Construction of Minority Shareholders Legal Protection in a Company's Limited Liability System

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Abstract- The purpose of this study is to determine the legal protection model for majority shareholders and minority shareholders in public limited companies. This research method is normative research. In order to investigate the ineffectiveness of laws and regulations, in particular, Law No. 40 of 2007 on limited liability companies in providing shareholder protection, researchers have studied the laws and regulations and considered the views of experts on legal concepts related to legal protection for shareholders, in particular minority shareholders. The results showed that the law was not maximal in providing fair legal protection for minority shareholders, so there was an imbalance between the rights of minority shareholders and majority shareholders. For this reason, 1) reform or progressive changes in laws and regulations are needed, in this case, PT Law No. 40 of 2007. These changes should be fundamental to philosophical aspects (values and perspectives) in providing shareholder protection, 2) changing views of protection shareholders should pay attention to aspects of fairness.

Index Terms- Protection, Reform, Minority Shareholders

I. INTRODUCTION

Legal protection for minority shareholders in a limited liability company is a legal issue that is always interesting and up to date for discussion. Various legal regulations have been issued, most recently Law Number 40 of 2007 concerning Limited Liability Companies or known as the PT. However, over time, the existence of this law for approximately 13 (thirteen) years of its validity period, there are still weaknesses that must be corrected immediately. The results of the 2018 EODB survey by the World Bank conducted in 2017, Indonesia was ranked 72nd out of 190 countries in the world (Setianto, 2020). The EODB indicator that is directly related to the UUPT is starting a business (Sinaga, 2017), protecting minority investors (Nanda, 2017), and resolving insolvency (Asmara et al., 2019).

Shareholders are one of the components (stakeholders) in a company in addition to other components (stakeholders) such as workers, creditors, investors, consumers, and the wider community who have an interest in the company (Yunia, 2018). More than that, the real shareholders are also the parties who are the funders for the sustainability of the company's activities (Wahidah & Iman, 2019). Thus in addition to being stakeholders, shareholders are also often termed bagholders (Hapsari et al., 2020). Because of its important position, it is only natural that the law should be able to guarantee the protection of shareholders in a company at any time.

In the practice of company management, as followed by the PT Law, there are two types of shareholders, namely majority shareholders and minority shareholders. The existence of this distinction often creates conflicts of interest between shareholders and often leads to legal issues (Li et al., 2020); (Zakiyah, 2017). Minority shareholders or minority shareholders are often only used as a complement in a company. In the decision-making mechanism in the company, it can be ascertained that these minority shareholders will always lose to the majority shareholder because the decision-making pattern is based on the large percentage of shares owned. This situation will get worse if it turns out that the majority shareholder uses this opportunity to control the company based on their interests alone and does not heed the interests of the minority shareholder.

There is a tendency for the majority shareholder to take advantage of their position irresponsibly through a mechanism in the General Meeting of Shareholders, namely by utilizing the principle of one share one vote, for example dominating through the Board of Directors, where the Board of Directors' policy is in favor of the majority shareholder which can cause the company to act only a tool for the benefit of majority shareholders who do not have good faith.

Another form of domination by the majority shareholder is the company's Directors or Commissioners (Supriatna & Ermond, 2019). If it is not carried out without moral hazard, it will be possible to pierce the corporate veil or carry out ultra vires actions which through the rectification agency will be legalized as an act of the company which will harm minority shareholders, other stakeholders, or the company itself. Majority shareholder abuse also occurs in company liquidation where the basis for the dissolution or liquidation is not carried out transparently. In this context, the law must be able to guarantee the protection of shareholders in a company (La Porta et al., 2007); (Haryono, 2016). In providing legal protection, it can be done by providing various concepts, methods, and theories which will later become the basis for the formulation of positive law which will be used as legitimacy for the legal protection of company shareholders, especially minority shareholders. Law aims to integrate and coordinate various interests in society because in traffic of interests, protection of certain interests can be done by limiting various interests on the other hand (Wendur et al., 2020). The interest of law is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected (Nawawi, 2019).

Legal protection for Minority Shareholders in a company is very important because the shareholders and stakeholders have regulated their rights and obligations as well as their authority proportionally. This concept can only be successful if the shareholders and management of the company uphold the ethics and principles of justice which are the source of the standard of

behavior of individual shareholders. These principles must be reflected in the legal content so that they become the rules of the game in running the company. The application of the principle of justice in providing legal protection for a company requires that the highest power is given to the general meeting of shareholders (Permatasari, 2014), where the majority vote (majority share) will determine the decision, but minority shareholders must also be guaranteed by giving their rights.

Therefore, to fulfill the element of justice, a balance is needed so that the minority shareholders can still enjoy their rights as the majority, including regulating the company. On the other hand, even minority shareholders need to pay attention to their interests and their rights cannot simply be ignored. To safeguard the interests of both parties, the company's legal science is known as the principle of "Majority Rule Minority Protection", namely the ruler in the company remains the majority party, but the power of the majority party must be exercised by always protecting (to protect) the party. minority. If this does not get attention from the government, it is feared that it will disrupt the investment climate and kill small investors

II. RESEARCH METHODS

The research method used in this research is the normative legal research method, which is legal research that examines legal rules aimed at identifying and describing legal aspects related to legal protection for minority shareholders.

III. RESULT AND DISCUSSION

In any condition, the presence of law must be able to realize 3 (three) basic values, namely the value of justice, certainty, and utility value (Purwanto, 1993). The synergy application of the three is certainly not easy, however ideally in every legal product preparation and law enforcement, the presence of the three must get a balanced proportion. Good law is a law that contains the principles of sustainability (Dernbach & Mintz, 2011), justice, and democracy (Bedner, 2010); (Hayat, 2015).

The value of justice is a measure of the fairness of the law (Rismawati, 2015). Not only that, but the value of justice also forms the basis of the law as law. Thus justice has a normative and constitutive character for the law (Jovanov & Velinov, 2019). It is normative because it functions as a transcendental prerequisite that underlies any dignified positive law (Harun, 2019). It becomes the moral foundation and yardstick of positive law (Burns, 1998). It is constitutive because justice must be an absolute element of law as law (Mubayyinah, 2019); (Kelsen, 1948). Thus talking about justice, basically talking about the essence of the existence of law in the human world, namely to guarantee justice (Kabrtova et al., 2012).

Concerning this paper, the author is interested in examining several provisions or articles in the PT Law which according to the author are closely related to legal protection for shareholders, especially minority shareholders. These articles are related to the stages or procedures that must be followed by shareholders in fighting for their rights. At least several stages or processes are passed starting from the identification of deviations against the rights of minority shareholders, classification of types of customers, analysis, examination, and decision.

Article 138 paragraph (1) of the PT Law confirms that minority shareholders can apply for an examination of the company, on the suspicion that the board of directors has committed an illegal act. The aforementioned action is an effort that can be made by shareholders in the context of identifying suspected violations of shareholder rights. The purpose of the examination is to obtain information related to the alleged existence of illegal acts that harm shareholders or third parties, or a member of the Board of Directors or the Board of Commissioners committed an unlawful act that harmed the Company or shareholders or a third party.

Data or information that is sought and obtained from the results of the examination to be used as evidence that can clarify whether or not the alleged illegal act committed by the Board of Directors is a process that can be categorized as an identification process for suspected violations of the rights of minority shareholders. This identification is the first step in obtaining information/data from the company to assess whether there has been a deviation/violation that could harm the rights of shareholders. If the results of the examination reveal facts about the occurrence of unlawful acts that may harm the interests of shareholders, then the results of the examination can be used as evidence stating that the Board of Directors has committed an illegal act.

According to Article 1915 of the Civil Code, it is affirmed that the allegations are the conclusions which by law or by the judge draws from a well-known incident to an unknown event. Two kinds of allegations, namely: allegations according to law and allegations not based on the law. In Article 1916 of the Civil Code, it is stated that the allegations according to the law are suspicions that are based on a special provision of law, connected with certain actions or certain events.

Allegations or allegations that have the quality as valid evidence, such allegations must be a conclusion drawn from an event, an event, or an action that occurred, and from the conclusion drawn there is an indication or fact of an element of unlawful acts committed by the Board of Directors. The allegations that meet the requirements to submit a request must have at least the evidence required for examination of the Company to obtain valid evidence in the form of documents, testimony of witnesses or experts, as preparation for filing a lawsuit against the Law based on Article 1365 of the Civil Code against the Board of Directors.

Regarding the classification of types of violations, by looking at the provisions of chapter IX of the company law, there are two possibilities. First, that the classification is included in the category of illegal acts and not in the category of illegal acts. As stipulated in Article 139 paragraph (1) of the PT Law, it is stated that the Chairman of the District Court can reject or grant the company examination request. If the company examination request is granted, the head of the Court shall appoint at least 3 (three) expert teams to carry out the task of the examination.

The expert team as appointed by the head of the Court has the right to examine and analyze all company documents and company assets deemed necessary. In the analysis and examination process, the expert team can request information from all related parties such as the board of commissioners,

directors, and company employees and for that, the commissioners, directors, and employees are required to provide all the information needed by the expert team in carrying out their duties.

Article 140 paragraph (1) of the Company Law states that if after an examination is carried out, the examiner is obliged to make a report on the results of the examination, and the examiner may not announce the results of the examination to other parties, but must be submitted to the Chair of the District Court within a maximum period of 90 (ninety) days, and also no later than 14 (fourteen) days from the date the examination result report is received, the Head of District Court must provide a copy of the examination result report to the applicant (minority shareholder) and the Company concerned based on Article 140 paragraph (2) PT Law. If the head of the District Court has obtained the results of an examination conducted by a team of experts appointed as stipulated in Article 139 paragraph (3), the chairman of the Court will provide a copy of the examination report to the applicant and the company within 14 (fourteen) days.

Observing the provisions of Article 140 paragraph (2), the author concludes that the District Court does not have the authority to issue decisions on violations based on the report of the appointed expert team. The court is only obliged to submit an examination report to the applicant and the company. According to the author, this provision has not provided certainty to shareholders in fighting for their rights. Why is that, because when the judge returns the results of the examination report and submits the settlement of the matter to the company internally. Thus, the next process will depend on the applicant. At this point, according to the author, it is necessary to carry out a legal reform movement that can guarantee protection for shareholders. Because the law including the PT Law is the result of human construction, both social, political, and cultural construction (Rahayu et al., 2019).

The construction includes the procurement of doctrines, principles, and other parts of it. The existence of law in society aims to serve the increasingly complex interests of society. Law as an ideal is closely related to the conceptualization of justice, but it turns out that law cannot operate only with abstract concepts. The law can only work through human assistance. The emergence of claims of a sense of justice in judges' decisions is inseparable from what and how the legal and moral and legal framework relates to politics. Good law is a law that can accommodate and provide a sense of justice to the people it governs (Allan, 2009). Good law is a law that reflects living values (Goesniadhie, 2010); (Christiani, 2016); (Mahanani, 2019).

Eugen Ehrlich in Hertogh, (2016) recommends carrying out legal reform through legislation with the awareness to pay attention to the realities that live in society. These facts are called "living and just law" which is the "inner order" of society reflecting the values that live in it. If you want to make changes to the law or make a law so that the law or laws that are made can be accepted and apply effectively in the life of the community, then something that deserves attention is the law that lives in that society. If this does not get attention, then the consequence is that the law cannot be effective and will even be challenged.

Legal reform, especially in the field of Limited Liability Companies as one of the pillars of the national economy in a global context, is very much needed as a form of state appreciation in providing protection for all communities and in the context of realizing the people's welfare and prosperity. Building a professional business world and prioritizing the principle of equality/balance is one of the factors that determine the success or failure of development. The direction of development in the economic sector is the government's obligation to provide direction and guidance in the context of developing the business world and creating a good business climate that encourages economic growth

IV. CONCLUSION

The existence of the PT Law has not been maximal in providing legal protection for minority shareholders. Therefore, legal reform, especially the PT Law, is necessary. One of the important points that must be reformed in the PT Law is the provision regarding the results of the examination of the company due to the alleged illegal activity by the company. Article 140 paragraph (2) of the PT Law emphasizes that district courts are only given the authority to submit reports on the results of examinations of suspected illegal acts to the applicant and the company. This provision does not give the court the authority to give a verdict on the violation based on the report of the appointed expert team. The matter was handed back to the company to be followed up internally. The results of the examination should be the basis for the court to state that the reported party has committed an illegal act so that it can proceed to the next legal process without having to go through a lawsuit. This is important to reduce procedures that have had to go through a lengthy process. Therefore, in the context of reforming the PT Law, there must be provisions that regulate or give authority to the court to explicitly give a decision on the existence of an illegal act. Thus, legal protection guarantees for shareholders, especially minority shareholders, can be realized.

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