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MINORITY SHAREHOLDERS LEGAL COVER ON CLOSED COMPANY MERGERS

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ABSTRACT

Minority shareholders is one of the stakeholders along with other stakeholders and minority shareholders are also the parties reply carries the coffers for the company. This is what interests should be protected by law. The methods used in this study is a research method, a normative legal method by means of data collection based on the study of librarianship (library search) that is by way of secondary data in the form of researching materials such as primary law scientific books, legislation, and the data that is retrieved by accessing the internet related to this research. The results from this research that the appraisal of the implementation of rights is one's "privileges" given by the law on merger transactions. Another privileges is the application of the principle of "super majority". Appraisal rights necessary in order to protect the minority shareholder,s given when they don't agree with the merger but his voice is insufficient to inhibit implementation of the merger, then the merger still held, and shareholders the minority's "forced" to accept the merger.

Keywords: Legal Protection, A Minority Stake, The Merger

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INTRODUCTION

Merger is a form of corporate restructuring. Dalam Article 1 number 9 of Law NO. 40 of 2007 concerning Limited Liability Companies clearly states that:

"Incorporation is a legal act committed by one or more Companies to merge with other existing Companies that result in the assets and assets of the Company that merged themselves switched due to law to the Company that received the merger and then the status of the Company's incorporated legal entity ended due to law."

Article 126 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies mentioned: (1) Legal acts of Incorporation, Melting, Expropriation, or Separation shall take into account the interests of:

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a. The Company, minority shareholders, employees of the Company;
b. Creditors and other business partners of the Company; and
c. Society and competition are healthy in doing business.

Minority shareholders are one of the *stake holders* in addition to other *stake-holders*, namely majority shareholders, directors, commissioners, employees and creditors. Moreover, together with the majority shareholders, minority shareholders are also parties who bring coffers to the company (*bagholders*). Therefore, it should not be, the minority shareholders to some extent should be protected by law.

Applying legal protections to minority shareholders is not easy. Minority shareholders who do not approve the implementation of mergers always have difficulty exercising their rights, especially in order to hold the company accountable. Sometimes the merger action that is considered detrimental, by the board of directors / commissioners or majority shareholders is actually considered as the most appropriate action for the company. The General Meeting of Shareholders of each company, both the taking over and the foreclosed company does not always reach a unanimous vote in deciding on a merger plan. To protect minority shareholders, mergers cannot be decided unilaterally by majority shareholders alone. Protection of minority shareholders is necessary given that shareholders cannot be forced to accept a fundamental change. It's different when they buy shares the first time. Disapproval may arise in connection with the foreclosed share price. If the decision on the merger is left to the majority shareholder, it could be that the price of the shares taken over or the valuation of the assets taken over harms minority shareholders.[1]

The protection of minority shareholders is always associated with aspects of fairness or balance, at least as stated in the principles of good management of the company developed by the OECD (*Organisation for Economic Cooperation and Development*). The principle affirms that the company's management framework must be able to ensure *equitable treatment* with shareholders, including minority shareholders.

From the background that has been outlined, the author wants to conduct research related to the legal protection of minority shareholders with the title: "Protection of Hukum Pemegang Saham Minoritas Pada Joining Tertutup Company".

DISCUSSION

Protection of Minority Saham Holders on The Merger of Closed Limited Liability Companies

Basically, the theory of legal protection is a theory related to the provision of services to the community. Roscou Pound said the law is a tool *of social engineering (law as tool of social engginering*). Human interests are a demand that is protected and fulfilled by man in the field of law.[2] The link of legal protection theory to this research

[1] Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas* (Jakarta: Raih Asa Sukses, 2015).
[2] Lili Rasyidi, *Filsafat Hukum* (Bandung: Remadja Karya, 1988).

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problem is that the law creates protection and also a balance between majority shareholders and minority shareholders.

The law is very closely related to justice, there is even an opinion that the law must be combined with justice, in order to really mean as law, because indeed the purpose of the law is the achievement of a sense of justice in society. According to Rawls, the situation of inequality must be given rules in such a way that it best benefits the weakest classes of society.[3]

C.F. Strong in Modern Political Constitutions, "Constitution is a collection of principles according to which the power of the government, the rights of the governed and the relations between the two are adjusted.[4]

In relation to this research problem, the principle of fairness into a company requires the granting of power to the general meeting of shareholders, where the most vote will determine the verdict, but in this case minority shareholders must also be guaranteed justice by giving to him in accordance with the rights of minority shareholders.

The concept framework that becomes the operational definition of research is:[5]

a. The protection of law is an act or attempt to protect society from arbitrary acts by rulers that are not in accordance with the rule of law, to realize order and tranquility so as to enable man to enjoy his dignity as a human being.
b. Limited Liability Company, hereinafter referred to as the Company, is a legal entity that is a capital alliance, established based on agreements, conducting business activities with basic capital that is entirely divided into shares and meets the requirements stipulated in this Law and its implementation regulations.
c. Closed Company is a PT that was established with no intention of selling its shares to the wider community (exchange).
d. Incorporation is a legal act committed by one or more Companies to merge with other existing Companies that result in the assets and assets of the Company that merge themselves switching due to the law to the Company that receives the merger and then the status of the Company's incorporated legal entity ends because of the law."
e. A *shareholder* is a person or legal entity who legally owns one or more shares in the company.
f. Minority shareholders are shareholders who own less than 50% of all issued shares, so it is generally not possible to control the company's management.

[3] Ahmad Faury Muhammad Syukri Albana Nasution, Zul Palmi Lubis, Iwan, *Hukum Dalam Pendekatan Filsafat* (Jakarta: Fajar Interpratama Mandiri, 2017).

[4] Eka N.A.M Sihombing, Irwansyah, *Hukum Tata Negara*, (Medan: Enam Media, 2019), p. 18.

[5] Setiono, "Rule of Law (Supremasi Hukum)," *Surakarta : Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret* (2004): 3.

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The legal protection of minority shareholders is relatively new in the Indonesian legal system. The arrangement has only been carried out since the exit of Law No. 1 of 1995 and has been updated with Law No. 40 of 2007 concerning Limited Liability Companies. Previously, there was a reluctance to provide protection to these minority shareholders, for the following juridical reasons and reasons:[6]

a. Strong prevailing principle that can represent the company only directors.
b. Strong prevailing opinion that considered democratic is the ruling party is the majority.
c. Strong sense of reluctance from the court to interfere in the business affairs of a company.

Law No. 40 of 2007 on Limited Liability Companies does not provide a clear definition of the understanding of minority shareholders or majority shareholders. Shareholders in the Company can be categorized as majority shareholders and minority shareholders only based on the company's number of shares owned in the Company.

Minority shareholders are a group of shareholders who have a small share in the company, so they cannot control the management of the company or do not have a decisive position in terms of the selection of the company's directors. In this regard, according to the *Anglo Saxon* legal system, minority shareholders are defined as:

> *A shareholder who owns less than half the total shares outstanding and thus can not control the corporation's management or single handledly elect directors.*
> (A shareholder who owns less than half of the total number of shares and cannot control the management of the company or single-handedly elect directors).[7]

Based on the above limitations, minority shareholders are shareholders who own the number of shares less than 50% of all issued shares, so it is generally not possible to control the company's management. Strict restrictions or defirrillation on minority shareholders cannot be found in Law No. 40 of 2007 concerning Limited Liability Companies. But from some provisions, including the provisions of Article 97 paragraph (6), it can be understood that minority shareholders granted derivative rights are shareholders who own at least 1/10 (one tenth) part of the total number of shares with valid voting rights in the Limited Liability Company.[8]

Reasons for the Need for Protection of Minority Shareholders

Minority shareholders are one of the *stakeholders* in addition to other *stakeholders*, namely majority shareholders, directors, commissioners, employees and creditors. Moreover, together with the majority shareholders, minority shareholders are also the ones who bring coffers to the company (*bagholders*). Therefore, it should not be, the minority shareholders to some extent deserve to be protected by the law.

[6] Munir Fuady, *Perseroan Terbatas Paradigma Baru* (Bandung: PT. Citra Aditya Bakti, 2003).
[7] Taqiyuddin Kadir, *Gugatan Derivatif Perlindungan Hukum Pemegang Saham Minoritas* (Jakarta: Sinar Grafika, 2017).
[8] Ibid.

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Solly Lubis in Hadita (2020) The theory of power, Laski argues , along with Marx, namely that every association of life requires coercive instruments, thus claiming the continuation ofa permanent production relationship, because if it were not so then the association of life would not be able to claim its livelihood. By Plato in his book "Politeia" Thrasymachos statement noted, that justice is the interest of the powerful who demanded the arrangement to the power that is there, it means that the law and the interests of the ruling is one.[9]

Another reason why minority shareholders need to be protected is because of the nature of the ruling by the majority in a General Meeting of Shareholders (GMS) which is not always *fair* to minority shareholders, even though the way of decision-making in a majority is considered the most democratic. Because, with the majority decision system, it could be a person who has financed the company up to 48% (forty-eight percent) by holding a 48% (forty-eight percent) stake has exactly the same position in voting with the holder only 1% (one percent) of shares, and will be very different from the shareholders 51% (fifty-one percent). It's not *fair*. Therefore, to maintain that there is justice for every shareholder whether he is a majority shareholder or a minority shareholder, then comes the principle called "Majority Power with Minority Protection" (*majority rule minority protection*).[10] According to John Rawls, the program of enforcement of justice with a populist dimension must pay attention to two principles of justice, namely: First, giving equal rights and opportunities for the broadest basic freedoms as wide as the same freedom for everyone. Second, being able to reorganize socio-economic inequalities that occur so that it can provide *reciprocal benefits* for everyone, both those from lucky and disadvantaged groups.

Forms of Protection of Minority Shareholders

One of the effects of the ownership structure through shares is the creation of a majority and minority shareholder structure. The forms of legal protection against minority shareholders stipulated in Law No. 40 of 2007 concerning Limited Liability Companies are:

1. The right for the shares to be purchased at a reasonable price
   Article 62 paragraph (1):
   "Every shareholder has the right to ask the Company that its shares be purchased at a reasonable price if the person concerned does not approve the Company's actions that harm shareholders or the Company, in the form of:
   a. Changes in the articles of association;
   b. Transfer or guarantee of the Company's wealth that has a value of more than 50% (fifty percent) of the Company's net worth; or

[9] Cynthia Hadita, Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government, *Nomoi Law Review*, Volume 1, Issue 1, May 2020.

[10] Fuady, *Perseroan Terbatas Paradigma Baru*.

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c. Merger, Smelting, Expropriation or Separation"

2. Implementation of *Silent Majority* principles in General Meeting of Shareholders
In this case the majority shareholder is required to abstain in the vote. One version of this *silent majority* principle is the "layered election system", which for example was introduced by bapepam chairman's decree Number Kep-01/PM/1993 dated January 29, 1993, which has been replaced by Bapepam Regulation No. 04/PM/1994 dated January 7, 1994. This principle of layered selection is operationalized by the implementation of two votes. In the first vote only shareholders do not clash with interests / minority shareholders who can vote while holders who clash with interests / majority shareholders can only continue the meeting if the shareholder decision does not clash the interests / minority shareholders The proposal in question, namely the proposal to conduct transactions that clash with interests. An example of a transaction that clashes interests is what populetr with the term "*internal acquisition*"[11]

3. Implementation of *Super Majority* principles in General Meeting of Shareholders
In this case, voting in a general meeting of shareholders requires more than just a *simple majority* (51%) to be able to win the vote. For example, the enactment of this *super majority* principle requires voting two-thirds of the vote, 75%, even the percentage can be more than that. Decisions from meetings cannot be taken if the vote in agreement is less than that percentage. In practice, a standard limited liability company's articles of association generally impose the principle of *a super majority* in certain matters that may be crucial for all shareholders, including minorities.[12]

4. Right to file a *direct suit*
A direct lawsuit is an action taken by shareholders on the basis of direct losses suffered by the shareholders concerned. In this case the shareholder acts on behalf of his or her own interests, and not on behalf of or on behalf of the company. Direct lawsuits are generally related to the legal rights as well as contractual rights of shareholders, related to the shares themselves, or related to share ownership and other matters related to the position as shareholders. UUPT No. 40 of 2007 entitles every shareholder to file a lawsuit against the company if harmed because of the company's actions that are considered unfair and without reasonable reason as a result of the decision of the GMS, directors, and / or board of commissioners. The direct lawsuit basically contains a request for the company to stop adverse actions and take certain steps, both to overcome the consequences that have arisen and to prevent similar actions in the future. In a direct lawsuit, damages will be paid to the plaintiff's shareholders if the plaintiff's shareholder wins the lawsuit.[13]

[11] Ibid.
[12] Ibid.
[13] Kadir, *Gugatan Derivatif Perlindungan Hukum Pemegang Saham Minoritas*.

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5. Right to file derivative *action*
   Derivative action is a mechanism that can be used by shareholders, especially minority shareholders to uphold the rights of the company when directors violate their obligations, while directors who act daily on behalf of the company, it is almost impossible to take action against directors who commit such violations. So in essence *derivative action* is aimed at protecting the interests of the company, and indirectly protecting the interests of minority shareholders. It should also be emphasized, that the concept *of derivative action* is a breakthrough in the company's law that aims to prevent abuse of authority by directors or commissioners, which are generally dominated by majority shareholders.[14]

6. Appraisal *rights*
   Minority shareholders have the right to judgment, which is the right to defend their interests in terms of stock price valuation. When shareholders ask the company to buy its shares, minority shareholders can use *appraisal right*, so that the shares are valued and purchased at a reasonable price. This can happen in the event that the shareholder does not approve the company's actions that can harm the interests of the company's shareholders.

Mergers are a common thing to do in order to get better results. Mergers are essentially legal acts that inevitably cause legal consequences, both to interested parties (minority shareholders) and to other parties. Basically the interests of minority shareholders can be reviewed from 2 (two) aspects, namely their personal interests to the company based on personal rights and their interests as part of the company (*derivative rights*), especially the General Meeting of Shareholders on the actions of other corporate organs, namely the Board of Directors and Commissioners. These interests must be protected by law. As a form of legal protection against minority shareholders is that the merger must be approved by the General Meeting of Shareholders and is not enough just based on the decision of the directors of each company. The quorum for the merger is determined to be at least 3/4 part of the total number of shares with valid voting rights and approved by at least 3/4 part of the vote. In addition, the legal actions of the merger must pay attention to the interests of the company, minority shareholders, employees of the company, the community, and healthy competition in doing business.[15]

If there are shareholders who do not agree with the merger, even though the general meeting of shareholders with a certain majority voting rights has decided to merge, then to the losing party this vote by law is given a special right called *appraisal rights*. What is meant by *appraisal rights* is the right of a minority shareholder who does not agree to a merger (but he loses a vote) or to other corporate actions, to sell the shares he holds to the company in question where the company that acquires the shares

[14] Ibid.
[15] Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik* (Jakarta: PT. Sinar Grafika, 2017).

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is obliged to buy back the shares at a reasonable price. The implementation of *appraisal rights* is one of the "privileges" granted by law in this merger transaction. Another "privilege" is the application of a principle called the "super majority". The principle *of super majority* (or *"absolute majority"*) means that to be able to approve a merger, it is necessary not only the *simple majority* (more than 50%) of shareholders who must approve it, but more than that. The Limited Liability Company Act states a figure of 3/4 or more of shareholders who approve it.[16] The form protection is by the law to accommodate all about it.

Reasonable Stock Pricing for Minority Shareholders Who Do Not Agree to Merger

The rights of minority shareholders at the time of the merger process are as follows Rights invited and voted in the Merger AGM. Shareholders should have the opportunity to effectively participate and vote in the General Meeting of Shareholders and shall have been informed of the rules of the GMS, including the rules on voting to be used in the GMS, namely by:

a. Shareholders should be provided with sufficient and timely information related to the date, place, and agenda of the GMS event, including complete and timely information related to the issues that will be decided in the GMS.
b. The opportunity should be given to shareholders to ask questions to the board of directors and to submit matters deemed important to the agenda of the GMS event while remaining subject to rational boundaries.

In Law No. 40 of 2007 concerning Limited Liability Companies, gms occupies a very sacred place as an organ of a Limited Liability Company that has the highest power. That way, actually outside the GMS, PT shareholders do not have any power over the company. Gms has authority that is not given to the Board of Directors and Commissioners. Gms approval is absolutely necessary in the event that PT decides on general policies (merger, smelting, and takeover and dissolution of PT), appointment and dismissal of Directors and Commissioners, and endorsement of the annual report of the Board of Directors / Commissioners.[17]a

Article 127 of Law No. 40 of 2007 concerning Limited Liability Companies regulates the quorum of attendance and decision making of gms in the framework of merger. In principle quorum and decision making, referring to the provisions of Article 89 and Article 87 paragraph (1) of Uupt No. 40 of 2007. This is affirmed by Article 127 paragraph (1) which says the decision of the GMS in the framework of legal merger if taken in accordance with the provisions of Article 87 paragraph (1) and Article 89.

Right to get the correct information about the merger

The fundamental rights of shareholders include the right to 1) safe methods and means of registering shareholding; 2) carrying and/or transferring shares; 3) obtain

[16] Fuady, *Perseroan Terbatas Paradigma Baru*.
[17] Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik*.

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relevant information about the company periodically and on time; 4) participate and vote in the General Meeting of Shareholders; 5) elect and appoint members of the board of commissioners and directors; and 6) the profit share of the company.

Shareholders have the right to participate in determining, and properly have been adequately informed of decisions that are related to fundamental changes to the Company, such as 1) changes in the articles of association / deed of establishment or similar company documents; 2) give approval to the addition of the number of shares of the company; and 3) out-of-the-ordinary transactions that can affect the company's sales results.[18]

Based on Article 126 paragraph (2) of Law No. 40 of 2007 concerning Limited Liability Companies, shareholders who "disagree" with the gms decision regarding merger, smelting, takeover, or separation as referred to in paragraph (1) may only exercise their rights as referred to in Article 62. Only to that extent that the rights allowed by the law are used by shareholders, namely:

1) Request the Company for its shares to be purchased at a reasonable price,
2) In principle the Company is obliged to buy it,
3) If the shares requested to be purchased by the Company exceed the limit of the terms of share repurchase by the Company as outlined in Article 37 paragraph (1) letter b, the Company shall strive for the remaining shares to be purchased by third parties.

Minority shareholders have the right to judgment, which is the right to defend their interests in terms of stock price valuation. When shareholders ask the company to buy its shares, minority shareholders can use *appraisal right*, so that the shares are valued and purchased at a reasonable price. This can happen in the event that the shareholder does not approve the company's actions that could harm the interests of shareholders or the company. For example, the company conducts sales, guarantees, exchanges most or all of the company's wealth, or the company intends to merge, consolidate and acquire. The provisions of Article 62 paragraph (1) of the 2007 Act regulate the assessment stating that, each shareholder has the right to ask for the sale of shares to be purchased at a reasonable price if the concerned does not approve the company's actions that harm shareholders or the company, in the form of: (a) amendment to the Articles of Association, (b) the sale, guarantee, exchange of most or all of the company's wealth; or (c) merger, smelting, expropriation or separation. The provision regarding the fair valuation of the share price, becomes important because the majority shareholder is more dominant in decision making in the GMS, which of course has the potential to harm the interests of minority shareholders. It is very likely that a minority shareholder sells his or her shares due to forced circumstances that are deliberately conditioned by a majority shareholder in bad faith.[19]

If a minority shareholder wishes to exercise his *appraisal rights*, the shares will be resold to the company at a reasonable price. But the problem is how the price size is worth it. To find out the appropriate price is known 3 (three) theories as follows:

[18] *Ibid*.
[19] Kadir, *Gugatan Derivatif Perlindungan Hukum Pemegang Saham Minoritas*.

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1. *Earnings Value* Theory
   What is meant by acquisition value is to look at the value of acquisition or investment. In this case usually what is seen is the value of the company's acquisition in the future (*future earnings*) after being discounted by the company's current acquisition value (*present value*).
2. *Market Value* Theory
   This theory teaches that the stock price is viewed to the market value of the stock in question before the merger is announced. The market value of these stocks is difficult to determine with certainty, especially for stocks that are not open companies.
3. *Asset Value* Theory
   This asset value theory teaches that the price of the shares to be purchased by the company in the event that minority shareholders exercise *appraisal rights* is as large as the price of the asset in a reasonable market. This will boost the stock price if in the company there are assets that are temporarily inactive or not producing, even though the price of the asset is quite large and significant.[20]

Stock valuation can be interpreted as a process of the work of an appraiser in providing a written opinion on the economic value of a business or equity at a given moment. Stock valuation is a mechanism for changing a set of economic variables / company variables that are predicted into estimates about the stock price such as company profits and dividends distributed, meaning a method to find the values of shares that become a measure in securities investments. The purpose of stock valuation is to provide management with an estimate of the value of a company's shares to be used as a management reference as a policy consideration for the company's shares.

In stock valuations are known there are three types of values, namely:

1. Book value
   Book value is a value calculated based on the bookkeeping of the company issuing shares (issuers). Book value and face value can be searched within or determined based on the company's financial statements. Book value is also the value of assets remaining after deducting the company's liabilities if distributed.
2. Market value
   Market value is a price formed by the demand and supply of shares in the capital market or also called the secondary market price. Market value is no longer influenced by issuers or emissions loan parties, so it may be this price that actually represents the value of a company. The market value can be seen in the stock price on the stock exchange.
3. Intrinsic value
   Intrinsic value is the value of a stock that determines the fair price of a stock so that the stock reflects the actual value of the stock so that it is not too expensive. This intrinsic value calculation is to look for the present value of all future cash flows derived from both dividends and *capital gains*.

[20] Sutedi, *Buku Pintar Hukum Perseroan Terbatas*.

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In buying or selling shares, investors will compare the value of intrigue with the market value of the stock concerned as information for investment decision-making investors.

The guidelines used to assess the stock price are:

a. If the market value of a stock is higher than its intrinsic value, meaning that the stock is *classified as expensive (overvalued*), then investors can take the decision to sell the stock.
b. If the market value of the stock is below its intrinsic value, it means that the stock is *classified as undervalued*, so investors instead buy the stock.
c. If the current market value of the stock is equal to its intrinsic value, it means that the stock is reasonably priced and in a balanced state.[21]

In practice, the determination of the stock price is determined based on the face value of the shares. If this value is approved by shareholders who want to sell their shares and approved by the company, then a fair value of the shares is formed under the agreement.

If the nominal price of the shares cannot be agreed, then to determine the fair value of the stock is done valuation or assessment of the stock price. Usually this is done by the appraiser company or the Office of Public Assessment Services (KJPP). The manner of the appointment of the assessor or the Office of Public Assessment Services (KJPP) is agreed by the relevant parties in the sale and purchase of shares.

Protection of Minority Shareholders Through Derivative Lawsuits

1.Understanding of derivative lawsuits

Derivative action is defined as a shareholder lawsuit on behalf of and representing the company against members of the board of directors who have made mistakes and harmed the company. The lawsuit is intended because the company does not have the will to sue or restore its rights for any particular reason. It can be said, the concept *of derivative action* gives the right to minority shareholders to take extraordinary action through the courts, with the aim that the company's rights can be restored or not harmed.[22]

In the company's law in Indonesia, the concept *of derivative action* can be defined first in Law No. 1 of 1995 on Limited Liability Companies, and then the formulation of provisions that indicate the derivative *action* concept is again contained in the new Limited Liability Company Law, namely Law No. 40 of 2007 on Limited Liability Companies (UUPT). However, the two laws do not explicitly mention the term *derivative action* or derivative lawsuit.[23]

2.Main purpose of derivative lawsuit

[21] Kompasiana, "Penilaian Harga Saham," *Https://Www.Kompasiana.Com/Susianti/56595faf2623bdfe0f80297e/Penilaian-Harga-Saham?Page=all,*.

[22] Taqiyuddin Kadir, *Op. Cit*., p. 20.

[23] *Ibid*., p. 21.

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The main derivative *action* is to achieve management accountability. Thus, derivative action can act as a mechanism to maintain investor or shareholder confidence. At the same time, management certainly needs to get protection against interference or attitude of hostility from minority shareholders, who when filing *derivative action* for example, do not act on behalf of the company.[24]

3.Requirements to file a derivative lawsuit

According to uupt 2007, a lawsuit can be filed by shareholders who own at least 10% of the shares on behalf of the company, or members of the board of directors who due to error or negligence cause losses to the company. Derivative lawsuits can also be filed by shareholders who own at least 10% of the shares, against members of the company's commissioners who due to error or negligence cause losses to the company. The provisions regarding derivative lawsuits against members of the company's board of directors, are only regulated in one provision, namely Article 97 paragraph (6) of the 2007 Tax Law. The requirements set by the provisions of Article 97 of the 2007 Act are only in the form of a requirement for ownership limits of at least 10% (*ownership requirement*). The provision does not contain any other requirements that must first be met by plaintiff shareholders to be able to act on behalf of or represent the company. Thus, ownership of at least 10% of the shares is the only procedural requirement that must be met by the plaintiff's shareholders. The element of error or negligence of members of the board of directors, as well as the element of loss is already a substantial requirement and is part of the subject matter that is certainly not always easy to prove before the examination in the trial.[25]

Derivative rights are rights granted or owned by minority shareholders in order to take certain actions in maintaining or representing the company against other organ actions in the company if the Company's interests are harmed. Under the Limited Liability Company Act this right is granted to shareholders, representing at least 1/10 (one tenth) part of the total number of shares with valid voting rights. Furthermore, two shareholder derivative rights are known in Law No. 40 of 2007 concerning Limited Liability Companies. The two derivative rights are: The right on behalf of the Company, owned by shareholders representing at least 1/10 (one tenth) part of the total number of shares with voting rights may file a lawsuit through the district court against members of the Board of Directors who due to their error or negligence caused harm to the Company, as stipulated in Article 97 paragraph (6) of Law No. 40 of 2007; and The right on behalf of the Company, owned by shareholders representing at least 1/10 (one tenth) part of the total number of shares with voting rights may sue members of the Board of Commissioners who for their error or negligence incur losses to the

[24] *Ibid*., p. 37 - 39.
[25] *Ibid*., 159-160.

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Company to the district court, as stipulated in Article 114 paragraph (6) of Law No. 40 of 2007.[26]

CONCLUSION

Minority shareholders are one of the *stakeholders* in addition to other *stakeholders* who bring coffers to the company (*bagholders*). Therefore, it should not be, minority shareholders to some extent deserve to be protected by law. *Appraisal rights* are one of the "privileges" granted by law to a merger transaction if a minority shareholder does not agree to a merger but the vote is insufficient to impede the implementation of the merger, the merger is still implemented, and the minority shareholder is "forced" to accept the merger. Forms of minority shareholder legal protection can be personal lawsuits, derivative lawsuits and *appraisal rights*. Reasonable stock price valuation is necessary in the event that minority shareholders do not agree with the merger, even though a general meeting of shareholders with a certain majority voting rights has decided to merge. In practice, stock price determination is applied based on the face value of the shares. If this value is approved by shareholders who want to sell their shares and agreed by the company, then a fair value of the shares is formed under the agreement. If the nominal price of the shares is not agreed then to determine the fair value of the stock is done valuation or assessment of the stock price. Usually this is done by the appraiser company or the Office of Public Appraiser Services. There needs to be provisions or legal rules that regulate clearly and unequivocally about the legal protection of minority shareholders if minority shareholders do not agree to the merger because in fact minority shareholders who do not agree with the merger (merger) end up selling their shares in forced circumstances that are deliberately conditioned by majority shareholders who have bad intentions.

[26] Gunawan Widjaja, *Individual & Collective Rights of Shareholders*, (Jakarta: Niaga Swadaya, 2008), p. 78.

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