

**LEGAL PROTECTION OF HOLDERS  
MINORITY SHARES REVIEWED FROM ASPECT  
EASE OF DOING BUSINESS**

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**ABSTRACT**

Generally, minority shareholders do not have great access to immediate information about the company in which they invest their capital. The purpose of this research is to determine the legal regulations for legal protection for minority investors according to Law Number 40 of 2007 concerning Limited Liability Companies and Ease of Doing Business (EODB), forms of investment crime involving minority shareholders and legal protection for minority shareholders if their rights are violated in a civil manner. The type and research approach used is normative juridical legal research with a case study approach and descriptive research nature, which uses Islamic legal data and secondary data as well as supporting interview data to strengthen the researcher's case study. Then, the data is processed using qualitative analysis. Based on the results of the research, first, the legal regulation of legal protection for minority investors according to Law Number 40 of 2007 concerning Limited Liability Companies regulates the authority of shareholders in filing a lawsuit against the company if they are harmed. There are at least 5 (five) authorities in demanding the rights of minority shareholders. that can be done. Second, the legal factors that minority shareholders do not fulfill are that many minority shareholders do not know about their rights in a Limited Liability Company. there is consumer ignorance and asymmetric information, minority shareholders do not want to file lawsuits and there is lack of clarity in the field and orientation of implementing the protection of minority shareholder rights. Third, legal protection for minority shareholders if their rights are violated in a civil manner, namely that minority shareholders are given the opportunity to file 2 (two) types of lawsuits, namely a direct lawsuit and a derivative lawsuit.

**Keywords: Ease of Doing Business, Shareholders, Legal Protection.**

**A. Introduction**

In carrying out its development, Indonesia requires large capital and investment. The capital and investment needed for this development cannot be met by the government and the national private sector alone. Therefore, it is also necessary to encourage maximum efforts to attract investment in Indonesia from foreigners or abroad. Investment activities in Indonesia are regulated in Law Number 25 of 2007 concerning Capital Investment (UUPM). The presence of the UUPM is expected to

provide legal protection and certainty for domestic and foreign investors so that they are willing to invest their capital in Indonesia. In the UUPM, one of the regulations is regarding the resolution of investment disputes, but apart from this UUPM, provisions governing dispute resolution are also contained in bilateral investment agreements made by Indonesia with investment countries.<sup>1</sup>

Investors in making their investments face different conveniences and obstacles when expanding their business to various countries. The difference in ease of making investments has led to the emergence of the ease of doing business index. The Ease of Doing Business (EoDB) Index is a ranking of the ease of doing business in a country based on several indicators and financed by the World Bank.<sup>2</sup>

Based on the Doing Business 2019 report, the ranking for ease of doing business in Indonesia is in 73rd position (seventy-third). Indonesia's EoDB ranking is still far from the target of being ranked in the top 40 (forty) in the world. There are at least 11 (eleven) indicators to measure ease of doing business or what is also known as EoDB. The eleven indicators include starting a business, permits related to building construction (dealing with construction permit), electricity connection (getting electricity), property registration (registering property), access to credit (getting credit), protection for minority investors (protecting minority investors), paying taxes, trading across borders, labor market regulation, enforcing contracts and resolving insolvency.

Legal protection for minority investors has so far been regulated in Law Number 40 of 2007 concerning Limited Liability Companies which basically provides protection for the rights of minority shareholders, as in Article 61, Article 62, Article 138 and Article 146 of Law Number 40 of 2007 concerning Limited Liability Companies, and there are other provisions aimed at protecting the interests

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<sup>1</sup> Salim HS dan Budi Sutrisno. 2018. *Hukum Investasi di Indonesia*. Jakarta: PT Raja Grafindo Persada, halaman 1

<sup>2</sup> Jamal Ibrahim Haidar. 2012. *The Impact of Business Regulatory Reforms on Economic Growth. Journals of The Japanese and International Economies*, Vol. 26, No. 3, halaman 285

of minority shareholders from majority shareholders or the company.

One of the problems with the weak protection of minority investors so far is the fact that in the management of companies there have been disputes (civil cases) involving minority shareholders and majority shareholders. In this case, the plaintiff is a minority shareholder, and as the defendant the majority shareholder is the company that owns the majority shares. Minority shareholders mostly experience objections to actions in the sale of shares and the lack of disclosure of information, violations of the law committed by management and majority shareholders, minority shareholders feel disadvantaged by procedural errors, minority shareholders consider the management and directors to be unlawful in their actions. managing the company without going through good and correct corporate governance (good corporate governance).

## **B. Research Methods**

A research cannot be said to be research if it does not have a research method.<sup>3</sup> Research methods are one of the factors of a problem that will be discussed.<sup>4</sup> The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

## **C. Analysis And Discussion**

### **1. Legal Arrangements for Legal Protection of Minority Investors According to Law Number 40 of 2007 concerning Limited Liability Companies and Ease of Doing Business (EODB)**

Investors consist of legal subjects in the form of individuals/humans (natural persons) and legal entities (legal persons). Previously, investments were made by individuals or groups of individuals who were not related to companies or capital associations to gain quick profits. Currently, foreign investment is mainly carried out

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<sup>3</sup> Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

<sup>4</sup> Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

by and dominated by multinational companies (MNC/MNE). MNC is defined as "incorporated or unincorporated enterprises consisting of parent enterprises and their foreign affiliates" namely companies with legal entities or non-legal entities consisting of parent companies and their foreign affiliates.<sup>5</sup>

In general, the legal regulations regarding the legal protection of minority shareholders (minority investors) in the UUPM are not specifically regulated, only that the UUPM states that their interests are not ignored by anyone including majority shareholders. However, reporting and information disclosure can protect investors as minority shareholders from violations in the capital market.<sup>6</sup>

## **2. Legal Factors of Non-fulfillment by Minority Shareholders. Minority Shareholders**

Several cases between majority and minority shareholders have occurred in Indonesia, one of which is a case of dispute between majority shareholders and minority shareholders, which also occurred between PT Blue Bird Taxi and two minority shareholders, namely Lani Wibowo and Elliana Wibowo, they sued the boss. Blue Bird named Purnomo Prawiro Mangkusubroto, Kresna Pariawan Djokosoetono and other defendants from Blue Bird, numbering 19 people. This case began when Lani and Elliana assessed that the late Chandra Suharto and his heirs had committed unlawful acts by ignoring good corporate governance by not protecting the interests of shareholders. Both of them are also not transparent in managing the company. They actually built many other companies such as PT Pusaka Citra Djoekosoetopo and PT Blue Bird by leveraging Blue Bird Taxi's reputation and resources. Purnomo and Chandra have founded and hold concurrent positions in Blue Bird's management. Lani and Elliana accused Blue Bird's brand, logo, buildings and other resources of having imitated Blue Bird Taxi.

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<sup>5</sup> Mas Rahmah. 2020. *Hukum Investasi*. Jakarta: Kencana., halaman 33-34

<sup>6</sup> Lintang Agustina & dkk. *Perlindungan Pemegang Saham Minoritas Dalam Terjadi Pengambilalihan Saham Pada Anak Perusahaan (Kasus Pt. Sumalindo Lestari Jaya, Tbk)*. *Diponegoro Law Journal*, Vol. 6, No. 2, 2017, halaman 3.

This action is considered to have misled the public as if Blue Bird is the same as Blue Bird Taxi, which was previously established and has a good reputation in the community. Apart from that, Purnomo and Chandra were also accused of unilaterally transferring consumers previously managed by Blue Bird Taxi to Blue Bird, giving rise to unhealthy business competition and harming shareholders.

This unilateral action, which is considered to have contributed to the peace of Blue Bird Taxi, has made Blue Bird a very large group company with the name Blue Bird Group. However, this did not contribute to an increase in the value of Blue Bird Taxi shares. Purnomo and other shareholders have committed unlawful acts and caused material and immaterial losses to Lani and Elliana as Blue Bird Taxi Minority shareholders. Material losses amounted to IDR 4.1 trillion and immaterial losses amounted to IDR 300 billion. However, in the trial held on Tuesday 1 July 2014, Lani Wibowo and Ellina Wibowo's lawsuit was not granted by the Panel of Judges. The panel of judges at the South Jakarta District Court considered Lani and Ellina's lawsuit to be formally flawed and unacceptable. Chairman of the Panel of Judges, Suprpto, assessed that Lani and Ellina, as owners of 20% of Blue Bird Taxi's shares, could not sue the Company's directors in their personal names.<sup>7</sup>

### **3. Legal protection for minority shareholders if their rights are violated in a civil manner**

Minority shareholders are given the opportunity to file a civil lawsuit when they experience losses due to violations of capital market regulations, including in the case of PT Pusaka Citra Djoekosoetopo and PT Blue Bird regarding non-registration of minority shareholders and notification of matters that develop during the course of the business. Directors who have been legally and convincingly proven to have deliberately committed acts that caused losses to the company, the members of the board of directors are deemed to have acted in bad faith in carrying out their duties so they can be held accountable. Minority shareholders can file 2 (two) types of lawsuits,

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namely direct lawsuits and derivative lawsuits. Minority shareholders who suffer losses due to errors or negligence of members of the board of directors in carrying out their duties in managing a Limited Liability Company, can file a lawsuit in the name of the Company (derivative lawsuit) against members of the board of directors as regulated in Article 97 paragraph (6) of the Limited Liability Company Law if they have the number of shares reaching 1 /10 (one tenth). If it does not reach 1/10 (one tenth) you can file a lawsuit against the company (direct lawsuit) without any requirement for a minimum number of share ownership that must be met.

The civil law enforcement authority granted by the UUPM as an alternative form for minority shareholders to obtain compensation is carried out independently without requiring procedures from certain capital market authorities. The logical consequence is that every investor, including minority shareholders who take civil action, must prepare documents and other evidence related to the occurrence of losses due to insider trading practices. Minority shareholders are given the freedom to appoint legal representatives or sue themselves in court.

Regarding the procedures for minority shareholders in filing a lawsuit, it is left to the statutory regulations regarding filing a lawsuit in court and the legal costs are borne by each plaintiff. Furthermore, filing a civil lawsuit can involve one of the capital market authorities, namely the OJK. OJK is an independent institution which is the result of a process of restructuring the organizational structure of institutions that carry out regulatory and supervisory functions in the financial services industry which includes the banking, capital markets and non-bank financial services industry. This arrangement is carried out within an integrated and comprehensive regulatory and supervisory framework for the financial services sector.

Filing civil lawsuits is regulated in Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter UUOJK) as a form of consumer protection in the financial services sector. This protection is carried out by carrying out legal defense, including by filing a lawsuit in the event of a violation of capital market regulations

which results in losses for consumers (investors) (Article 30 paragraph (1) letter b to 2 UUOJK). As an institution that has regulatory authority in the entire financial services industry, OJK has a very strategic objective in ensuring transparency, stability and being able to provide protection of the interests of consumers and the public in the financial services industry.<sup>8</sup>

#### **D. Conclusion**

Legal regulations regarding legal protection for minority investors according to Law Number 40 of 2007 concerning Limited Liability Companies regulates the authority of shareholders to file a lawsuit against the company if they are harmed. There are at least 5 (five) authorities in claiming the rights of minority shareholders that can be exercised. Meanwhile, if we refer to the Ease of Doing Business (EODB) policy, this policy is an indicator of protecting investors, measuring how far the interests of minority investors receive legal protection from abuse of company management authority (misuse of corporate assets) related to transactions with related parties. special (related party transactions).

Legal factors for non-fulfillment of minority shareholders, namely, firstly, many minority shareholders do not know about their rights in a Limited Liability Company. Second, there is consumer ignorance (the inability to receive proportional and accurate information) and asymmetric information (the unequal reception of information among minority shareholders). Third, minorities do not want to file lawsuits due to the losses they suffer for various reasons, namely the burden of large costs, the legal process is not simple, complicated, expensive and long. Fourth, there is lack of clarity in the field and orientation of implementing the protection of minority shareholder rights in the field. Both minority shareholders and majority shareholders.

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<sup>8</sup> Riezdiani Restu Widyoningru. *Perlindungan Hukum Pemegang Saham Minoritas Terhadap Implikasi Praktik Insider Trading Dalam Perdagangan Saham Di Pasar Modal*. *Privat Law*, Vol. V, No 2, 2017, halaman 106

lawsuit when they experience losses due to violations of capital market regulations, including in the cases of PT Pusaka Citra Djoekosoetopo and PT Blue Bird regarding non-registration of holders minority shares and notification of matters that develop during the course of the business. Minority shareholders can file 2 (two) types of lawsuits, namely direct lawsuits and derivative lawsuits. A direct lawsuit is a lawsuit filed by a minority shareholder against the company. Meanwhile, a derivative lawsuit is a lawsuit on behalf of the company filed by a minority shareholder against a member of the board of directors who committed an error or negligence that resulted in losses for the company. Regulations regarding direct lawsuits are regulated in Article 61 paragraph (1) of the Limited Liability Company Law.



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