

NORMATIVE REVIEW OF LEGAL PROTECTION FOR MINORITY SHAREHOLDERS IN LIMITED LIABILITY COMPANIES IN INDONESIA (NORMATIVE LEGAL ANALYSIS)

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ABSTRACT

This study provides a normative legal analysis of the protection of minority shareholders in limited liability companies (Perseroan Terbatas/PT) in Indonesia. Minority shareholders often face unequal treatment due to the dominance of majority shareholders in decision-making, leading to potential abuse and neglect of their rights. Using a doctrinal approach, the research examines the legal framework under Law No. 40 of 2007 on Limited Liability Companies and related regulations, focusing on mechanisms such as derivative suits, company dissolution rights, accountability of directors and commissioners, and access to information. The analysis reveals that while Indonesia's legal system formally recognizes these protections, their practical enforcement is hindered by high ownership thresholds, judicial inconsistency, lengthy litigation processes, and limited shareholder awareness. Comparative perspectives from jurisdictions such as the United States, United Kingdom, Singapore, and Malaysia highlight Indonesia's need to strengthen its enforcement mechanisms and corporate governance practices. The study concludes that lowering procedural barriers, enhancing judicial consistency, promoting alternative dispute resolution, and improving legal literacy are crucial to ensuring effective protection of minority shareholders. Strengthening these protections not only guarantees fairness for shareholders but also contributes to investor confidence and sustainable corporate development in Indonesia.

Keywords: Minority Shareholders, Legal Protection, Limited Liability Company, Corporate Governance, Indonesia

INTRODUCTION

The development of limited liability companies (Perseroan Terbatas/PT) in Indonesia has played a central role in supporting the growth of the national economy, as this business form being the most widely used offers clear advantages such as legal personality, limited liability for shareholders, and the ability to raise capital through share ownership; however, within this structure, the relationship between majority and minority shareholders often creates potential for conflict, since majority shareholders generally hold a dominant position in determining company policies, which may lead to the neglect of the rights and interests of minority shareholders, particularly in areas such as dividend distribution and corporate restructuring. The legal framework governing PTs in Indonesia, especially Law Number 40 of

2007, reinforces this by limiting shareholder liability only to the extent of their shareholding, but such provisions can sometimes open opportunities for misuse of company assets for personal gain, against which legal actions may be pursued by the company or authorized representatives through established procedures (Ardi, 2018). To mitigate potential abuses, the law also provides protective mechanisms for minority shareholders, especially during restructuring, where they often face risks of losing dividend rights and decision-making influence (Wiatmaja et al., 2024). Nevertheless, minority shareholders continue to experience challenges such as dilution of shares and reduced power in company decisions due to the strong dominance of majority shareholders, with these problems becoming more pronounced in restructuring processes; therefore, suggested solutions include enhancing transparency and revising shareholder agreements to ensure better protection of minority interests (Wiatmaja et al., 2024). Despite these issues, PTs remain a preferred business model in Indonesia because of their flexibility in ownership changes and their important role in facilitating economic activities across diverse sectors, which explains their popularity and underscores the need for a balanced approach to protecting shareholder rights in order to sustain fair and equitable business practices (Susilo, 2022).

Minority shareholders, by definition, are those whose ownership does not provide sufficient power to influence the decision-making process of the General Meeting of Shareholders (RUPS), making them vulnerable to practices such as shareholder oppression, unfair transactions, or decisions that disproportionately benefit majority shareholders at their expense; this condition underscores the importance of effective legal protection to ensure that minority shareholders' rights are not only formally recognized but also enforceable in practice, since despite their limited influence in decision-making, minority shareholders play a vital role in maintaining corporate governance and ethical standards. Legal frameworks and mechanisms have been established to protect minority shareholders and balance corporate power dynamics, aiming to ensure ethical conduct and financial integrity (Chander, 2003), while legal adjustments are deemed necessary to restrict the dominance of majority shareholders and safeguard the legitimate rights and interests of minority shareholders (Modigliani & Perotti, 1997), with strengthened normative frameworks and tools such as dissolution for grave cause considered essential to reinforce these protections (Paucar-Mejía

et al., 2024). Nonetheless, minority shareholders continue to face challenges in corporate management and decision-making participation due to the principle that power rests with majority shareholders (Modigliani & Perotti, 1997), and therefore effective protection must extend beyond legal measures to encompass organizational culture that fosters transparency, collaboration, and respect for all stakeholders' rights (Paucar-Mejía et al., 2024), with continuous evaluation of the adequacy and effectiveness of protection mechanisms remaining crucial to ensuring their rights are upheld (O'Neal, 1987). Moreover, minority shareholders serve as advocates for ethical conduct, transparency, and accountability within companies, thus contributing to the strengthening of corporate democracy (Chander, 2003), and their protection represents not only a legal requirement but also an ethical principle of corporate governance, fundamental to sustaining trust, investment, and market value (Chander, 2003).

The Indonesian legal framework, particularly Law No. 40 of 2007 on Limited Liability Companies, provides several provisions aimed at protecting minority shareholders, including the right to file derivative suits, request company dissolution under certain conditions, and demand accountability from directors and commissioners; however, the effectiveness of these protections is hindered by weak enforcement, inconsistent judicial interpretations, and limited awareness among minority shareholders regarding their rights, thereby creating a gap between the legal framework and its practical application. Derivative suits, for example, are designed to enable minority shareholders to seek redress when the company suffers harm due to the actions of its directors or majority shareholders, yet their implementation remains constrained by the influence of majority shareholders and systemic inadequacies in delivering justice (Rosida, 2023), whereas comparative perspectives from Australian Corporation Law demonstrate more robust protections and provide a potential model for reforming Indonesian regulations to strengthen shareholder safeguards (Rosida, 2023). Similarly, while minority shareholders have the legal right to request company dissolution under certain conditions, the dominance of majority shareholders often complicates this process (Novanda et al., 2025), and although mechanisms exist to hold directors and commissioners accountable, these are frequently undermined by weak enforcement and opportunistic exploitation of regulatory loopholes (Al Aqib et al., 2023). Compounding these challenges is

the limited awareness among minority shareholders about their legal rights and available mechanisms (Al Aqib et al., 2023), alongside the lack of consistent enforcement and judicial interpretation that further weakens protections, as evident in cases where majority shareholders bypass minority interests in decision-making (Widyaningrum & Irianto, 2021).

Given these issues, a normative legal analysis is essential to assess whether the existing legal framework sufficiently guarantees fair treatment and equitable protection for minority shareholders, and by examining statutory regulations, doctrinal principles, and relevant jurisprudence, this study seeks to identify the strengths and weaknesses of the current legal protection system in Indonesia, with the objective of providing a comprehensive understanding of how minority shareholder rights are safeguarded within Indonesian company law while also offering recommendations for strengthening regulatory and judicial mechanisms, which is crucial not only for protecting individual shareholders but also for enhancing corporate governance, investor confidence, and the overall sustainability of Indonesia's business environment.

LITERATURE REVIEW

1. Concept of Limited Liability Companies (PT)

A limited liability company (Perseroan Terbatas/PT) is a legal entity that separates personal and company assets and limits shareholder liability to the value of their shares, designed to facilitate capital mobilization and ensure company continuity, with its establishment and operation governed by Law Number 40 of 2007 concerning Limited Liability Companies, which regulates the General Meeting of Shareholders, directors, and commissioners (ANDRIYANI, n.d.; Dewi, 2019; Kurniawan, 2014). PTs are based on agreements with authorized capital divided into shares, allowing flexibility in investment (Arini, 2021; Dewi, 2019), while shareholder liability may be lifted if asset commingling occurs (Ardi, 2018; Kurniawan, 2014). Management lies with directors who must act in good faith, otherwise facing personal liability for losses (ANDRIYANI, n.d.). PT operations are strictly regulated to align with legal and ethical standards, requiring compliance from directors and shareholders (Ardi, 2018), though exceptions exist, such as in State-Owned Enterprises (BUMN Persero), sparking debates on fairness and legal reforms (Arini, 2021).

2. Minority Shareholders in Corporate Governance

Minority shareholders, despite their limited influence in corporate decision-making, play a crucial role in upholding corporate governance principles such as fairness, accountability, and transparency, making effective legal frameworks and governance mechanisms essential to protect them from potential abuses by majority shareholders. Legal provisions safeguard minority rights by ensuring their participation in governance and protection against exploitation (Chander, 2003), while in jurisdictions such as Bosnia-Herzegovina and Croatia, company laws and capital market regulations are central to their protection, though effectiveness varies (Mikelic, 2005). Nonetheless, challenges such as shareholder oppression and expropriation necessitate robust legal and regulatory frameworks (Chander, 2003), and the diversity of minority shareholders, including institutional and retail investors, introduces distinct challenges and opportunities requiring nuanced approaches (Varottil, 2020). Beyond legal measures, cultivating a corporate culture that prioritizes transparency, collaboration, and respect for all shareholders is vital (Paucar-Mejía et al., 2024), with minority shareholders serving as advocates for ethical conduct and corporate democracy, highlighting the importance of supportive organizational environments (Chander, 2003).

3. Legal Protection for Minority Shareholders in Indonesia

The Indonesian legal framework, particularly Law No. 40 of 2007 on Limited Liability Companies, provides several mechanisms for the protection of minority shareholders, including the right to file derivative suits, request company dissolution, demand accountability from directors, and access corporate information; however, the effectiveness of these protections is often weakened by weak enforcement, limited shareholder knowledge, and inconsistent judicial interpretation. Minority shareholders may file derivative lawsuits against directors for unlawful acts or negligence, serving as a deterrent against misconduct and promoting good corporate governance (Rosida, 2023; Widjaja, 2022), though their effectiveness depends on the court's thoroughness and the requirement that shareholders hold at least 10% of voting shares to initiate such actions (Widjaja, 2022).

Shareholders also have the right to request company dissolution in cases of unlawful or harmful activities (Novanda et al., 2025), yet the process is often complex and influenced by majority shareholder interests, limiting its protective value for minorities (Rosida, 2023). Furthermore, directors and commissioners can be held personally liable for losses caused by negligence or abuse of authority (Subagiyo, 2015), while shareholders' entitlement to access corporate documents remains essential for monitoring company activities and protecting their interests (Setiawati, 2024).

4. Research Gap

While existing studies acknowledge the presence of legal protections for minority shareholders in Indonesia, limited research has systematically evaluated their effectiveness from a normative legal perspective. Most analyses either focus on corporate governance broadly or on practical enforcement challenges without thoroughly examining doctrinal consistency. This study addresses that gap by analyzing the adequacy of the current legal framework and its alignment with principles of fairness and shareholder equality.

RESEARCH METHODS

1. Research Approach

This study employs a normative juridical approach, also referred to as doctrinal legal research. The focus is on examining laws, regulations, doctrines, and legal principles governing the protection of minority shareholders in limited liability companies in Indonesia. Unlike empirical research, which relies on field data, normative legal research emphasizes the analysis of written norms and their interpretation to assess their adequacy and coherence within the legal system.

2. Research Specifications

The research is descriptive-analytical in nature. It aims not only to describe the current legal framework regulating minority shareholder protection but also to analyze its strengths and weaknesses in safeguarding shareholders' rights. By doing so, the study provides a

comprehensive understanding of how Indonesian corporate law addresses the issue and identifies areas for improvement.

3. Sources of Legal Materials

The study relies on three categories of legal materials, namely primary, secondary, and tertiary sources. Primary legal materials include Law No. 40 of 2007 on Limited Liability Companies, the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) as it relates to contractual principles, relevant regulations from the Financial Services Authority (OJK) and Capital Market Law for publicly listed companies, as well as court decisions and jurisprudence concerning minority shareholder disputes. Secondary legal materials consist of legal textbooks, journal articles, and scholarly opinions on corporate law and minority shareholder protection, along with comparative studies from other jurisdictions such as the U.S., U.K., and ASEAN countries. Meanwhile, tertiary legal materials encompass legal dictionaries, encyclopedias, and online databases that serve to clarify legal terminology and support the interpretation of laws.

4. Legal Material Collection Technique

Legal materials are collected using literature study (studi kepustakaan). This involves reviewing statutory regulations, official commentaries, and relevant academic literature. Legal documents are sourced from official publications, government websites, academic journals, and legal databases such as HeinOnline, JSTOR, and Indonesian legal portals.

5. Analysis Technique

The analysis technique applied is qualitative normative analysis, where the collected legal materials are systematically categorized and examined through several steps: a statutory approach by interpreting relevant provisions in Law No. 40 of 2007 and related regulations, a conceptual approach by applying legal doctrines such as shareholder rights, fiduciary duties, and principles of good corporate governance, a comparative approach by contrasting Indonesian regulations with international standards and best practices, and a case approach by analyzing judicial decisions to understand how courts have interpreted and

applied minority shareholder protection laws; through these methods, the study evaluates whether the current legal framework adequately protects minority shareholders and identifies potential reforms to strengthen such protections.

RESULT AND DISCUSSION

1. Legal Framework for Minority Shareholder Protection in Indonesia

The Indonesian legal system recognizes the importance of protecting minority shareholders to prevent domination by controlling shareholders, with Law No. 40 of 2007 on Limited Liability Companies serving as the primary legal instrument by providing several mechanisms. Derivative actions empower shareholders to initiate lawsuits on behalf of the company against directors for breaches of duty, particularly when directors themselves are the wrongdoers (Salim & Kaur, 2012), and this mechanism is vital in jurisdictions where directors have fiduciary duties, enabling shareholders to address misconduct and violations of fiduciary principles, though its effectiveness is often hindered by legal ambiguities and procedural challenges such as unclear criteria for negligence (Masyhuri et al., 2023). Furthermore, minority shareholders may request the dissolution of a company through the courts if it engages in unlawful or harmful activities, thereby offering legal recourse to protect their interests (Ali et al., 2022).

In addition, the right to accountability ensures that directors and commissioners can be held personally liable for losses arising from misconduct, negligence, or abuse of authority, strengthening corporate governance and responsibility (Ramsay, 1992). Shareholders also enjoy the right to information, including inspecting company documents and requesting explanations during the General Meeting of Shareholders, which promotes transparency and informed decision-making (Ali et al., 2022). Another safeguard is the pre-emptive right, which grants shareholders priority to purchase new shares, preventing ownership dilution and protecting their proportional stake in the company (Ali et al., 2022). These provisions demonstrate that Indonesian law formally provides avenues for minority shareholder protection, though their practical effectiveness continues to face challenges in enforcement and application.

2. Challenges in Implementing Minority Shareholder Protection

The challenges faced by minority shareholders in initiating derivative suits in Indonesia are multifaceted, involving high ownership thresholds, judicial inconsistency, prolonged litigation, limited legal literacy, and weak corporate governance. The requirement of at least 10% share ownership to file a derivative suit, although intended to balance economic conditions and shareholder interests, often excludes small shareholders and limits their access to legal remedies, enabling potential collusion between management and large shareholders (Grechenig & Sekyra, 2007; Haar & Grechenig, 2013; Widjaja, 2022). This situation is further compounded by inconsistent judicial decisions, particularly in cases concerning minority rights such as company dissolution or derivative suits, which undermines legal certainty and discourages shareholders from pursuing remedies (Boyle, 2002). Additionally, litigation in Indonesian courts is generally time-consuming and costly, making it an unattractive option for minority shareholders with limited financial resources (Widjaja, 2022). Compounding these issues, many minority shareholders lack sufficient awareness and legal literacy, preventing them from effectively exercising their rights and leaving them vulnerable to exploitation by majority shareholders (Boyle, 2002). Moreover, although corporate governance principles like fairness, accountability, and transparency are formally recognized, their implementation remains uneven in practice, with decision-making often dominated by controlling shareholders, resulting in minimal participation from minorities (Widjaja, 2022).

3. Comparative Analysis with Other Jurisdictions

Comparing Indonesia with other jurisdictions highlights important differences in the protection of minority shareholders. In the United States, shareholders can initiate derivative suits without strict ownership thresholds, making legal remedies more accessible, while courts impose strong fiduciary duties on directors to ensure equal protection for all shareholders and enhance corporate governance (Gindis & Gibbs-Kneller, 2019). The United Kingdom provides remedies such as the “unfair prejudice” provision under the Companies Act 2006, which enables shareholders to challenge decisions detrimental to minority interests, although the high evidentiary burden and cost allocation to the losing party often deter

enforcement (Gindis & Gibbs-Kneller, 2019). Meanwhile, Singapore and Malaysia adopt modern corporate governance frameworks aligned with international best practices, offering clearer mechanisms for minority protection and faster dispute resolution, with Singapore standing out for its effective derivative action procedures that are considered among the most advanced in the Commonwealth (Ningsih & Adam, 2023; Puchniak et al., 2012).

Indonesia's regulatory framework for shareholder protection, though adequate on paper, lags behind these jurisdictions in terms of practical enforcement. Rooted in its Civil Law heritage, Indonesia's system contrasts with the Common Law traditions of countries like the US and Singapore, particularly regarding shareholder involvement in processes such as delisting (Ningsih & Adam, 2023). Weak enforcement, limited access to remedies, and less transparent corporate governance practices hinder minority shareholders from fully exercising their rights. To improve, Indonesia needs clearer guidelines for shareholder approval in delisting decisions, more transparent criteria for forced delisting, and stronger judicial enforcement mechanisms, thereby enhancing legal certainty and ensuring more effective protection for minority shareholders (Ningsih & Adam, 2023).

4. Strengths of the Current Framework

The protection of minority shareholders in Indonesia is reflected in the existence of formal mechanisms such as derivative suits and dissolution rights, alongside the recognition of pre-emptive rights and access to information, all of which demonstrate an alignment with the principles of good corporate governance at the normative level.

5. Weaknesses of the Current Framework

Minority shareholders in Indonesia face several obstacles in exercising their rights, including the high ownership threshold required for legal action, inconsistent judicial interpretation of shareholder protection laws, lengthy and costly litigation processes, as well as limited shareholder awareness and weak enforcement mechanisms.

6. Implications for Legal Reform

To strengthen minority shareholder protection in Indonesia, several reforms are necessary, including lowering the 10% ownership threshold for derivative suits to a more accessible level, enhancing judicial consistency through clear guidelines or the establishment of special chambers for corporate disputes, promoting alternative dispute resolution (ADR) such as arbitration or mediation as faster and less costly mechanisms, improving corporate governance enforcement by strengthening the role of the Financial Services Authority (OJK) in monitoring compliance and sanctioning violations, and increasing legal literacy through shareholder education programs to raise awareness about rights and remedies under company law.

CONCLUSION AND RECOMMENDATIONS

The normative legal analysis demonstrates that Indonesia has established a regulatory framework for minority shareholder protection through Law No. 40 of 2007 and related regulations. Key mechanisms such as derivative suits, dissolution rights, pre-emptive rights, and accountability provisions indicate a formal recognition of the importance of safeguarding minority interests. However, in practice, minority shareholders continue to face substantial challenges, including high ownership thresholds, inconsistent judicial decisions, lengthy and costly litigation, weak governance practices, and limited legal awareness, all of which hinder the effectiveness of these protections.

Comparative analysis with more developed jurisdictions shows that while Indonesia's framework is conceptually aligned with international standards, significant improvements are needed in terms of enforcement and accessibility. Reforms should prioritize lowering thresholds for legal action, enhancing judicial consistency, promoting alternative dispute resolution mechanisms, strengthening the supervisory role of the Financial Services Authority (OJK), and increasing shareholder legal literacy. Implementing these reforms would help create a more balanced corporate environment that upholds fairness, transparency, and accountability, thereby protecting minority shareholders from oppression, fostering investor confidence, improving corporate governance, and ultimately contributing to sustainable economic growth.

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