

LEGAL PROTECTIONS FOR LIMITED LIABILITY COMPANY SHAREHOLDERS WITH MENTAL HEALTH DISORDERS

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Abstract

Minority shareholders, including those suffering from mental illness, frequently encounter numerous obstacles in securing adequate legal protection. The study employs a normative juridical method with a statutory approach to address its objectives. The results showed that the shareholders can file direct lawsuits against the company or derivative lawsuits on behalf of the company if the directors or management engage in unlawful activities that infringe on their rights, as outlined in the corporation law. They can also initiate lawsuits against the company in cases of loss or psychological harm. In situations where the company suffers a loss, the right to sue belongs to the company itself, not to the minority shareholders, reinforcing a bias towards the directors over minority shareholders, including those with mental disorders, since the directors are authorized to represent the company in legal matters.

Keywords: Legal Protection; Shareholders; Mental disorders.

Abstrak

Pemegang saham minoritas, termasuk mereka yang menderita penyakit mental, sering kali menghadapi berbagai kendala dalam mendapatkan perlindungan hukum yang memadai. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan untuk menjawab tujuannya. Hasil penelitian menunjukkan bahwa pemegang saham dapat mengajukan gugatan langsung terhadap perusahaan atau gugatan turunan atas nama perusahaan jika direktur atau manajemen terlibat dalam kegiatan melawan hukum yang melanggar hak-hak mereka, sebagaimana yang diuraikan dalam hukum korporasi. Mereka juga dapat mengajukan gugatan terhadap perusahaan dalam kasus kerugian atau cedera psikologis. Dalam situasi di mana perusahaan menderita kerugian, hak untuk menuntut adalah milik perusahaan itu sendiri, bukan milik pemegang saham minoritas, yang memperkuat bias terhadap direktur atas pemegang saham minoritas, termasuk mereka yang memiliki gangguan mental, karena direktur berwenang untuk mewakili perusahaan dalam masalah hukum.

Kata Kunci: Perlindungan hukum; Pemegang saham; Gangguan jiwa.

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INTRODUCTION

The growth of Limited Liability Companies (PT) is currently very rapid as they are the most dominant legal entities in Indonesia's economy.¹ The advantages of a Limited Liability Company (PT) include limited liability, a clear organizational structure, and supreme authority in the General Meeting of Shareholders (RUPS).² PTs must comply with regulations that align with contemporary developments in their economic activities. The legal foundation governing Limited Liability Companies is detailed in Law No. 40 of 2007 concerning Limited Liability Companies (UUPT).³ Before the enactment of this Law, the legal basis for PTs referred to Law No. 1 of 1995 concerning PTs. According to Article 1, Section 1 of Law No. 40 of 2007, a PT is a legal entity established through an agreement, engaging in business activities with capital divided into shares, and fulfilling the requirements stipulated in the Law and its implementing regulations.⁴

Shareholders in a Limited Liability Company (PT) are individuals or entities owning part or all of the company's shares.⁵ Shareholders are entitled to receive dividends, have voting rights in the General Meeting of Shareholders (RUPS), and claim the remaining assets if the PT is dissolved.⁶ As a legal entity, the establishment of a PT requires at least two founders. Therefore, shareholders' liability is limited to the amount of their investment in shares, thereby limiting their risk.⁷ However, a PT founded by two shareholders with equal shares can encounter issues, particularly in decision-making during RUPS if disagreements arise due to discord or differing opinions between the shareholders. This requirement highlights the critical role of capital in establishing a PT, indicating that a PT is essentially a capital accumulation. The PT's authorized capital comprises the nominal value of all shares, making shareholders key stakeholders alongside employees, creditors, investors, consumers, and the community at large. Additionally, shareholders are also the primary financiers of the company.

Mental health disorders can significantly impact an individual's daily life, including their role as a shareholder. Hence, it is crucial to explore the legal protections available for shareholders with mental health issues within the corporate context. One important aspect to consider is protection against

¹ Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas (Raih Asa Sukses)*, 2015), hal. 34.

² T. Rahayu, A. N. Masita, S. I. Wahjono, dan S. Hidayat, "Pengendalian manajemen sebagai alat penilaian kinerja di unit pembiayaan mikro di Surabaya," *BALANCE: Economic, Business, Management and Accounting Journal* 14, no. 01 (2017)

³ E. R. Nugroho, "Politik hukum pembaharuan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Kajian Pasal 74 beserta penjelasannya)," *Jurnal Hukum IUS QUIA IUSTUM* 21, no. 3 (2014): 485–506.

⁴ H. Hartana, "Pengaturan pembatasan ekspansi perusahaan group di sektor pertambangan batubara ditinjau dari Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas," *Jurnal Komunikasi Hukum (JKH)* 8, no. 1 (2022): 233–243.

⁵ N. Aridah dan R. M. Haikal, "Perbandingan pertanggungjawaban hukum antara bentuk badan usaha terbatas (PT) dan perusahaan perorangan," *Journal of Management and Business (JOMB)* 6, no. 2 (2024): 384–391.

⁶ S. Syafrida, P. E. Latumeten, dan W. Suryandono, "Benturan kepentingan oleh pemegang saham mayoritas yang diangkat sebagai direktur utama perseroan terbatas tertutup (Analisa Akta Anggaran Dasar PT ARS)," *Jurnal Notary* 1, no. 1 (2019)

⁷ A. D. Safira, "Implikasi status hukum partai politik sebagai badan hukum dalam sistem hukum Indonesia," (2022).

discrimination. Shareholders with mental health disorders must be safeguarded from discriminatory practices that may occur within the company, including unlawful termination or other actions that could harm the affected shareholders.

Additionally, in terms of share ownership, shareholders with mental health disorders need protection from exploitation by others who might try to take advantage of their condition for personal or corporate gain. Legal protections must ensure that shareholders' rights are upheld and their interests are recognized despite their mental health challenges. It is crucial to balance the legal protection for shareholders with mental health issues and the overall interests of the company. Legal safeguards should promote inclusion and equality without compromising the company's viability. Therefore, changes in corporate policy and efforts to raise awareness and understanding of mental health issues within the corporate environment are necessary. Legal protection for shareholders with mental health disorders should be an integral part of creating an inclusive and fair workplace for all stakeholders.

This research aims to ensure that shareholders with certain mental health conditions receive fair treatment and protection in their participation as shareholders in a PT company.

METHOD

The method used in this research is the normative juridical method, employing an examination of legislation relevant to the issues addressed. The approach encompasses applicable laws and corporate regulations. The sources accessed in this normative juridical research include primary and secondary legal materials. Data collection is conducted through a literature review, encompassing materials from various sources such as books, articles, and journals.

RESULT AND DISCUSSION

1. Regulations on Legal Protection for Every Shareholder in Limited Liability Companies

Notary/PPAT is official generally given authority for make deeds authentic about deed law certain about right on land or right owned by on unit house arrange, and deed giving power for charge right dependents. Deed Notary/PPAT is deed made by a Notary/PPAT as proof has implemented it deed law certain about right on land or right owned by on unit House arrange.

A PT (Limited Liability Company) is a legally recognized entity, making it an autonomous legal subject.⁸ Ensuring legal protection for shareholders within a PT is essential to safeguard the interests of shareholders, particularly minority shareholders.⁹ The limited liability principle is a fundamental aspect of shareholder protection in a PT. Consequently, shareholders are liable for the company's debts only up to the amount of their shares. In cases of financial loss or bankruptcy, shareholders are not personally liable for the company's debts exceeding their investment.¹⁰ The law entitles shareholders to file a lawsuit if their interests are violated or harmed by the company's actions or its management. In such situations, shareholders can initiate a direct lawsuit against the company or a derivative lawsuit

⁸ U. Supriyatin dan N. Herlina, "Tanggung jawab perdata perseroan terbatas (PT) sebagai badan hukum," *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 127–144.

⁹ E. Herlina, "Implementasi prinsip transparansi sebagai salah satu prinsip-prinsip good corporate governance dalam pasar modal," *Jurnal Pemuliaan Hukum* 1, no. 1 (2018).

¹⁰ D. Muaya, "Analisis yuridis tanggung jawab terbatas pemegang saham atas kepailitan perseroan terbatas," *Lex Privatum* 3, no. 4 (2015).

on behalf of the company if there is unlawful conduct by the directors or management. Additionally, the law mandates transparency and accountability in corporate governance, requiring management to provide shareholders with clear and timely reports on the company's financial, operational, and strategic status.¹¹ This enables shareholders to monitor the company's performance and make informed investment decisions. Rights and Protections of Minority Shareholders: Legal frameworks often highlight special rights and protections for minority shareholders.¹²

This includes the right to receive information, the right to attend general meetings of shareholders, and the right to receive dividends or profit distributions according to their share ownership proportion. These regulations create a legal framework that provides adequate protection for each PT shareholder, allowing them to invest with confidence and ensuring their interests in the company are secure. This also ensures that the relationship between the company and its shareholders operates transparently, fairly, and in line with good corporate governance principles. Legal protections for every shareholder in a limited liability company are governed by Law Number 40 of 2007 concerning PT. This law guarantees adequate legal protection for shareholders, especially minorities, who may suffer losses due to the mistakes or negligence of the company's directors. According to the PT Law, minority shareholders who feel harmed by wrongful actions or negligence by the directors can file two types of lawsuits: direct lawsuits against the company and derivative lawsuits on behalf of the company. This indicates that the PT Law provides a solid legal foundation to ensure the protection of shareholders' interests, particularly minorities, when directors' actions may harm them.

Furthermore, in terms of shareholder liability, the PT Law stipulates that shareholders have limited liability, which is limited to the amount of their shares.¹³ This means that if the company's debts exceed its assets, shareholders are not liable for the excess debts. Conversely, if the company records profits, those profits will be distributed according to the established provisions. Thus, the PT Law provides a clear legal framework to protect shareholders' interests in a PT, whether through lawsuits or in terms of shareholder liability. The goal is to provide fair and satisfactory legal protection for every shareholder, ensuring their interests are protected according to the provisions set out in the law.

In situations where the company suffers losses, the entity with the right to sue is the company itself, and minority shareholders have no authority to take legal action, as explained by Kadir (2024). In this context, such policies do not support minority shareholders' interests and tend to favor the directors, since it is the directors who have the authority to represent the company in legal actions.

Consequently, this narrows the possibility for minority shareholders to file lawsuits against the company, ultimately marginalizing their position within the company.

Given the weak position of minority shareholders, there is a need for specific legal provisions to protect their interests from potential harm by majority shareholders' actions. Legal inequality, often stemming from a lack of transparency and general acceptance, is the root of unfair treatment between minority and majority shareholders. This makes it difficult for minority shareholders to fight for their

¹¹ A. Maradita, "Karakteristik good corporate governance pada bank syariah dan bank konvensional," *Yuridika* 29, no. 2 (2014).

¹² E. R. Y. Arifudin, "Ambivalensi derivative action dalam perlindungan pemegang saham minoritas dan kepentingan perseroan terbatas di Indonesia," Program Studi Hukum Program Doktor Fakultas Hukum UII (2022).

¹³ Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas* (Raih Asa Sukses, 2015), hal. 34.

rights, as they are often seen merely as fulfilling the legal requirement for the number of shareholders, without the ability to advocate for their rights. Therefore, it is essential to protect shareholders, acknowledging the need to strengthen the position of minority shareholders who lack a clear conceptual and historical basis for protection.

2. *Legal Protection for Shareholders with Mental Disabilities in Limited Liability Companies*

According to Satjipto Rahardjo, legal protection involves safeguarding human rights that are infringed upon by others, and this protection is provided to all levels of society so that they can enjoy the rights granted by law in a country.¹⁴ Essentially, legal protection serves as a means to offer protection to society, in this context, shareholders with mental disabilities in a limited liability company, who often have a weaker voice compared to majority shareholders in general meetings. Minority shareholders (with mental disabilities) have rights that provide them with legal protection, as specified in Article 61 of Law Number 1 of 1995 concerning PT, which states that every shareholder has the right to file a lawsuit against the company in the district court if they feel harmed by injustices committed by the general meeting of shareholders, directors, commissioners, and others. Shareholders are entitled to legal protection, including those with mental disabilities. While majority shareholders have guaranteed legal protection within the company, minority shareholders with mental disabilities often face injustices without the knowledge of other shareholders. The protection for minority shareholders, including those with mental disabilities, aims to safeguard their personal rights from misconduct and violations that could harm them.

There are several forms of protection for minority shareholders with mental disabilities: a) Super Majority Principle Implementation: This principle provides protection by requiring that decisions in the general meeting of shareholders (GMS) are determined based on a percentage agreed upon by the shareholders. b) Protection with Public Special Commissioners: Independent commissioners are tasked with regulating authority and participating in the decision-making process in the limited liability company. c) Protection with Shareholder Contract Principle: Parties must adhere to their agreements and are prohibited from violating or ignoring the shareholder contract instruments. d) Protection with Compensation Assistance: If any actions harm minority shareholders (with mental disabilities), they can claim compensation from the parties proven to have caused harm. e) Protection with Appraisal Rights: This form of protection allows minority shareholders to exit the company and sell their shares to another if any action threatens their interests. f) Protection through Legal Assistance: If both disputing parties cannot resolve their issues amicably, they may resort to legal proceedings to find a resolution.

There are numerous regulations that provide protection for minority shareholders (including those with mental disabilities), such as Law Number 1 of 1995, the Commercial Code, the Civil Code, the Criminal Code, and others.¹⁵ These various legal frameworks aim to protect minority shareholders and integrate their rights within a limited liability company.¹⁶ Many rights of minority shareholders (including those with mental disabilities) are detailed in Article 46 of Law Number 1 of 1995

¹⁴ T. Natya, "Perlindungan hukum terhadap model dalam kontrak kerja pada industri modeling menurut hukum perdata," *AMAR* 1, no. 2 (2023): 78–95.

¹⁵ M. Taufiq, *Aspek hukum dalam ekonomi* (MNC Publishing, 2017).

¹⁶ A. R. Pinto, "Protection of close corporation minority shareholders in the United States," *The American Journal of Comparative Law** 62, suppl_1 (2014): 361–385.

concerning PT, which explains their rights comprehensively. However, injustices can still occur, making it necessary to establish new laws in the future that provide more proportional and optimal protection for minority shareholders, particularly those with mental disabilities.

Legal actions that minority shareholders (who might be affected by company policies) can take include the right to express dissent, such as a dissenting opinion, especially against significant decisions like mergers, acquisitions, and other major changes that impact the shareholders or the company as a whole. Minority shareholders play a crucial role in the company's business direction. They often purchase shares hoping for profits but can end up as "bag holders" when share values plummet. Therefore, the law must offer specific protections to minority shareholders to prevent such outcomes.

From the perspective of minority shareholders, the law offers two options for them to protect themselves:

a. *Right to Exit the Company:*

The right to exit the company, also known as the "exit right," allows minority shareholders who feel aggrieved to leave the company without harming their own interests or those of the company (Kampen, 2023). Appraisal rights, which are a form of exit rights, involve the valuation of their shares. Additionally, they can petition the court to dissolve the company if they believe that dissolution is necessary to achieve justice. Recent studies in corporate governance show a shift in the paradigm from viewing the exit right as a sign of shareholder disloyalty to recognizing it as a legitimate right of minority shareholders.

b. *Right to Improve from Within:*

The right to improve from within allows minority shareholders with mental disabilities to utilize legal rights to make improvements in the company without leaving it, thus retaining their share ownership. For example, they can use mechanisms such as derivative lawsuits or request the court to appoint experts to conduct investigations within the company to protect their interests.

Protection for minority shareholders (especially those with mental disabilities) in such situations is crucial. If they disagree with a merger or acquisition process but are forced to remain shareholders in a fundamentally changing company, it is unjust. Therefore, the legal sector acknowledges the need for special attention and different treatment in these cases. One mechanism is appraisal rights, which allow dissenting minority shareholders to exit the company with a valuation of their shares. However, protection for minority shareholders must also consider their distinct positions and interests.

Because of this, it is crucial to assign different rights and positions to the following categories of shareholders: a) All minority shareholders, b) Shareholders with at least 1 percent ownership, c) Shareholders with at least 10 percent ownership, d) Shareholders with at least one-third percent ownership, e) Independent minority shareholders.

In this context, to elevate the status of minority shareholders, particularly in companies with numerous minority shareholders, it is necessary to grant them the rights to block or hinder corporate actions that may harm their interests. For example, in a public company, independent minority shareholders have the right to reject transactions that conflict with their interests, whether with the directors or the majority shareholders. Additionally, it is crucial to grant minority shareholders the right to ensure that the company operates in accordance with the legal regulations, as any legal violations

by the company can adversely affect them. Legal protection for minority shareholders also includes compensation if they suffer losses due to certain actions. Although the Company Law has provided protection for minority shareholders, in practice, holding the company's organs or the company itself accountable when the rights of minority shareholders are violated is not easy. Legal protections for every shareholder in a limited liability company are essential. A lack of transparency and accountability in the company can lead to conflicts and lawsuits. Legal protections for minority shareholders must encompass fairness and balance, ensuring their interests are considered and not ignored.

3. *Legal protection for shareholders with mental disabilities in a Private Limited Company (PLC) in Malaysia*

The Companies Act 2016 in Malaysia is the law that governs companies and shareholders, including those with mental disabilities. Here is a more detailed explanation regarding some aspects you inquired about: Right to Attend and Vote in General Meetings: Shareholders have the right to attend company general meetings and cast their votes on decisions made. This includes shareholders with mental disabilities, who can be represented by guardians or estate managers if they are unable to attend or make decisions on their own. Right to Obtain Information about Company Activities: All shareholders have the right to be provided with information about the activities and performance of the company. This enables them to make informed decisions based on accurate and up-to-date information. Right to Demand Accountability for Breach of Fiduciary Duty: If the directors or managers of the company breach fiduciary duties, such as abuse of power or poor management, shareholders can demand accountability. Shareholders with mental disabilities are also protected under this right and can demand through their guardians or estate managers.

Protection through Appointment of Guardian or Estate Manager: To ensure that the rights of shareholders with mental disabilities remain protected, they can appoint guardians or estate managers. These individuals will act on behalf of the shareholders to manage their share interests and represent them in company activities. This Act is designed to ensure that all shareholders, regardless of their mental condition, receive equal protection and can participate in the management of the company.

CONCLUSION

Shareholders have the option to file a direct lawsuit against the company or a derivative lawsuit on behalf of the company if there are illegal actions by the directors or management. This allows them to monitor the company's performance and make informed investment decisions. However, in cases of corporate loss, the company holds the strongest right to take legal action, and the management does not have the authority to take such steps on behalf of minority shareholders. This demonstrates a lack of impartiality towards minority shareholders, especially those with mental disabilities, and tends to favor the directors, as they have the right to represent the company in legal actions.

Due to the weak position of minority shareholders, they are in a situation that requires special protection, which should be regulated by legislation to safeguard their interests, including minority shareholders with mental disabilities, from potential harm by majority shareholders' actions. All shareholders are entitled to legal protection, including those with mental disabilities. While majority shareholders have guaranteed legal protection within the company, minority shareholders, particularly those with mental disabilities, often face injustice unnoticed by other shareholders. Protection for

minority shareholders, including those with mental disabilities, aims to safeguard their personal rights from abuse and violations that could harm them.

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