

Constitutional Protection of the Rights of Minority Shareholders in Indonesia: An Analysis of Regulatory Implementation in Indonesia

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ABSTRACT. This study discusses the protection of the rights of minority shareholders in Indonesia, focusing on the implementation of Law No.40/2007 on Limited Liability Companies (UUPT) and related regulations. The purpose of this study is to analyze the implementation of the UUPT, identify constraints in the protection of minority shareholders' rights, analyze existing regulations, and explore efforts to strengthen the protection of minority shareholders' rights. The research method used is normative legal research by referring to the literature and applicable laws and regulations. The results of the analysis show that the law provides protection for the rights of minority shareholders, but its implementation depends on factors such as the company's compliance with regulations and shareholder awareness. Minority shareholders may face challenges in fighting for justice in the event of violations of their rights. Therefore, a good understanding of the Law and monitoring of the protection of shareholders' rights is very important. The proposed recommendations include expanding and updating regulations, increasing corporate transparency, strengthening the role of capital market supervisory authorities, involvement of minority shareholders in corporate decision-making, improving education and awareness of minority shareholders, and collaboration between governments, regulators, companies, and minority shareholders.

KEYWORDS: minority shares; legal protection; regulation in Indonesia

INTRODUCTION

Protection of minority shareholders' rights is a very important issue in the context of Indonesian corporate law. As a country with a rapidly developing and fast economy, Indonesia has a large number of limited companies or better known by the abbreviation PT (limited liability company), and operates in various sectors. In this context, constitutional protection of the rights of minority shareholders is very important to be discussed in order to ensure the creation of a fair and just business environment in accordance with the fifth precept principle of social justice for all Indonesian people. Companies in the form of Limited Liability Companies (PT) have the goal of making a profit by doing several ways, for example by structuring the company through mergers, mergers and acquisitions (Situmoranga & Rasji, 2023). The number of PT establishments, both carried out by Indonesian Citizens (WNI) and Foreign Citizens (WNA), especially in the context of investment activities, is more motivated by considerations related to the status of legal entities attached to PT which are none other than the Indonesian constitution (Sari, Kusuma, & Kurnia, 2019). In addition, it is also due to the nature of PT as an association that awareness in the practice of stock protection for holders is often misinterpreted and lack of knowledge is directed at the holders, especially those who are only minority or small shareholders. The Limited Liability Company Law (UUPT) in force in Indonesia has an important role in regulating the relationship between minority and majority shareholders in a limited liability company. This law provides a legal basis and framework to protect the rights of minority shareholders, which include voting rights, rights to information, rights to earn dividends, and rights to participate in corporate decision-making.

However, the implementation of the Law in the practice of limited liability companies often faces challenges and problems. There are situations in which the rights of minority shareholders may be waived, violated, or not granted in full. This can occur due to a variety of factors, including less transparent corporate practices, unlawful actions by majority shareholders, or weak enforcement in

cases of violations of minority shareholders' rights. Legal protection for minority shareholders is clearly regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). The existence of legal protection for minority shareholders is expected to be able to know how to take steps to protect their interests (Artadi, 2019). In this context, the analysis of the implementation of the Law in the practice of limited liability companies becomes very relevant. Such analysis can help identify constraints and challenges faced by minority shareholders in protecting their rights. In addition, the analysis can also provide an understanding of legal policies that need to be strengthened or improved to strengthen the protection of the rights of minority shareholders in Indonesia.

In this paper, we will conduct an in-depth analysis of the implementation of UUPT in the practice of limited liability companies in Indonesia. We will look at some real cases that illustrate violations of the rights of minority shareholders, as well as the factors that led to such violations. In addition, we will explore efforts that can be made to strengthen constitutional protections for the rights of minority shareholders, both through improved legal policies and through more effective monitoring and enforcement. Through this paper, it is hoped that solutions will be found that can improve the protection of the rights of minority shareholders in Indonesia, as well as improve the investment climate in the country. Thus, this paper has important relevance in the context of companies, the economy, and legal development in Indonesia.

This study aims to conduct an in-depth analysis of the implementation of the Limited Liability Company Law (UUPT) in limited liability company practices in Indonesia as well as existing regulations in Indonesia, focusing on constitutional protection of minority shareholders' rights. Some of the specific objectives of this study are as follows: (1) Analyze the implementation of UUPT in Law No.40/2007 in the practice of limited liability companies in Indonesia, (2) Identify constraints and challenges in protecting the rights of minority shareholders in Indonesia, (3) Analyzing existing regulations in Indonesia for minority shareholders, and (4) Exploring efforts to strengthen the protection of minority shareholders' rights.

By achieving these goals, this research is expected to make a significant contribution in strengthening the protection of the rights of minority shareholders in Indonesia as well as advancing more equitable corporate law practices for their holders.

METHOD

The type of research used in this writing is a literature study with normative legal research, namely problem solving based on existing literature and applicable laws and regulations. The theoretical basis used is law as a legal norm, theories that are in accordance with the problems raised and the law. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find truth based on scientific logic from its normative side. The normative side here is not limited to laws and regulations. Normative legal research consists of research on legal principles, research on legal systematics, research on the level of legal synchronization, and using a normative juridical approach, namely a method in the form of a legal approach used to examine the legal basis of the issue under study and also using a conceptual approach method to examine the frame of mind, conceptual framework, or theoretical basis of the legal issue to be studied. In this research activity, the author will also use a legal approach and a conceptual approach (Prahassacitta, 2019).

RESULT AND DISCUSSION

Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) is a law that regulates the establishment, management, and dissolution of limited liability companies in Indonesia. In this Law, there are several provisions that protect the rights of minority shareholders. The following is an analysis of regulations relevant to minority shareholders in UUPT No. 40/2007 in Indonesia. This will be related to the current phenomenon that minority shareholders in PT feel disadvantaged by the many rules made by majority shareholders without regard to the principle of fairness for each holder. This analysis will have several points as follows: (1) Protection of Shareholder Rights, (2) Protection against Adverse Actions, (3) Class Action, and (4) Disclosure of Information.

Prior to the enactment of the UUPT, minority shareholders had almost no other choice, but to accept all resolutions stipulated in the GMS (Purnomo, Layung, 2016). UUPT provides protection for the rights of shareholders in PT, both majority and minority shareholders. Basic rights such as the right to attend the GMS, vote, obtain information, and receive a share of the company's profits are guaranteed by the UUPT. It aims to ensure that shareholders have fair access to information and decision-making processes in the PT as a whole.

UUPT provides protection against actions that harm shareholders in PT. If there are actions of the company or majority shareholders that harm the interests of minority shareholders, the Law allows minority shareholders to file a lawsuit in court (Harruma, 2022). This provides a legal mechanism by which to obtain compensation or undo adverse actions.

A class action is a lawsuit filed by one or more people representing a class with similar interests. The law gives minority shareholders the right to file class actions if they suffer losses as a result of actions taken by the company or related parties. In this case, minority shareholders can combine their claims to strengthen their legal position. The demands of this group can be an effective tool in fighting for justice for minority shareholders in PT (Harruma, 2022).

The Law requires PT to make mandatory disclosure of information to shareholders. This includes annual financial statements, reports on PT activities, as well as other information relevant for shareholders to make informed investment decisions. With this disclosure obligation, UUPT provides fairness to shareholders by providing equal access to relevant information.

Although Law No. 40/2007 provides legal protection and mechanisms for shareholders in a PT, its implementation may depend on factors such as the company's compliance with regulations, shareholder awareness and understanding, as well as the availability of resources and access to the judicial system. In practice, minority shareholders may face challenges in fighting for justice in the event of non-compliance or violation of their rights. Therefore, it is important for shareholders to have a good understanding of the Law and monitor the protection of their rights.

A juridical review of the fairness of both majority and minority shareholders involves an analysis of the legal protections afforded to both groups of shareholders within a company. Here are some key points in the juridical review:

1. **Protection of Rights of Majority Shareholders:** In general, majority shareholders have greater power and control in corporate decision-making. The rights of majority shareholders can be contained in the company's Articles of Association and UUPT. The majority shareholder usually has the power to make strategic decisions, such as changes to the Articles of Association, election of directors, and other important decisions. However, these rights should not be used to unfairly harm minority shareholders.
2. **Protection of Rights of Minority Shareholders:** The Law provides protection to minority shareholders by providing basic rights, such as the right to attend and vote in GMS, obtain relevant information, and receive a share of the company's profits. In addition, minority shareholders have the right to protect their interests from adverse actions committed by majority shareholders or the company, such as through the mechanism of a lawsuit to court or class action. This protection aims to maintain justice and prevent abuse of power by the majority shareholder.
3. **Principles of Justice and Good Corporate Governance (GCG):** The principles of fairness and Good Corporate Governance are also important aspects in juridical reviews of majority and minority shareholders. These principles emphasize the importance of transparency, accountability, and fair treatment of all shareholders. This principle requires the company's directors to be responsible for the success of the company's management to realize the objectives of the company. Commissioners are responsible for carrying out supervisory duties over the board of directors in connection with their duties (Ginting, 2019) The Company is expected to implement good GCG practices to maintain a balance of interests between majority and minority shareholders, as well as maintain trust and integrity of the capital market.

Juridical review of the fairness of majority and minority shareholders depends on the interpretation and application of GCG laws and principles applicable in a particular jurisdiction. Court decisions, company regulations, and capital market regulations are important references in observing fair practices for both groups of shareholders. It is important to note that juridical reviews may vary

according to applicable legal regulations and may change over time. Therefore, it is advisable to refer to current legal sources and get advice from legal experts who are experienced in this matter.

In principle, when talking about rights and responsibilities, then we must return to the Rule of Law. The regulation of this Law in civil law, in addition to being formed by the Legislature, can also be created from an agreement between parties involved in legal relations with each other. Both the Laws made by the Legislature and the agreements agreed by the parties, they form a bond between the parties that make them. It is the bond that determines the rights and responsibilities that must be exercised and those that must not be exercised in a bond. Likewise, agreements made by minority shareholders with internal parties such as majority shareholders ultimately result in the creation of rights and responsibilities between them.

In the past, the relationship between minority shareholders and majority shareholders was paternalistic, where minority shareholders always followed what the majority shareholders said without asking anything. Now the majority Shareholder is a partner of the Minority Shareholder and both positions are equal before the law. Minority Shareholders have their own rights, as do Majority Shareholders. However, in reality many rights of minority shareholders are neglected. Therefore, as a minority shareholder, it is necessary to know what his rights are in the legal relationship of the agreement with the majority shareholders, so as to avoid rights violations that can harm the interests of minority shareholders (Sayid, 2021). In the past, the relationship between minority and majority shareholders was paternalistic, where minority shareholders always followed the words of majority shareholders without asking anything.

Now the majority shareholder is the partner of the minority shareholder and the two are equal before the law. Minority shareholders have their own rights, just like controlling shareholders. In fact, many minority shareholders' rights are neglected. Therefore, as a minority shareholder, it is necessary to know what his rights are in the legal relationship of the agreement with the majority shareholders, so as to avoid rights violations that can harm the interests of minority shareholders. The following rights need to be fulfilled by PT for shareholders (Aprilliani, 2015):

1. **Voting Rights:** Minority shareholders have the right to cast their votes in the general meeting of shareholders (GMS). This voting power allows them to participate in important decisions within the company, such as election of the board of directors, passage of the budget, or important policy changes. However, along with smaller holdings, minority shareholders' voting influence tends to be more limited.
2. **Dividend Rights:** Minority shareholders are entitled to receive a share of the company's profits distributed in the form of dividends. Dividends are usually distributed to shareholders based on their proportion of ownership in the company. Therefore, minority shareholders will receive dividends corresponding to the number of shares they own.
3. **Right to Information:** Minority shareholders have the right to obtain relevant information about the company. This includes financial statements, annual reports, and other reports related to company performance. This right allows minority shareholders to monitor the company's performance and make better investment decisions.
4. **Right to Indemnity:** Minority shareholders have the right to recover in case of violation of their rights. If the company commits actions that harm the interests of minority shareholders, for example through discriminatory acts or abuse of power, minority shareholders can file lawsuits seeking damages.
5. **Conversion Rights and Warrant Rights:** In some cases, minority shareholders may have conversion rights or warrant rights. Conversion rights allow shareholders to exchange their common stock for preferred stock or shares with other privileges. Warrants give minority shareholders the right to purchase additional shares at a predetermined price at a specified time in the future.
6. **Public Information Rights:** Minority shareholders also have access to public information related to the company. This information can be found through public financial statements, official company announcements, or through capital market supervisory authorities. This right allows minority shareholders to obtain additional information that may influence their investment decisions.

It should be noted that the rights of minority shareholders may vary depending on the legal regulations and agreements in force in a particular country or company.

Efforts to strengthen the protection of minority shareholders' rights can involve various aspects, including legal regulations, good corporate governance, and transparency practices. The following are some steps that can be taken to improve the protection of minority shareholders' rights (Purnomo, Layung, 2016):

1. **Clear Legal Regulations:** The State of Indonesia may adopt or strengthen legal regulations that protect the rights of minority shareholders. This includes ensuring fair and equal access to company information, protecting voting rights, and guaranteeing minority shareholders' right to file lawsuits in the event of violations.
2. **Transparency and Openness:** Companies must implement high transparency practices in their financial and operational reporting. Clear and detailed financial statements can help minority shareholders understand a company's financial condition and make better investment decisions. In addition, the company must also provide sufficient information to shareholders regarding company policies, decision making, and important changes.
3. **Minority Shareholder Involvement in Decision Making:** Minority shareholders should be given the opportunity to be involved in important corporate decision making. This can be done through voting rights in the GMS or through the appointment of minority shareholder representatives in the company's board of directors. Empowering minority shareholders in decision-making will increase their awareness and influence in overseeing the company's actions.
4. **Effective Grievance and Dispute Resolution Mechanism:** An effective mechanism is needed to address complaints or disputes involving minority shareholders. This may involve the establishment of an independent supervisory body, a special court, or other alternatives to resolve disputes fairly and efficiently.
5. **Minority Shareholder Education and Awareness:** Minority shareholders need to be given education and awareness regarding their rights. Proper training and information will help them understand their rights, monitor company performance, and protect their interests.
6. **Application of Good Corporate Governance Principles:** Companies must apply the principles of good corporate governance, including independence of the board of directors, transparency in decision making, protection against conflicts of interest, and strong accountability. Good corporate governance practices will enhance the protection of minority shareholders' rights.

CONCLUSION

Based on the results of this literature review research, several things can be concluded as follows: The protection of the rights of minority shareholders in Indonesia still needs to be strengthened. Although related regulations and regulations already exist, there are challenges in their implementation which result in the protection of minority shareholders' rights is still not optimal. Regulations governing the rights of minority shareholders need to be clarified and updated. In-depth evaluation of existing regulations needs to be carried out to ensure clarity on the rights of minority shareholders and adapt to capital market developments and international practices.

Corporate transparency is an important aspect in protecting the rights of minority shareholders. Companies must implement high transparency practices in their financial and operational reporting, as well as provide sufficient and accurate information to minority shareholders. The role of capital market supervisory authorities needs to be strengthened. The supervisory authority must have a strong role in monitoring and supervising the company's compliance with the rules and regulations related to the protection of minority shareholders' rights.

The involvement of minority shareholders in corporate decision-making should be encouraged. Minority shareholders should have equal access to the general meeting of shareholders and be given the opportunity to be involved in important corporate decision-making. Education and awareness of minority shareholders need to be improved. Minority shareholders need to have a good understanding of their rights and the actions they can take if their rights are violated. Collaboration between governments, regulators, companies, and minority shareholders is essential in improving the protection

of minority shareholders' rights. Stakeholders should work together to strengthen regulations, adopt best practices, and ensure effective implementation.

This research provides a deeper understanding of the constitutional protection of the rights of minority shareholders in Indonesia. These recommendations and conclusions can be used as a reference in efforts to improve the protection of the rights of minority shareholders in Indonesia through improved regulation, transparency, participation, education, and collaboration between relevant stakeholders.

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