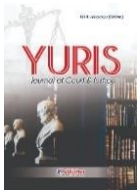

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The Legal Protection of Minority Shareholders against Company Consolidation in the Perspective of the Limited Liability Company Law

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ABSTRACT

Company consolidation is one of the legal actions that can significantly impact shareholders, predominantly minority shareholders. Law No. 40/2007 on Limited Liability Companies (UUPT) stipulates that in the consolidation process, the rights of minority shareholders must still be considered, including the right to request the purchase of their shares at a fair price if they disagree with the decision of the General Meeting of Shareholders (GMS). However, in practice, implementing legal protection for minority shareholders still faces various challenges, especially regarding legal certainty and the mechanism for exercising their rights. This research aims to provide a comprehensive understanding of the legal landscape surrounding minority shareholders in the context of company consolidations, highlighting both existing protections and areas needing reform. This research uses normative legal research methods with statutory and conceptual approaches. The results show that although Article 62 of the UUPT gives minority shareholders the right to sell their shares to the company in certain situations, the absence of clear sanctions for companies that fail to carry out this obligation causes legal uncertainty. Therefore, a firmer legal reconstruction is necessary, including providing administrative sanctions and compensation for companies that do not fulfil their obligations. In addition, dispute resolution mechanisms can be implemented through litigation and non-litigation channels, such as mediation and arbitration, to provide more effective protection for minority shareholders.

Keywords: *Company Consolidation, Legal Certainty, Legal Protection, Limited Liability Company Law, Minority Stakeholders*

INTRODUCTION

Article 1 Number 1 of Law No. 40/2007 regarding Limited Liability Companies (hereinafter referred to as UUPT) defines Limited Liability Company as a legal entity which constitutes an alliance of investors, incorporated based on an agreement, conducting commercial activities with an authorized principal that is entirely divided into stocks and fulfilling the requirements determined in the laws and regulations for their implementation.[1] This regulation has the legal consequence that a limited liability company has independent rights, obligations, and assets, which are separated from the rights, obligations, and assets of the founders or shareholders.[2] The provisions of Article 126 Paragraph (1) letter a of UUPT state that the legal actions of Merger, Consolidation, Acquisition, or Demerger must pay attention to the interests of the Company, minority shareholders, and company employees.[3] This shows that decision-making that can change the Company's structure, such as merging companies, must not only consider the interests of the Company as a whole, but must also protect the rights of affected minority shareholders.

Subsequently, Article 126 Paragraph (2) of the UUPT states that shareholders who disagree with the GMS resolution regarding Merger, Consolidation, Acquisition, or Demerger may only use their rights as referred to in Article 62.[4] This is an affirmation of the rights of shareholders who disagree with the General Meeting (GMS) resolution regarding the consolidation of the Company can only apply for the options stipulated in the provisions of Article 62 Paragraph 1 of the Company Law. Article 62 of the UUPT stipulates that shareholders who disagree with corporate resolution deemed detrimental, including amendments to the articles of association, transfer or pledge of corporate assets worth more than 50% of the company's net assets, as well as merger, consolidation, acquisition, or separation actions, have the right to request that the company purchase their shares at a fair price.[5]

Article 62 Paragraph (2) of UUPT assigns an obligatory duty to the company to organize for the remaining shares requested to be purchased by the dissenting shareholders, if they exceed the share buy-back limit stipulated in Article 37 Paragraph (1) point b, to be purchased by a third party. Article 37, Paragraph (1), letter b regulates that a company may only buy back shares that do not exceed 10% of the total issued shares. Suppose the amount of the shares demanded exceeds this limitation. In that case, the company must try to find a third party to acquire the

[1] Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 40 Tahun 2007 Tentang Perseroan Terbatas" (2007), https://peraturan.bpk.go.id/Details/39965.
[2] Zainal Asikin and L. Wira Pria Suhartana, *Pengantar Hukum Perusahaan* (Prenada Media Group, 2016), https://books.google.co.id/books?id=KdxDDwAAQBAJ.
[3] Indonesia, Undang-undang (UU) Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
[4] Indonesia.
[5] Indonesia.

required shares, to preserve the rights of minority shareholders. This aims to ensure that dissenting shareholders are not forced to be bound by a decision that is adverse to their interests.

Based on the occurrence of the phrase "shall" in the provisions of Article 62 Paragraph (2), the following question emerges if the company is unable to endeavour to purchase the remaining number of shares from a third party. The word "mandatory" indicates that the corporation cannot ignore or postpone the obligation. According to the provisions of the Appendix to Law No. 12/2011 on the Formation of Legislation, the phrase "shall" certainly implies sanctions. Nevertheless, the problem is that UUPT does not regulate clear consequences whether the company does not fulfil its obligations, thus making this condition blurs norms. Therefore, it is questionable how the legal protection of minority shareholders and legal measures can be taken if the shareholders cannot sell the shares of minority shareholders at a fair price.

RESEARCH METHODOLOGY

This research applies the normative legal research method. Normative legal research understands legal research from an internal perspective, with the research object being the legal norm. On the other hand, normative legal research has the function of providing juridical argumentation during the occurrence of vacancies, vagueness and conflicts of norms, it can be interpreted if this research has the role of maintaining the critical aspects of legal science as a *sui generis* normative science.[6]

The approaches used in this research include a statutory approach and a conceptual approach. Regulatory approach (statutory approach), namely using an approach that aims to explain statutory regulations and examine theoretical frameworks based on legal concepts related to legal protection of minority shareholders against the rejection of the dissolution of a limited liability company at the GMS by examining from the perspective of Law Number 40 of 2007 concerning Limited Liability Companies.

Legal sources in normative legal research consist of primary, secondary, and tertiary legal materials.[7] Primary legal materials are legal materials that have legally binding legal force, consisting of basic norms, basic regulations, laws, and regulations. Primary legal materials contain new scientific knowledge and new understanding of things related to an idea under research.

Primary legal materials used in this research include the 1945 Constitution of the Republic of Indonesia; Law Number 40 of 2007 concerning Limited Liability

[6] I Made Pasek Diantha, *Metode Penelitian Hukum Normatif Dalam Justifikasi Teori* (Jakarta: PT. Karisma Putra Utama, 2016).
[7] Sri Mamudji and Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2015), https://books.google.co.id/books?id=_Y1GPAAACAAJ.

Companies; Law Number 6 of 2023 on Stipulating the Government instead of Law Number 2 of 2022 on Job Creation into Law; and Government Regulation No. 27 of 1998 on Merger, Consolidation, and Acquisition of Limited Liability Companies. Meanwhile, secondary legal materials used in this research are law books, state sheets, additional state sheets, legal journals, legal papers, or views of legal experts. As well as tertiary legal materials, namely supporting materials that can provide information about research, such as dictionaries. The legal material supports legal analysis to answer the legal protection of minority shareholders against consolidation in limited liability companies.

This research collects legal materials using literature studies, including data collection through books, articles, journals, etc. The collection of legal materials by literature study which is a significant part of the research as a reference in research to examine and answer the formulation of the problem by recording / quoting the necessary information and the identity of the source in full, in order to answer the legal protection of minority shareholders against consolidation in limited liability companies. The collected legal materials are then analyzed to obtain the final argumentation, which serves as the answer to the research problem.

RESULT AND DISCUSSION

Legal Protection of Minority Shareholders against the Rejection of Company Consolidation in the GMS of Limited Liability Companies

A share is a right to its registered owner, referred to as a shareholder. Shareholders as legal segments have rights and obligations to the company and other shareholders. These rights and obligations arise from the shares they own.[8] Shareholders in the company are divided into 2 (two) types: majority and minority shareholders. The majority of shareholders are shareholders who can control the company through the decisions they make, and control can be exercised by holders of 50% (fifty percent) of the shares or more. The rights and obligations of shareholders are the same, but majority shareholders can be given more rights in the GMS. The majority shareholders legally have the power to control the Company through GMS. This understanding is supported by the definition contained in Black's Law Dictionary, which explains that majority shareholders are: “One who owns or controls more than 50 percent of the stock of a corporation, though effective control may be maintained with far less than 50 percent if most of the stock widely held. In close corporation, majority shareholder may owe fiduciary, partner-like duties to minority.”[9]

This means that a party that owns or controls more than 50% (fifty percent) of the shares in the company has more effective authority than a party that owns

[8] Azizah, *Hukum Perseroan Terbatas* (Malang: Setara Press, 2016).
[9] Bryan A. Garner Henry Campbell Black, *Black’s Law Dictionary* (West Group St. Paul, MN, 1999).

less than 50% (fifty percent), in other words, the majority shareholder has the authority to carry out management for the benefit of the company. Meanwhile, the definition of a minority shareholder is a person or legal entity that owns several shares with a very small composition. This group is categorized as persons or legal entities that own shares below 10% (ten percent) that do not control the company. Henry Campbell Black explains that minority shareholders are: "Minority stockholders are those stockholders of corporation who hold so few shares in relation to the total outstanding that they are unable to control the management of the corporation or to elect directors."[10] This implies that minority shareholders are shareholders who own a minimal number of shares out of the total shares; they are unable to control the management or elect the Board of Directors.

In a corporate merger context, minority shareholders often face the risk of loss, both economically and in the form of loss of control or influence in decision-making. The UUPT provides several legal protection mechanisms aimed at safeguarding the rights of minority shareholders in the corporate merger process. These protections are fundamental because the majority shareholders usually decide to consolidate through the General Meeting of Shareholders (GMS).

The Theory of Legal Protection is a concept that underlies the guarantee and recognition of the rights of citizens or legal subjects from possible arbitrary actions by other parties, including the state. The most recognized figure who developed this theory in Indonesia is Philipus M. Hadjon. According to him, legal protection can be divided into two primary forms, preventive legal protection and repressive legal protection.[11]

Preventive legal protection is a form of protection provided to avoid law violations or conflict before the event occurs. This is accomplished through mechanisms that allow potentially aggrieved parties to express opinions, and objections, or participate in the decision-making process, which can directly impact their legal rights. This form of protection reflects the basic principles of procedural justice (procedural justice), i.e. that each party should be allowed to be heard before important decisions are made (the right to be heard).

In the context of limited liability companies, especially regarding company mergers, preventive legal protection is important for minority shareholders. This is because the merger process is usually a strategic decision made by the majority shareholders and company management, which has the potential to ignore or harm the interests of minority shareholders. The UUPT provides preventive legal protection to minority shareholders through a regulation that requires the merger process to obtain approval from the GMS (General Meeting of Shareholders), where all shareholders have the right to attend and express their views or objections to the merger plan.

[10] Henry Campbell Black.
[11] Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2019).

One of the forms of this preventive protection is the obligation to publicly disclose information regarding the merger plan, including the legal, financial, and impact on the position of shareholders. This disclosure is mandatory in the Merger or Consolidation Plan, as stipulated in Article 122 paragraph (1) of the Company Law, which states that each company's board of directors must prepare a merger plan and submit it to all shareholders for prior study. Therefore, minority shareholders are given space to understand the plan and prepare their position or objections.

Furthermore, the UUPT also provides shareholders who disagree with the consolidation resolution the right to exercise their right to transfer their shares to other parties at a fair price. This is regulated in Article 62, paragraph (1) of the Company Law, which states that if shareholders do not approve the GMS resolution on consolidation, they have the right to request that the company purchase their shares at a fair price. These mechanisms are a form of preventive as well as remedial legal protection, as they prevent minority shareholders from being victimized by majority decisions that may be detrimental.

This is where the principle of "the right to be heard" comes into play where minority shareholders have the right to know in advance, have their say, and vote in the GMS before the final decision is taken. If their votes are lost in the voting, they still have the right not to participate in the merger through the share transfer mechanism. This indicates that the UUPT has adopted a normative preventive protection system, by providing formal procedures that must be followed before the decision to consolidate is enacted.

Moreover, the UUPT also stipulates that the decision on consolidation must be taken with a certain quorum, usually at least two-thirds of the total number of shares with voting rights present or represented in the GMS, as stated in the provisions of Article 87 and Article 89 of the Company Law. This means that the position of minority shareholders is still legally recognized, and they can play a strategic role if the number of their shares is significant enough to influence the quorum or vote.

From the practical side, this preventive mechanism provides an opportunity for minority shareholders to conduct due diligence, consult with legal or financial advisors, and prepare strategic steps if they feel that the consolidation plan is detrimental to their interests. They also can submit written objections or even challenge the GMS decision if it proves to be unprocedural or contrary to the articles of association.

Accordingly, preventive legal protection in company consolidation under the UUPT is designed to avoid conflicts and legal losses from the outset. This is implemented by providing access to information, voting rights, and the option to exit the company. These are the implementation of the principles of procedural justice and respect for minority rights as an important part of the principle of legal protection in the rule of law.

Representative legal protection is a form of legal protection provided after a violation of the law or a dispute. The ultimate goal of this protection is to restore rights that have been violated through a fair and lawful settlement mechanism. The representative protection is usually carried out through litigation in court, settlement through arbitration, mediation, or other dispute resolution institutions. In particular, this protection can also take the form of compensation, restitution, and rehabilitation for the injured party, as a form of correction to unlawful actions or policies.

Representative legal protection becomes very important when the company's consolidation process is not carried out following legal procedures or causes harm to minority shareholders. In this case, minority shareholders who feel disadvantaged can exercise their right to file a lawsuit in court, both against the GMS decision and against the board of directors or commissioners, if an illegal act is proven in the consolidation process. This is provided for in Article 61, Paragraph (1) of UUPT, stipulates that shareholders have the right to file a lawsuit in court if they feel aggrieved by the GMS resolution.

Moreover, the UUPT also gives shareholders the right to file a lawsuit against the board of directors or commissioners based on personal liability in the event of losses due to actions contrary to the law, articles of association, or negligence in managing the company. This is governed by Article 97 Paragraph (6) and Article 114 Paragraph (6) of the UUPT, which states that the board of directors or commissioners can be sued personally for the company's losses arising from their errors or negligence in carrying out their duties.[12]

Representative protection in the case of a consolidation detrimental to minority shareholders may include a request to annul the GMS resolutions deemed invalid or contrary to the law and the articles of association. According to Article 75 of the UUPT, shareholders representing at least 1/10 of the total number of shares with voting rights may apply to the court to annul the resolution of the GMS.[13] This constitutes a legal measure designed to provide a legal remedy to minority shareholders who do not have voting power in the GMS forum, but still want to enforce their rights.

These legal processes pursued by minority shareholders are also a form of judicial control over the running of the corporation in order to stay within the law. Thus, the repressive protection serves as a counterweight to the majority power in the company, and ensures that the entire business process, including the consolidation, is carried out in good faith and upholds the principles of justice.

Practically, repressive legal protection involves dispute resolution not only in general courts and business dispute resolution mechanisms, such as national arbitration (BANI) or mediation. This mechanism is often chosen because it is

[12] Indonesia, Undang-undang (UU) Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
[13] Indonesia.

considered faster, more efficient, and more flexible in resolving corporate cases, including business restructuring or consolidation.[14]

Therefore, repressive law protection functions not only as a means of correction against unlawful acts but also as an instrument of corporate justice enforcement. The existence of norms in the UUPT that allow minority shareholders to claim compensation, cancel decisions, or hold directors and commissioners accountable is a concrete form of repressive legal protection in a healthy business world.

Nevertheless, although Law No. 40/2007 on Limited Liability Companies (UUPT) has provided a basis for the legal protection of minority shareholders, the effectiveness of such protection has not been maximized. This provision in Article 126, paragraph (1), letter a of the UUPT stipulates that legal actions such as merger, consolidation, acquisition, and separation must consider the interests of minority shareholders. While this norm is imperative, the regulation has not been accompanied by adequate legal consequences, making it vulnerable to being ignored in practice.

When shareholders do not approve the GMS decision regarding corporate actions such as consolidation, Article 62 paragraph (1) of the UUPT provides the right to request that the company purchase their shares at a fair price. This regulation shows the legislator's effort to provide repressive legal protection to minority shareholders affected by the majority's decision in the company structure.

The problem arises, however, when Article 62 paragraph (2) of the UUPT stipulates that if the number of shares requested to be purchased exceeds the 10% limit as stipulated in Article 37 paragraph (1) letter b of the Company Law, the company is “obliged” to endeavour to have the shares purchased by a third party. While the phrase “shall” should have legal consequences in this context, the UUPT does not explicitly regulate sanctions or legal steps if the company fails to carry out this obligation.

The absence of sanction norms leads to legal vagueness (vagueness of norm), which affects the effectiveness of protection for minority shareholders. This aligns with the legal protection theory by Philipus M. Hadjon, which emphasizes the importance of preventive and repressive legal protection. In this context, the expected repressive protection through Article 62 Paragraph (2) provisions does not function optimally due to the absence of sanctions for violations.

Furthermore, from the perspective of Gustav Radbruch's theory of legal certainty, the law must provide predictability regarding the legal consequences of an action or omission. When provisions for sanctions do not accompany a legal

[14] Nyoman Satyayudha Dananjaya and Kadek Agus Sudiarawan, “KARAKTERISTIK MEDIASI PERBANKAN SEBAGAI ALTERNATIF PENYELESAIAN SENGKETA PERBANKAN INDONESIA (ANALISIS ASPEK KEADILAN, KEPASTIAN HUKUM, DAN KEMANFAATAN),” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 5, no. 1 (May 31, 2016): 202, https://doi.org/10.24843/JMHU.2016.v05.i01.p18.

obligation, the enforcement of the norm becomes weak and creates uncertainty for parties relying on such legal protection.

Although the term “mandatory” in legal norms is theoretically binding and carries the consequence of sanctions, as stipulated in Appendix II, letter C, point 87 of Law Number 12 of 2011 on the Formation of Legislation, the UUPT does not regulate any sanctions against companies that fail to fulfil or neglect this obligation. This creates legal uncertainty and opens loopholes for companies to disregard minority rights without clear legal consequences. Without sanctions, the term "mandatory" becomes meaningless and lacks adequate binding power.

From a legal perspective, such ambiguity leads to norm vagueness, which reduces the effectiveness of legal protection. According to Satjipto Rahardjo, law is not merely a collection of norms but should be viewed as a tool to achieve substantive justice. When legal norms fail to provide mechanisms for sanctions or concrete remedies, the essence of protecting minority shareholders' rights is reduced to mere formalities. In this context, the provisions of Article 62 should not only be seen as a form of repressive protection but also as capable of providing tangible remedies.

From the perspective of the theory of legal utility, as proposed by Jeremy Bentham and John Stuart Mill, the law must provide the most significant benefit to the most significant number of people.[15] When the law fails to offer adequate protection for minority groups, such as minority shareholders, the utilitarian purpose of the law is not achieved, as it primarily benefits majority shareholders.[16] In this case, distributive and procedural justice, which should be guaranteed by corporate law, cannot be realized. Minority shareholders are vulnerable and lack sufficient voting power in the General Meeting of Shareholders (GMS) to reject detrimental decisions.[17] Therefore, substantive legal protection is crucial to maintaining a balance of power within the corporate structure.

When analyzed further using the Economic Analysis of Law approach by Richard A. Posner, this norm vagueness can lead to economic inefficiency. Legal uncertainty causes minority investors to perceive a high legal risk, prompting them to demand higher returns as compensation.[18] This results in increased cost of capital

[15] Jan Enviro A Quiambao, “Thinking Ethically: The Utilitarianism Approach in Moral Decision Making,” *International Journal of Multidisciplinary Research and Growth Evaluation*, June 23, 2022, 602–4, https://doi.org/10.54660/anfo.2022.3.3.30.

[16] M. P. Arunothaya Arasi and K. Apparna, “Protection of the Minority Shareholders in Company Law Regime,” *International Journal For Multidisciplinary Research* 5, no. 6 (November 26, 2023), https://doi.org/10.36948/ijfmr.2023.v05i06.9497.

[17] Rafi Akbar Al Aqib, Azi Fachri Mandala, and Jhames Jorgi, “PERLINDUNGAN HUKUM BAGI PEMEGANG SAHAM MINORITAS DALAM PERUSAHAAN PERSEROAN,” *Media Keadilan: Jurnal Ilmu Hukum* 14, no. 1 (April 30, 2023): 17, https://doi.org/10.31764/jmk.v14i1.12199.

[18] Jiarui Ji, Na Liu, and Yanyao Zhao, “Legal Risk in Transnational Investment and Its Countermeasures,” *Journal of Education, Humanities and Social Sciences* 24 (December 31, 2023): 477–81, https://doi.org/10.54097/ehnzj468.

and reduced corporate competitiveness. Furthermore, this condition may discourage investors from investing in companies that lack adequate legal protection for minority rights. In the long term, this situation can negatively impact the investment climate and the efficiency of the national capital market.

The lack of strict regulation also creates a moral hazard, as company controllers can easily evade their obligations to minority shareholders. Without the threat of sanctions, company controllers have no incentive to comply with the provisions of Article 62 Paragraph (2) of the UUPT (UUPT), rendering the norm merely symbolic.

Thus, although the UUPT normatively includes provisions for the protection of minority shareholders, the vagueness of norms in Article 62 Paragraph (2) creates uncertainty and diminishes the effectiveness of such protection. Therefore, reconstruction or implementation of regulations is needed to clarify the obligations and sanctions for violations so that legal protection, legal certainty, legal utility, and economic efficiency can be achieved holistically.

The legal reconstruction of the provisions in Article 62 paragraph (2) of UUPT must address the vagueness of norms related to legal protection for minority shareholders in corporate mergers. This provision requires the company to facilitate the purchase of remaining shares by third parties if the number of shares requested for buyback exceeds the company's buyback limit. However, the norm lacks regulation regarding the legal consequences if the company fails to fulfil this obligation, resulting in legal uncertainty that could weaken the legal standing of minority shareholders.

From the perspective of the theory of legal certainty, the law must provide clear and enforceable rules to create order and protect the rights of legal subjects.[19] When provisions use the term "mandatory" without accompanying sanctions, the norm loses its effectiveness as a legal control mechanism. Therefore, one form of legal reconstruction that can be undertaken is to include provisions for administrative or civil sanctions in the UUPT or its implementing regulations, thereby ensuring corporate compliance with these obligations.

Legal reconstruction is an important step to strengthen the effectiveness of legislation. Article 62 Paragraph (2) of UUPT, which regulates the company's obligation to facilitate the purchase of shares from shareholders who dissent against the General Meeting of Shareholders' decision regarding mergers, lacks sanction provisions if this obligation is not fulfilled, making the regulation weak. This creates a normative vacuum (absence of sanction norms) that can hinder legal protection for minority shareholders. Therefore, legal reconstruction is necessary

[19] Teguh Tresna Puja Asmara, Tarsisius Murwadji, and Bambang Daru Nugroho, "Tanggung Jawab Pemilik Koperasi Pada Saat Terjadi Kredit Macet Ditinjau Dari Teori Kepastian Hukum," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (April 22, 2020): 109, https://doi.org/10.29303/ius.v8i1.712.

by adding norms regarding administrative or civil sanctions against the company or its directors who fail to comply with this obligation.

The addition of administrative sanctions can take the form of written warnings, suspension of business activities, revocation of business licenses, or administrative fines. Meanwhile, civil sanctions may include claims for damages by the aggrieved shareholders or demands for accountability from the directors for breaching legal obligations and neglecting their fiduciary duties. These provisions can also refer to Article 97 Paragraphs (3) and (4) of the UUPT, which state that directors who commit errors or negligence in carrying out their duties, causing losses to the company, are personally liable and can be sued in court by shareholders.

This legal reconstruction is also crucial to strengthen the principles of accountability and good corporate governance, where the directors as company managers must comply with legal regulations and be responsible for their decisions. The addition of sanction norms aligns with the principles of legal certainty and effectiveness, as emphasized by the theories of legal certainty and protection.[20] Without sanction norms, the legal obligation in Article 62 Paragraph (2) of the UUPT loses its binding character and remains merely normative.

Thus, legal reconstruction through the addition of sanction provisions functions not only as a repressive tool but also as a form of preventive legal control, ensuring that companies carry out fair legal procedures that protect all shareholders, including minority shareholders. This step will also enhance investor confidence in Indonesia's corporate legal system and strengthen the competitiveness of Indonesian business law globally.

Additionally, legal reconstruction can be realized by drafting implementing regulations, such as Government Regulations or Ministerial Regulations, which detail the mechanisms for third-party share purchases, procedures for determining fair prices, and resolution processes if no third party is willing to buy the shares.[21] This effort aligns with Jeremy Bentham's theory of legal utility, which emphasizes that the law should benefit the wider society. In this context, minority shareholders, as a vulnerable group, must be prioritized for protection to prevent economic losses resulting from the dominance of majority shareholders in decision-making.

By adopting the legal protection theory put forward by Philipus M. Hadjon, protection for minority shareholders should not only cover repressive aspects after violations occur but also include preventive measures from the outset, through clear

[20] Chintya Devi, "Kajian Hukum Pencabutan Hak Politik Pada Pelaku Tindak Pidana Korupsi Suap Berdasarkan Teori Kepastian Hukum," *Yustisia Tirtayasa: Jurnal Tugas Akhir* 1, no. 1 (August 4, 2021), https://doi.org/10.51825/yta.v1i1.11204.

[21] I Nyoman Gede Sugiartha and Ida Ayu Putu Widiati, "Tanggungjawab Pemerintah Dalam Pengelolaan Lingkungan Hidup Berbasis Partisipasi Masyarakat Untuk Pembangunan Daerah Bali," *KERTHA WICAKSANA* 14, no. 2 (July 23, 2020): 96–102, https://doi.org/10.22225/kw.14.2.1862.96-102.

regulations and the involvement of shareholders in the decision-making process.[22] In this regard, legal reconstruction becomes a concrete form of preventive legal protection that strengthens the position of minority shareholders amid the complex dynamics of corporate structures.

Legal Remedies for Minority Shareholders Against the Rejection of Corporate Mergers in Limited Liability Companies Through Non-Litigation Remedies

Minority shareholders hold a vulnerable position within a Limited Liability Company (PT) structure, particularly when the majority shareholders approve strategic policies such as corporate mergers. Article 126 Paragraph (1) letter a of Law Number 40 of 2007 on Limited Liability Companies (UUPT) emphasizes that such decisions must consider the interests of minority shareholders. However, minority shareholders often lack the power to effectively oppose these decisions.

In such situations, the UUPT provides a protective mechanism under Article 62, granting shareholders who disagree with the RUPS decision the right to request that the company purchase their shares at a fair price. This right serves as a form of preventive legal protection aimed at avoiding further disputes through litigation. However, the implementation of Article 62 of the UUPT encounters challenges when the company cannot purchase the shares or fails to secure a third-party buyer as mandated by Article 62 paragraph (2) of the UUPT. In these circumstances, minority shareholders can opt for resolution through non-litigation legal remedies.

Non-litigation legal remedies refer to dispute resolution mechanisms conducted outside the court process. Law No. 30/1999 on Arbitration and Alternative Dispute Resolution provides various options for out-of-court settlements, including consultation, negotiation, mediation, conciliation, or expert appraisal.

Article 1 point 10 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution explains that alternative dispute resolution refers to resolving disputes or differences of opinion through a dispute resolution institution or mechanism agreed upon by the parties, outside of court proceedings.[23] These procedures include various forms of resolution, such as consultation, negotiation, mediation, conciliation, or expert appraisal, allowing the parties to reach an agreement without resorting to formal litigation. This mechanism is crucial as it is often more flexible, faster, and cost-effective than court processes, which can take years to conclude.

As an alternative dispute resolution method, mediation is an excellent option for resolving disputes between a corporation and its minority shareholders. Mediation allows both parties to discuss openly and seek mutually beneficial solutions. Typically, a mediator facilitates communication and helps identify

[22] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Bina Ilmu, 1987).
[23] Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa" (1999), https://peraturan.bpk.go.id/Details/45348/uu-no-30-tahun-1999.

common ground between majority and minority shareholders, ensuring that the agreement reached accommodates the interests of both parties. This process is faster and less formal than court proceedings.

Minority shareholders can request the board of directors or commissioners to convene a follow-up General Meeting of Shareholders (GMS) or internal forum to voice their objections and negotiate resolution options, such as instalment payments for shares, provision of alternative share buyers, or specific concessions.

Besides mediation, arbitration is also an alternative that can be chosen. Arbitration is a dispute resolution method involving a neutral third party, called an arbitrator, who listens to the arguments of both parties and issues a binding decision.[24] If the parties agree to resolve the dispute through arbitration, the decision will be binding and carry the same legal force as a court ruling.

In this regard, arbitration has advantages because the process is faster and more efficient and can be conducted privately to protect sensitive information. Minority shareholders can initiate external mediation or arbitration through institutions such as the Indonesian National Arbitration Board (BANI) or the Indonesian Capital Market Arbitration Board (BAPMI), provided an arbitration clause has been included in the Articles of Association or shareholder agreement.[25] This demonstrates the importance of including an alternative dispute resolution clause in corporate documents as a form of anticipatory legal planning.

Consultation and negotiation are also forms of dispute resolution that can be undertaken before deciding to proceed with mediation or arbitration. In consultation, the parties may seek advice from legal experts or other professionals to better understand their rights and obligations and the steps that can be taken to resolve the dispute. Negotiation is a process in which both parties attempt to reach an agreement through open dialogue and discussion, which may involve modifying or adjusting decisions previously made.

Expert appraisal is another step that can be taken in resolving disputes related to the merger of a company. In this case, an expert may be requested to assess the fair value of the shares held in the company or the legality of the merger procedures. This appraisal can offer a more objective view of whether or not the price and terms offered in the merger are fair.

The scope of disputes that can be resolved through alternative non-litigation dispute resolution is vast, including corporate disputes arising from decisions of the General Meeting of Shareholders (RUPS), such as the rejection of a company

[24] Viraj Fulena and Hemant Chittoo, "International Commercial Litigation and Arbitration Research Essay," *International Journal of Social Science and Human Research* 06, no. 02 (February 28, 2023), https://doi.org/10.47191/ijsshr/v6-i2-70.

[25] Aldiva Pitaloka, Marjo Marjo, and Zil Aidi, "The Role of the Indonesian National Arbitration Board (BANI) in the Prevention and Settlement of Business Disputes in Indonesia," in *Proceedings of the International Conference on Sustainability in Technological, Environmental, Law, Management, Social and Economic Matters, ICOSTELM 2022, 4-5 November 2022, Bandar Lampung, Indonesia* (EAI, 2023), https://doi.org/10.4108/eai.4-11-2022.2328969.

merger by minority shareholders. Such disputes reflect conflicts of interest between majority and minority shareholders that can impact the company's stability and the protection of investor rights. In this context, non-litigation dispute resolution becomes a viable and strategic alternative, as it offers a faster, more flexible resolution process and preserves the business relationship between the parties involved.

As a form of legal protection for minority shareholders, non-litigation dispute resolution alternatives such as mediation, conciliation, or arbitration offer more efficient mechanisms than formal litigation processes. Besides reducing costs and time, these mechanisms also open opportunities for achieving peaceful agreements that are win-win solutions and place greater emphasis on substantive justice beyond the strict procedural approaches applied in courts.

Thus, utilizing non-litigation dispute resolution is crucial in addressing objections to corporate policies such as mergers, especially by minority shareholders. This mechanism ensures access to justice without going through court processes that tend to be complicated and time-consuming. Moreover, non-litigation resolution can serve as a means to strengthen legal protection for parties who hold structurally weaker positions within a corporation.

Minority Shareholders' Legal Actions Against the Rejection of a Limited Liability Company Merger through Litigation Efforts

The rights of minority shareholders are explicitly regulated in Law No. 40/2007 concerning Limited Liability Companies (UUPT). Although merger decisions are generally made through the General Meeting of Shareholders (RUPS), minority shareholders have the legal right to oppose the decision if it is deemed detrimental to their interests. When resolution through deliberation or non-litigation alternatives fails, litigation becomes a legitimate and constitutional option.[26]

Litigation in this context refers to the judicial process in the district court that has the authority to adjudicate civil cases, including disputes between shareholders and the company. Minority shareholders can file a civil lawsuit based on unlawful acts (onrechtmatige daad) as regulated in Article 1365 of the Civil Code if it can be proven that the merger decision causes unfair losses or violates their rights.

In practical terms, this lawsuit can be filed against a liability company, the board of directors, or the commissioners who are allegedly responsible for the decision. The lawsuit can be in the form of a request to cancel the GMS resolution that has been passed or a compensation claim. This mechanism is also possible in Article 61 Paragraph (1) of the Company Law, which states that shareholders can file a lawsuit if they feel aggrieved by the GMS decision.

[26] Ida Ayu Surya Dwijayanti, I Nyoman Puru Budiartha, and Desak Gde Dwi Arini, "Penyelesaian Sengketa Perasuransian Oleh Badan Mediasi Dan Arbitrase Asuransi Indonesia (BMAI)," *Jurnal Preferensi Hukum* 2, no. 2 (2021): 377–81, https://doi.org/10.22225/jph.2.2.3341.377-381.

One of the forms of lawsuit that can be pursued is a request for annulment of the GMS resolution as stipulated in Article 82, Paragraph (1) of the UUPT.[27] In this provision, shareholders who feel directly disadvantaged as a result of the GMS resolution, including the consolidation resolution, can file a lawsuit in court within a period of no longer than 60 days after the resolution is adopted.

Furthermore, the minority shareholders can also use the derivative suit mechanism, a lawsuit filed by the shareholders on the Company's behalf against internal parties that are regarded as detrimental to the Company, as stipulated in Article 97, Paragraph (6) of the UUPT.[28] This is relevant if the shareholders believe the board of directors abused its authority in the incorporation process.

The litigation remedy provides a clear formal and procedural channel for dispute resolution. The judicial system offers evidentiary mechanisms, appeal rights and judicial control that enable shareholders to obtain justice under positive law. While the litigation process is often time-consuming and costly, it remains an important route when it is perceived to create substantive justice and protect the larger economic structure from unfair practices. This is particularly true in mergers that have far-reaching impacts on share value and ownership rights.

Litigation also enables declaratory or constitutive rulings to be obtained, for example, by annulment of GMS resolutions or orders not to carry out certain corporate actions, which cannot be obtained through non-litigation channels. This provides more legal power over shareholder rights. As a preliminary step, minority shareholders must have strong legal standing and prove that they are the party harmed by the consolidation decision. The judiciary will assess the formal and material aspects of the petition.

In litigation, the strength of evidence is fundamental. The shareholders must be able to show that the GMS process was conducted unfairly, without information disclosure, or even in violation of formal procedures as stipulated in the articles of association and laws and regulations. If the Court accepts the lawsuit, the decision to consolidate can be cancelled, and the board of directors can be held liable for compensation. This is aligned with the principle of directors' liability stipulated in Article 97 Paragraph (3) of the Company Law, where the directors are liable for the company's losses arising from their errors or omissions.

The litigation can also encourage the creation of jurisprudence, or legal precedents, which are useful for strengthening the legal position of minority shareholders in similar cases in the future. In the long term, this will enhance good corporate governance. Nonetheless, the effectiveness of the litigation route still depends on the judiciary's integrity, the judges' understanding of corporate issues, and the legal capacity of the disputing parties. Accordingly, minority shareholders are also advised to be accompanied by legal counsel competent in corporate law.

[27] Indonesia, Undang-undang (UU) Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
[28] Indonesia.

The litigation route guarantees minority shareholders the right to legally claim their rights to reject the company's consolidation. This is part of the legal ecosystem that ensures that corporations are not solely controlled by majority rule, but rather by the principles of justice and compliance with applicable laws justice and compliance with applicable law. The advantages of litigation dispute resolution are that court decisions have definite legal force, are final, create legal certainty with the position of the parties winning or losing (win and lose position), and can be enforced if the losing party does not want to carry out the contents of the court decision (execution).[29]

Sudikno Mertokusumo stated that judicial decisions have three kinds of the privileges of litigation dispute resolution:

1. The binding force of a judge's decision is binding, meaning that the decision has permanent legal force from when it is pronounced and cannot be annulled or ignored. This means the decision is the first and last level in the legal process, and no further legal remedies can be taken against it. The judge's decision is final and binding when pronounced in a plenary session open to the public. This means the decision has permanent legal force and cannot be annulled or ignored. In addition, the parties are bound by the judge's decision, both positively and negatively. Binding in a positive sense, namely what has been decided by the judge, must be considered true (res judicata pro veritate habetur). Binding in a negative sense, namely that the judge may not choose again a case that has been decided before between the same parties and on the same subject matter (ne bis in idem).
2. Evidentiary Power means that the judge's decision in open court and set out in written form is considered an authenticated deed. This provides strong legal certainty because the decision becomes valid evidence for the parties involved in the case. In the proving context, the judge's decision becomes one of the pieces of evidence that can be used in the next legal process, such as an appeal or cassation. In this regard, it shows that the judge's decision not only serves to resolve the dispute at that time but also has legal implications in the future.
3. Executorial Power, the executive power of a civil court decision, means that the decision can be implemented by force with the help of state instruments. This implies that the judgment not only stipulates the rights and obligations of the parties but also has the power to be enforced if one of the parties does not comply. Executive power also aims to implement the decision in reality so that court decisions not only mean theory but can also be implemented in practice. Executing a judge's decision involves the

[29] Viony Laurel Valentine et al., "Penafsiran Keadaan Tertentu Dalam Tindak Pidana Korupsi: Perspektif Teori Kepastian Hukum," *JURNAL ANTI KORUPSI* 13, no. 1 (June 13, 2023): 14, https://doi.org/10.19184/jak.v13i1.40004.

losing party fulfilling the performance stated in the court's decision. The winning party can apply for execution to the court that decided the case to carry out the decision by force. Therefore, the effectiveness of dispute resolution through litigation is often considered stronger because it is supported by a decision with permanent legal force (inkracht) and can be executed by force by the state. This provides high legal certainty for the parties to the dispute. However, the litigation route also has disadvantages, such as a long process, high costs, and the potential for greater tension between the disputing parties. In contrast, non-litigation channels such as mediation or arbitration offer a faster, more flexible process and lower costs. Still, the outcome is not always legally binding and depends on the agreement of both parties. As such, the effectiveness of the litigation route is better suited for cases where legal certainty and enforcement of decisions are critical, while the non-litigation route is more effective for more amicable and win-win solutions.[30]

CONCLUSION

The legal protection of minority shareholders in the face of the decision to consolidate the company in the GMS is an important aspect of maintaining a balance between the power of majority shareholders and the rights of minority groups. Law No. 40/2007 on Limited Liability Companies (UUPT) has provided a framework of protection through preventive and repressive approaches, including the right to information, the right to voice opinions in the GMS, the right to sell shares, and the right to challenge adverse decisions.

Nevertheless, such legal protection has not been fully effective, partly due to the vagueness of the norms in Article 62, paragraph (2) of the Company Law. The phrase "shall endeavour" to purchase shares by third parties is not accompanied by clear limitations, mechanisms, or sanctions, leaving room for multiple interpretations and covert violations of minority shareholders' rights. This vagueness weakens the binding force of legal norms and creates legal and economic uncertainty for investors. The impact of this norm vagueness not only creates an imbalance of power in the GMS forum but also reduces the confidence of minority investors in protecting their rights. In the long term, this can increase investment risk and reduce the efficiency and competitiveness of the company.

Therefore, legal reconstruction of vague norms is required, including the affirmation of the meaning of “mandatory” and the inclusion of strict mechanisms and sanctions in the implementing regulations. This will strengthen the principles

[30] Rosita Rosita, “ALTERNATIF DALAM PENYELESAIAN SENGKETA (LITIGASI DAN NON LITIGASI),” *Al-Bayyinah* 1, no. 2 (December 1, 2017): 99–113, https://doi.org/10.35673/al-bayyinah.v1i2.20.

of legal certainty and legal effectiveness, and ensure that the protection of minority shareholders is not only formal but also substantive.

The mechanism of dispute resolution, both through non-litigation channels (such as mediation or arbitration) and litigation, must also be encouraged as a means of fair and balanced recovery. By consistently clarifying norms and enforcing protections, corporate justice and the sustainability of a healthy business climate can be better ensured in Indonesia.

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