MINORITY SHAREHOLDERS ON THE OPERATION OFGENERAL MEETING OF SHAREHOLDERS THAT PASSED THE TIME

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A. Introduction

A company when viewed from the point of view of its shareholders, can be divided into 2 (two) types, namely a closed company and a public company. A closed company is a company in which not everyone can participate in the capital by buying one or several shares. In a closed company, all share certificates are written in the name, and what often happens is that only people who have a certain relationship such as family and soon become shareholders. Publicly listed companies according to paragraph 1 number 7 of the 2007 Law on are Public Companiesor a company that makes a general offering of shares, in accordance with the provisions of the laws and regulations in the field of capital markets, while a public company according to article 1 number 8 of the 2007 Company Law is a company that meets the criteria for the number of shareholders and paid up capital in accordance with the provisions of laws and regulations in the field of capital market.

There are two groups of shareholders, namely minority shareholders and majority shareholders. The definition of minority shareholder according to the provisions of Company Law No. 40 Ta hun 2007 Article 79, paragraph (2), namely s atu people or more shareholders who together represent one tenth of the total shares with valid voting rights, or a smaller amount as specified in the basic anggran PT that concerned.

According to Taqiyuddin Kadir (2017) minority shareholders are a group of shareholders who have a small share of shares in the company, so they cannot control the management of the company or do not have a decisive position in terms of selecting the company's directors, while the majority shareholder is a shareholder who owns or controlling more than half of the company's shares.

If something happens that involves the majority shareholder, then usually the majority shareholder has anticipated the General Meeting of Shareholders, in this case the majority shareholder controls a superior vote, of course the majority shareholder will elect the people who will be the directors or the board of commissioners. consisting of people who side with the majority shareholder. Through this method, the majority shareholder will indirectly control the running of the company's management. Therefore, the majority shareholder is also known as the "controlling shareholder". (Rudhi Prasetya, 2011).

Dominant control by the majority shareholder through the management of the company can generally be seen in the policies of the management who take sides and always tend to benefit the majority shareholder. Intervention of the majority shareholder through the management of the company if carried out without control will have the potential to cause losses to shareholders and stakeholders. However, the company's policies originate from the resolutions of the General Meeting of Shareholders (GMS), while the decisions of the GMS are taken based on majority votes.

The regulation regarding *fiduciary duty* is in Article 97 paragraph (2) of the PT. The management of PT must be carried out by every member of the Board of Directors in good faith (*duty of loyalty*) and with full responsibility (*duty care*). Good faith, in this case, means that compliance with respect to the fulfillment of achievements and how to exercise rights and obligations must observe the norms of decency and morality. This *duty to act in good faith* contains an obligation for the Board of Directors to only prioritize the interests of the Company, and not to take advantage of its position as the Board of Directors to obtain benefits, either directly or indirectly, from the Company unfairly, as well as to avoid conflict. interests between the personal interests of the Board of Directors and the interests of the Company. (Gunawan Widjaja, 2008).

One of the problems in the implementation of the annual GMS is the provision regarding the timing of the annual GMS, which is in Article 78 paragraph (2) of the 2007 Company Law "The annual GMS must be held within 6 (six) months after the financial year ends". According to the gramatical interpretation of the word "obligatory" in article 78, this is a sign that the provision is imperative . (M. Yahya Harahap, 2009). So that when the Company does not submit an annual report or does not conduct an annual GMS on a regular basis, this can cause legal problems and cause losses for shareholders. In this case, shareholders cannot know the company's financial condition and cannot receive dividends, because shareholders also have the right to receive dividend

payments. Dividends are the total net profit after deducting the allowance for reserves, which are distributed to shareholders, as long as the GMS does not determine otherwise **.**

Every and all obligations of a company should be carried out and resolved as well as possible, one of which is to achieve compliance with applicable laws and *Good Corporate Governance*. However, in reality the running of a company's business activities, there are often obstacles in the implementation of each and all of the company's obligations. One example is the implementation of the General Meeting of Shareholders (GMS) which in fact can be hampered by the failure of shareholders to attend the GMS according to the schedule determined by the company's directors or there are errors or negligence of the directors in holding the GMS, even though the GMS is is an important element in a company, where almost all matters relating to the company are determined by the GMS. Things like this can cause losses and legal problems for shareholders, especially for minority shareholders. It is necessary to pay attention to that this is a concrete example of the urgency of protection and legal certainty for shareholders in the implementation of management activities of a company.

B. Legal Protection Theory

Legal protection if explained literally can lead to many perceptions. Before parsing legal protection in its true meaning in legal science, it is also interesting to parse a little about the meanings that can arise from the use of the term legal protection, namely legal protection can mean protection given to the law so that it is not interpreted differently and is not injured by enforcement officials. law and can also mean the protection provided by law against something.

Legal protection is an act or effort to protect society from arbitrary actions by a ruler that is not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.

The principle of legal protection as well as justice as stated in the preamble of the 4th paragraph of the 1945 Constitution clearly and firmly states as follows: "then than that to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's blood and to promote public welfare, educating the nation's life, and taking part in implementing world order based on independence, eternal peace and social justice, then the national independence of Indonesia is compiled in a constitution of the Indonesian state, which is formed in the state structure of the Republic of Indonesia with the sovereignty of the People with based on the One and Only Godhead, fair and civilized humanity , Indonesian unity, and society led by wisdom in deliberation / representation, and by realizing a social justice for all Indonesian people "

The real manifestation of the protection of the entire Indonesian nation and of all Indonesian bloodshed is the guarantee of security for all citizens and for all parts of Indonesia. (Jimly Asshiddiqie, 2009).

According to Sudikno Mertokusumo (2009) legal protection can mean protection provided for the law so that it is not interpreted differently and is not injured by law enforcement officials and also means protection provided by law for something.

According to Satijipto Raharjo (2000), legal protection is to provide protection for human rights that is given to the community so that they can enjoy all the rights provided by law. Law can be used to realize protection which is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.

Meanwhile, according to Philipus M. Hadjon (1987), there are two kinds of means of legal protection, namely:

1. Means of Preventive Legal Protection

In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes a defibitive form. The goal is to prevent disputes. Protection laws preventive enormous meaning for acts of government that is based on freedom of action for the protection of law preventive compelled government to marry careful in taking decisions based on discretion.

2. Repressive Legal Protection Advice

Repressive legal protection aims to resolve disputes. The handling of legal protection by the general courts and administrative courts of Indonesia is included in this category of legal protection. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because according to western history, the birth of the concepts of recognition and protection of human rights is directed at limiting and laying out the obligations of society and government. In connection with legal recognition and protection of human

rights, recognition and protection of human rights has a primary place and can be linked to the objectives of the rule of law.

Thus the shareholders of get treated right to equal without look at the big ketch l number of shares. The principle of protection also balances the closeness of the shareholders to the company, the shareholders with the directors and commissioners who determine the back and forth of a company need to be balanced by providing protection of interests to shareholders. A fair balance of rights among shareholders is essential in smoothing the company's functions. With the presence of legal protection provided by the government (state) to the community, it is hoped that in fact it can be applied in social life, and it is hoped that peace can be created in social life. So that in this case the role of the government is expected to protect the rights of minority shareholders in the company. Ensuring the rights of shareholders, especially minority shareholders, is one of the objectives of legal protection.

C. Legal Certainty Theory

The law has the task of creating legal certainty because it aims to create order in society. Legal certainty is a feature that cannot be separated from law, especially for written legal norms. Law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone (Fence M. Wantu, 2007).

According to Hans Kelsen (2008), law is a system of norms. Norms are statements that emphasize the "should" or das sollen aspects by including some rules about what to do. Norms are deliberative human products and actions. Laws containing general rules serve as guidelines for individuals to behave in social life, both in relationships with fellow individuals and in relation to society. These rules become a limitation for society in burdening or taking action against individuals. The existence of rules and the implementation of these rules creates legal certainty.

Certainty in understanding has the meaning of a provision, or stipulation, whereas if the word certainty is combined with the word law it becomes legal certainty, which means a provision or legal provision of a country capable of guaranteeing the rights and obligations of every citizen. Normatively, legal certainty is when a regulation is made and promulgated because it regulates clearly and logically. It is clear in the sense that it does not cause doubts (multiple interpretations) and logically does not cause a clash and obscurity of norms in one norm system. The obscurity of norms that results from uncertainty of legal rules, can occur multiple interpretations of something in a rule.

In Gustav Radbruch's opinion, the meaning of legal certainty is that law is positive, which means:

1. That positive law is legislation.
2. Whereas law is based on facts, meaning that it is based on facts.
3. Whereas facts must be formulated in a clear manner so as to avoid confusion in meaning, as well as being easy to implement.
4. That positive law cannot be changed.

This opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically from legislation.

E. Utrecht (1959) also stated that law in developing countries has two definitions of the challenge of legal certainty, namely certainty by law, and certainty in or from the law. Then according to Van Radbrucht, the law must also contain 3 (three) identity values, namely as follows:

1. The principle of legal certainty (*rechmatigedaad*), this principle observes from a juridical point of view .
2. The principle of legal justice *(gerecigheit*), this principle *observes* from a philosophical point of view, namely where justice is equal rights for all people before the court.
3. The principle of legal usefulness (*zwechmatigheid*).

This doctrine of legal certainty is derived from juridical-dogmatic teachings which are based on a positivistic school of thought in the world of law, which tends to see law as autonomous, independent, because for those who adhere to this thought, law is nothing but a collection of rules. For adherents of this school, the purpose of law is nothing but to guarantee the realization of legal certainty. Legal certainty is manifested by law by its nature which makes only general legal rules. The general nature of these legal rules proves that the law does not aim at realizing justice or benefit, but solely for certainty. (Achmad Ali, 2002).

The connection with this, namely, what kind of rules and implementation can provide legal certainty for the legal consequences if the GMS is held late. the position of minority shareholders in terms of holding a General Meeting of Shareholders. Apart from that, in order to create a safe and peaceful atmosphere, hereby minority shareholders need assurance in the legal field of their rights in

the company, and it is hoped that legal certainty is guaranteed so that their rights are not violated, it is necessary to provide protection with existing set of legal rules.

Each shareholder also has the right to file a lawsuit against the company to the District Court if they suffer losses due to the company's actions which are deemed unfair and without reasonable reasons as a result of the General Meeting of Shareholders, Directors and/or the Board of Commissioners. Therefore, *Derivative Action* was created. (Munir Fuady, 2003).

Derivative Action or derivative rights, namely rights granted or owned by minority shareholders to be able to take certain actions in safeguarding or representing the company against the actions of other corporate organs in a limited liability company if the company's interests are harmed, namely by:

1. In accordance with Article 114 paragraph (6) of the Limited Liability Company Law, on behalf of the company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights can sue a member of the Board of Commissioners who due to their fault or negligence. cause losses to the company to court.
2. In article 80 paragraph (1) of the Limited Liability Company Law, in the event that the board of directors or board of directors does not issue a summons for the General Meeting of Shareholders within the period referred to in article 79 paragraph (5) and paragraph (7), the shareholders requesting the holding of the General Meeting of Shareholders may submit a request to the Chairman of the District Court whose jurisdiction includes the domicile of the Company to determine the granting of permission to the applicant to personally call the General Meeting of Shareholders (GMS).

D. Forms of Legal Protection for Minority Shareholders for Organizing General Meetings of Shareholders that Over Time

Legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that translate into attitudes and actions in creating an order in the interaction of life between fellow humans. (Muchsin, 2003).

Legal protection is providing protection to human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law. Law can be used to realize protection which is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice. (Satjipto Rahardjo, 2000).

In the framework of legal protection, the Limited Liability Company Law provides certain rights to minority shareholders so that majority shareholders do not abuse their power to minority shareholders. The rights of the said minority shareholders are as follows:

1. **Rights of the Individual (*Personal Rights*)**

   Personal right is an individual right that is owned by shareholders as a legal subject to sue for the negligence or error of the board of directors and the board of commissioners so that it results in losses for shareholders. Individual rights are protected by law. Individual rights are relative (Sutan Remy, 2019).

   In general, all people have the same position in law. Individual rights are protected by law. Minority shareholders as legal subjects have the right to sue the company, the Board of Directors and/or the Board of Commissioners if the Board of Directors and/or the Board of Commissioners have committed an error or negligence that has harmed minority shareholders to court.

   Actions of the board of directors that may be deemed to be detrimental or violate the individual rights of minority shareholders include, among others, transactions for personal interests (self dealing). Self dealing contains elements of a conflict of interest, namely between the personal interests of the directors and the interests of the company, while the teaching of corporate opportunity states that directors or other corporate organs are not allowed to take the opportunity to gain profit for themselves if the opportunity is actually can be given to the company. (Chatamarrasjid Ais, 2004).

   Then it has been explained earlier that Article 61 paragraph (1) of the Company Law gives shareholders the right to file a lawsuit against the company to the District Court if they are harmed due to the company's actions which are considered unfair and without reasonable reasons as a result of the decision of the GMS, the board of directors and / or the board. commissioner. Each shareholder referred to in this article is limited to shareholders who own shares of at least 10% (ten percent) in the company.

   So a shareholder can sue on behalf of himself and/or with other shareholders, except for the shareholder who is also being sued. Likewise, minority shareholders on their own behalf can

sue the board of directors and / or commissioners, if the directors and/or commissioners have committed an error that is detrimental to the minority shareholders.

2. Right Ratings (*Appraisal Right*)

Appraisal Right is the right of minority shareholders to defend their interests in order to value share prices. This right is exercised by the shareholders when requesting the company that its shares be assessed and purchased with a reasonable heart because the shareholders do not approve of the company's actions that could harm or harm the company. The provisions of article 62 paragraph (1) give each shareholder the right to ask the company to purchase its shares at a fair price if the person concerned does not approve of the company's actions that harm the shareholders or the company, relating to amendments to the articles of association, transfer or guarantee of the company's assets. a value of more than 50% (fifty percent) of the company's net assets or a merger, consolidation, acquisition or separation.

Provisions regarding the fair share price valuation are very important because the majority shareholder is more dominant in making decisions at the GMS, which of course could potentially harm the interests of minority shareholders. It is very possible that the minority shareholders sell their shares due to compulsion which is deliberately conditioned by the majority shareholder with bad faith.

3. The Prior Rights (*Pre-emptive Right*)

Priority right is the right to ask for precedence or the right to pre-empt the shares offered. Companies usually issue new shares in order to increase capital. The rights that take precedence (*pre-emptive right*) is a right granted to minority shareholders to be prioritized to own or purchase shares offered by the company.

In the event that the shares to be issued for additional capital are shares whose classification has never been issued, all shareholders who are entitled to purchase first are in accordance with the balance of the number of shares they own.

The share offering does not apply in the case of issuing shares:

1. addressed to company employees
2. Addressed to holders of bonds or other securities that can be converted into shares, which have been issued with the approval of the GMS, or
3. carried out in the context of reorganization and/or restructuring that has been approved by the GMS.

4. Questionnaire Rights (*Inquette Recht*)

The right to inquiry (inquette recht) is the right to carry out an examination of the company. This inquiry right is granted to minority shareholders to apply for an examination of the company through the court, to conduct an examination due to allegations of fraud or other things being hidden by the board of directors, commissioners or majority shareholder. Minority shareholder inquiry rights are regulated, among others:

1. Article 97 paragraph (6) of the Company Law, that on behalf of the company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights can file a lawsuit through the District Court against members of the board of directors who due to errors or his negligence which caused losses to the company.
2. The right to inquiry is granted under Article 114 paragraph (6) which gives minority shareholders the right to sue members of the board of commissioners to the District Court who due to their fault or negligence have caused losses to the company.
3. Article 138 paragraph (3) gives the right of minority shareholders to mengajuka examination request to the company by legislation, the articles of association or the agreement in the event there is a presumption that the company, directors or members of commissioners committed an unlawful act that is detrimental to the company or shareholders or third parties.

5. The right to file a derivative action (*Derivative Action*)

Derivative Rights are the authority of minority shareholders to sue the directors and commissioners on behalf of the company. Minority shareholders have the right to defend the company's interests through the authority of the judiciary. A lawsuit through the judiciary must be able to prove the fault or negligence of the board of directors or commissioners. With the lawsuit, if the lawsuit is won, the company entitled to receive compensation payments from the defendant is the company. This right also includes the right to demand that a GMS be held on behalf of the company.

According to Gunawan Widjaya, derivative right is the right given to one or more shareholders to act, for and on behalf of the company to take legal action in the form of filing a lawsuit against a member of the company's board of directors who has violated his fiduciary test.

Article 79 paragraph (2) gives minority shareholders the right to propose the holding of a GMS. Even shareholders with their derivative actions can request assistance from the District Court to force the directors to hold a GMS in connection with suspected actions that are detrimental to the company, or shareholders or third parties.

Basically, the derivative lawsuit involves two separate claims, namely the main claim from the company against a third party (board of directors) and the claim that shareholders must be allowed to act on behalf of or on behalf of the company. If viewed from another point of view, derivative action is in principle a tri-synergy of litigation, apart from involving the plaintiff's shareholders and the company as the plaintiff. Litigation also involves parties who are suspected of having committed a wrongdoing that has harmed the company or personally benefited from the company in an unjustified manner, who is the defendant. The lawsuit addressed to the defendant is of course an essential matter or the essence of the derivative lawsuit, and the interests of the company in this case directly conflict with the interests of the defendants. Therefore it is common practice in common law countries that defendants in derivative action cases will be represented by their personal advocates and not by company lawyers or consultants. (Robert W. Hamilton , 2018).

The concept of derivative action is a breakthrough in corporate law which aims to prevent abuse of authority by directors or commissioners who are generally dominated by the majority shareholder.

Derivative action is a mechanism that can be used by shareholders, especially minority shareholders to enforce the company's rights when the board of directors violates their obligations, while the board of directors who act on behalf of the company is almost impossible to take action against the board of directors who commit the violation. .

According to Ramsay (2006) , the concept of derivative action is basically intended to be able to provide a balance between the inevitability of the accountability of the board of directors and the inevitability of a reasonable freedom for him to run the wheels of the company. From Ramsay's statement it can be understood that the main purpose of derivative action is to achieve management accountability. Therefore, derivative action can act as a mechanism to maintain the trust of investors or shareholders. The same thing for management, of course, it is necessary to get protection against interference or hostility from minority shareholders, who when submitting derivative action does not act as a representative for the interest. company. In other words, derivative action is a mechanism that has the benefit of creating a deterrent effect on dishonest management.

E. CONCLUSION

A form of legal protection for minority shareholders in the event that the company is late in holding the General Meeting of Shareholders (GMS) when viewed from the perspective of the Limited Liability Company Law, namely shareholders can submit a request to the Chairman of the District Court whose jurisdiction includes the domicile of the company to assign permits to shareholders to conduct their own summons for the GMS. However, due to the absence of sanctions in any form, whether in the form of fines, warnings and others against the company, this does not provide protection for share holders.

The legal consequences to the company that organizes the AGM passed a period, in the Law Company Limited is not mentioned due to legal or sanctions if it passes out of 6 (six) months after t cope book ends not held AGM, so I get a conclusion that there are legal consequences anything for the company if there is a delay in terms of the implementation of the GMS. But logically, if not carried out R UPS means no p engesahan his deeds law made by the company, it is the same with the meaning that it has not completed the responsibility of the company for the year, and is one of the forms of indiscipline and not the good faith of company management in carrying out its duties.

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