Justice

Justice is based on the idea of doing what is right for all parties involved. If justice is to be implemented in public companies, majority shareholders must be given control through the GMS, where they will determine company policy. However, justice must also be guaranteed for minority shareholders by providing equal rights and obligations in line with the principles of Good Corporate Governance.

2. Transparency

Disclosure requirements cover a wide range of situations, including situations where the interests of officers or commissioners conflict with the interests of the company, as well as major business deals, investments, sales and pledges of key assets of the company, etc. The implementation of information disclosure greatly protects the interests of small and medium shareholders, because small and medium shareholders can read and understand the company's situation, and if an incident occurs, they can quickly determine their position and minimize the risk of loss.

3. Accountability

Accountability can provide legal protection for minority shareholders, because there is a good committee and monitoring system, fraud in the company can be prevented, and the dominance of large shareholders can limit losses so that minority shareholders also receive better treatment.

4. Responsibility

The principle of responsibility or obligation here emphasizes that companies must comply with applicable laws and carry out their activities in a manner that is responsible to all shareholders and refrains from detrimental actions.

The Limited Liability Company Law has made general provisions in the form of protecting the rights of small and medium shareholders. The limited liability company law regulates the rights owned by minority shareholders, namely:<sup>9</sup>

1. Individual Rights (Personal Rights)

The law guarantees everyone equal opportunities for decent work and a decent life. In the event that a minority shareholder suffers a loss as a result of the director's or commissioner's actions or negligence, the minority shareholder can file a lawsuit against the director or commissioner in accordance with paragraph 1 of Article 61 of the Company Law.

2. Appraisal Rights

Appraisal Rights are protections that allow minority shareholders to retain a stake in assessing a company's shares. Shareholders can use this option to request that the corporation buy back their shares at a reasonable price. Article 62 Paragraph (1) UUPT regulates the appraisal rights of UUPT minority shareholders.

3. Pre-Emptive Rights

Pre-Emptive Rights are the legal right to obtain shares offered before anyone else. The Articles of Association may limit the obligation to issue shares. The Limited Liability Company Law, in Article 43 paragraphs (1) and (2), regulates the pre-emptive rights of minority shareholders.

4. Derivative Rights

The ability to act on behalf of a company lies at the heart of Derivative Rights. Based on the provisions of those who have the authority to represent the company as intended in Article 79 Paragraph (2) and Article 144 Paragraph (1), Directors are generally people who have this right.

<sup>8</sup> Pita Permatasari, *Perlindungan Hukum Pemegang Saham Minoritas Perusahaan Terbuka akibat Putusan Pailit*, Jurnal Filsafat dan Budaya Hukum (November, 2014), 306.

<sup>9</sup> Maya Sari, dkk., *Analisa Perlindungan Hukum bagi Pemegang Saham Minoritas dalam Proses Akuisisi berdasarkan Pasal 126 Undang-Undang Nomor 40 Tahun 2007, JIPPK, Volume 2, Nomor 2 (Desember, 2017), 118-119.*

#### 5. Enquete Rights (Enquete Recht)

Members of the public who suspect fraud has been committed by Directors, Commissioners, or majority shareholders can apply to the court for permission to examine the company or carry out their own examination based on Article 97 Paragraph (6), Article 114 Paragraph (6), or Article 138 Paragraph (3) UUPT Persero.<sup>10</sup>

To ensure the legal security of minority shareholders, it is necessary to consider and implement measures to protect them. This is important because everyone can contribute to development by investing their money in companies if they know their investment is safe and protected from legal threats. Regulations mandated by law are a form of restriction from the party in power (majority shareholder) because of the state's obligation to guarantee the protection of the rights and obligations of its citizens, in this case minority shareholders.

### CONCLUSION AND SUGGESTION

#### Conclusion

UUPT, or Minority Shareholder Protection Regulations. The broad idea of minority shareholder protection is codified in the laws governing limited liability company businesses. To protect minority shareholders, it is essential to take precautions and even resort to intimidation. Negative impacts for minority shareholders of open PTs, such as financial losses caused by the actions of majority shareholders or the company itself. UU no. 40 of 2007 concerning Limited Liability Companies in Indonesia provides several legal protections for minority shareholders, helping to alleviate and prevent these problems. actions against the firm and actions by the District Court are regulated in Article 61 paragraph (1), Article 62, Article 79 paragraph (2), Article 97 paragraph (6), Article paragraph (6), Article 138(3), and Article 144(1) . board of directors and supervisory board. The right to summon a General Meeting of Shareholders (GMS), the right to request the dissolution of the company, and the right to demand the purchase of shares due to company losses. Protection of small and medium shareholders is a guarantee of legal protection for small and medium shareholders, and is a requirement that must be observed and implemented. The rights and obligations of minority shareholders must be protected, which is important because it involves justice that must be upheld.

#### Suggestion

In accordance with Indonesian law, especially Law Number 40 of 2007 concerning Limited Liability Companies, companies must be managed and developed with an awareness of honesty, fairness and wisdom in the company so that minority shareholders can carry out their rights and obligations on an equal basis with the main shareholders big investors, etc.

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<sup>10</sup> Dwi Tatak Subagiyo, Perlindungan Hukum Pemegang Saham Minoritas akibat Perbuatan Melawan Hukum Direksi Menurut Undang-Undang Perseroan Terbatas, Prespektif, Volume XX No.1 (Januari:2015), 53-54.

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