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Legal Protection of Minority Shareholders in Merger Limited Liability Company in Indonesia

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Abstract
Companies in various countries are warm take action to strengthen the company financially. One way in which the company and has been a trend of late both domestically and abroad is a merger (amalgamation). Merger activity can affect unprotected minority shareholders should adjust the Limited Liability Company Law and government regulation (PP) provides legal protection for minority shareholders in the merger. The results of this study indicate that the implementation of the merger under the purchase method often harm the rights of minority shareholders. Legal merger, in this case the government regulation (PP) No.27 of 1998 on Merger, Consolidation and Acquisition Company Limited has determined that Article 4 (4) stipulated that the exercise will not stop the implementation of the merger. The law became less protection, while the law is the main entrance creates legal protection. Likewise matter of legal protection for minority shareholders in the merger.The principle of majority rule as one of the pillars of the Limited Liability Company Law, which, if the principle of majority rule is applied can fundamentally potential occurrence of abuse of power that led to the minority shareholders are not powerless in the face of the authority of the majority shareholder. The legal protection of minority shareholders in this case is done by introducing a special vote principle, namely the principle of the silent majority and super majority.
Keywords: Legal Protection of Minority Shareholders, Merger.

1. Introduction

Today almost every country is experiencing a decline in economic growth. The companies in various countries are warm take measures to strengthen the foundation of the company. One way in which the companies and has become the trend of late both domestically and abroad is a merger (amalgamation). The final goal of the merger is to form part of the business and corporate strategy of the acquirer or the surviving company. So both acquisitions and mergers are ideally be said the goal is to create value for the shareholders of the acquirer or the surviving company, and increase the market value (market value) of the merged company.[1]

The views of shareholders for this merger is to provide added value for shareholders, or minimum stay. Merger is a step in business strategy, so we need a calculation and based on the regulations that apply in Indonesia. Merger is basically an agreement, but the laws governing the procedures for the merger, so we need a separate strategy to reach the desired destination by the shareholders of the company, among others, to gain an advantage. The rule of law is intended to protect parties affected by the negative impact of the merger.[2]

Legal actions merger must be approved by the General Meeting of Shareholders (GMS) on each side Limited Liability Company (PT) involved in the merger. The GMS applied the principle of one share, one vote, so that the majority shareholder has considerable opportunities to get votes compared to the minority shareholders. This resulted minority shareholders can not accommodate his will in the General Meeting of Shareholders. Linked with the principle of fairness (fairness), therefore it must be balanced with the rights of minority shareholders (minority rights), but it also should not be detrimental to the majority shareholders who have greater capital in the company. The majority shareholder has a fiduciary duty to the minority shareholders, because they have the power to control the company through the vote in the GMS.[3]

Minority shareholders have a unique position in an engagement to establish a limited liability company, and the law is fair when the state intervened to provide protection to its citizens. State is the maker of legislation and have the right to apply sanctions, both criminal sanctions and administrative sanctions.

Therefore, it should be allowed, the minority shareholders until certain limits should be protected by

[1] Joseph M Morris, *Merger and Acquisitions Business Strategies for Accountants*, Canada: John Wiley & Sons. Inc, 2000, hlm.5.
[2] Nindyo Pramono, *Sertifikasi Saham PT Go Public Dan Hukum Pasar Modal Di Indonesia*, Bandung: PT Citra Aditya Bakti, 2001, hlm. 90
[3] Munir Fuady, *Doktrin-doktrin Modern Dalam Corporate Law & Eksistensinya Dalam Hukum Indonesia*, cetakan pertama, Bandung: PT Citra Aditya Bakti, 2002, hlm. 65.

law.[1]

The legal protection for minority shareholders in the merger is an important thing in a limited liability company, because the more people who buy shares in PT in an amount not too much resulting in a PT shareholder will be many. This resulted in legal protection for shareholders including minority shareholders become more important in the new world that is both global economy.[2]

The majority shareholder must always act in good faith. There should be rules what is meant by the minority shareholders.[3]

Therefore, in order to fulfill the elements of justice, we need a balance so that the minority shareholders will still be able to enjoy their rights as the majority, including regulating the company. On the other hand, the shareholders minoritaspun Noteworthy interests and can not simply be ignored rights. To safeguard the interests of both sides, in the science of Limited Liability Company Law known as the principle of "mayority Rule minority Protection", which is the rule (the ruler) in the company remain the majority, but the rule of the majority that must be undertaken by always protecting (to protect) the parties minority. It if does not get the attention of the government in fear will disrupt the climate of mergers and minority shareholders.

The principle of the protection of minorities have a good cause for the requested is ekuilibirium which is summed up in the principle of majority rule and minority rights. Only, when other factors, such as procedural problems, hardware and software and also the human factor is not ready, will in fact tirany minority.[4]

Legal protection is still lacking to accommodate the will of the minority shareholders in the merger, due to regulations in the Limited Liability Company Law is not clear on what the definition of a reasonable price, the extent to which the majority shareholders may approve fundamental changes in companies before merger carried out, and how far the holder shares do not agree on merger may request the purchase of shares at a reasonable price,[5] is there any other rights owned by minority shareholders set forth in the regulations in Indonesia.

In connection with these problems, then this dissertation research identifies legal issues as follows:

Why the Limited Liability Company Law and Government Regulation No.27 of 1998 on Merger, Consolidation and Acquisition Company Limited did not set clear laws regarding the protection of minority shareholders in the event of a merger?

2. Research Method

This research is a normative study, which is the study of the principles of law, the legal norms of the rule of law and the legal system.[6] This research uses several approaches, such as: Approach legislation and conceptual approaches.[7]

3. Result and Discussion

The Framework Theory

Theory of Legislation.

Gesetzgebung Wissenschaft is a theory of law which is a concept that translates peundang law in general, which was originally developed in Western Europe, especially in countries that speak German. Another term often used is Wetgeving wetenschap or science of legislation. Understanding of law in Indonesia is divided into two senses. First, according to A. Hamid S. Attamimi, argues legislation (wettelijke regels) literally means the regulations pertaining to the laws, regulations either in the form of their own laws and regulations lower the attribution or assignment of legislation.[8] And second, Maria Farida Indrati, argues sense legislation that includes laws is the process of formation of state regulations and legislation is the result of the formation of state regulations, both at the central level and at the regional level.[9]

According to Article 1 paragraph 2 of Law No. 12 Year 2011 on the Establishment of legislation, which is the legislation is "written rules contain legal norms binding in general and formed or defined by state agencies or competent authorities through the procedure set out in the legislation ". The formation of a theory of the

[1] Munir Fuady, *Perseroan Terbatas: Paradigma Baru,* Bandung: PT Citra Aditya Bakti, 2003, hlm. 171.
[2] Margareth Chew*, Minority Shareholders, Rights and Remedies*, Singapore: Butterworths Asia, 2000, halaman pendahuluan dari A.F.Mason yang menyatakan bahwa *protection of the rights of minority shareholders assumes greater importance in the new world of the global economy.*
[3] Kartini Muljadi, *Tinjauan Aspek Hukum Merger Dan Akuisisi Perbankan Indonesia*, *makalah* disampaikan pada Seminar Tinjauan Aspek Hukum Dalam Pelaksanaan Merger dan Akuisisi, Jakarta: 20 Juni 1996, hlm. 22.
[4] Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktek,* Bandung: PT Citra Aditya Bakti, 1996, hlm. 16.
[5] James D.Cox., Thomas Lee Hazen, F.Hodge O'neal, *Corporation*, New York: Aspen Law & Business, 1997, hlm. 585.
[6] Sudikno Mertokusumo, *Penemuan Hukum,* Yogyakarta : Liberty, 2009, hlm 29
[7] Peter Mahmud Marzuki, *Penelitian Hukum,* Jakarta: Kencana Prenada Media Group, 2008 hlm. 93
[8] A. Hamid S, Attamimi (1), *Perbedaan antara Peraturan Perundang-undangan dan Peraturan Kebijakan***.** Makalah pada Pidato Dies Natalis PTIK ke-46, Jakarta 17 Juni 1992, hlm.3,
[9] Maria Farida lndrati Soeprapto, *Ilmu Perundang-undangan,* Jakarta: Kanisius, 2007**,** hlm. 3.

legislation will be guided and further elaborated on legal principles and legal norms, the type and the hierarchy of legal norms and principles of formation of legislation is good and ideal. Understanding of the principles of formation of the legislation is good, we must first understand understanding legal principles and legal norms. The principle of the law is the background of the existence of a concrete law, while the norm is the law of the concrete itself. Or it could also be said that the principle is the origin of the norm. It gives meaning, understanding legal principles are the basics or directions in the formation of positive law. Normative character of legal science shows a characteristic that is normative.[1] Legislation, in the context of Indonesia are written rules established by state institutions or competent authorities and the generally binding.

Referrers principle is used to resolve the conflict between the norms of the Act setting Limited Liability Company Law and government regulation (PP) in providing legal protection for minority shareholders in the merger. Legal certainty refers to the imposition of the law is clear, consistent, and consequently, the implementation can not be influenced by subjective circumstances. Indicators of legal certainty in a country itself is the existence of clear legislation and legislation is implemented well by the judges and other legal officials.[2] In our country control the use of government authority has been there even is long existence, whether it's internal controls (the built-in control), or control external, preventive control (A-priori control) or the repressive control (A-posteriori control), juridical control, political control, social control, and other controls. [3]

Hierarchy of legislation means laws or ordinances levels lower a rule must not conflict with the laws and regulations are higher. Theory of laws which examines the legal principles and legal norms, the type and the hierarchy of legal norms, and preferences of this law is used to analyze the hierarchy of norms in Government Regulation No. 27 Year 1998 regarding the Merger, Consolidation, Acquisition of limited liability company under Limited Liability Company Law No. 1 of 1995 on Limited Liability Company, while the existing Law on Limited Liability new: Limited Liability Company Law Number 40 Year 2007 regarding Limited Liability Company, but until now there is no government regulation is new. Merger is expected to contribute positively to the shareholders, especially minority shareholders, it can even be a way out of the various problems faced by the minority shareholders.

Theory of Legal Protection

Beginning of the rise of the theory of legal protection is derived from the theory of natural law or natural law school. This stream was pioneered by Plato, Aristotle and Zeno. According to them the law comes from God is universal and timeless, as well as between law and morality should not be separated. And is a reflection and rules internally and externally of human life which is realized through legal and moral. There is a difference view of the philosophy of natural law acknowlege are still many disputed and rejected by the majority of the philosophy of law against the law of nature, because they still consider the search for an absolute law of nature only a futile act and not helpful.[4] But in reality it is the writings of these specialists use a lot of natural law schools they do not realize. The legal protection is to give shelter to the human rights that harmed others and the protection is given to the people so they can enjoy all the rights granted by law or in other words the legal protection is a wide range of legal remedies that must be provided by law enforcement officials to provide a sense of security, both in mind and physical harassment and threats from any party.[5] Is the pride and dignity, as well as the recognition of human rights which are owned by the legal subject under the provisions of the law of tyranny or as a collection of laws or rules that can protect a thing from another.[6] Legal protection has a narrowing sense of protection, in this case the only protection by the law alone. The protection afforded by the law, is also related to their rights and obligations, in this case that of humans as subjects of law in its interaction with fellow human beings and the environment. As the subject of human law has the right and obligation to make a legal action.[7]

Majority shareholders and minority shareholders have differences in legal protection. The legal protection against the majority shareholder is reasonably assured, especially through the GMS mechanism which can otherwise take decisions by consensus, it will be taken by a decision adopted by a majority, while the legal protection for minority shareholders, namely the noble cause to maintain fairness in the Company limited (PT), so that the minority must be protected though not necessarily to be the governing party of the company. Minority shareholders will feel safe and protected and secured interests in limited liability companies (PT) is being merged.

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[1] I Dewa Gede Atmadja, Sudarsono, Suko Wiyono, *Filsafat Ilmu*, Malang: Madani, 2014, hlm. 9.
[2] Abdul Rachmad Budiono, *Pengantar Ilmu Hukum*, Malang: Bayu media, 2005, hlm. 22.
[3] Sudarsono, *Pilihan Hukum dalam Penyelesaian Sengketa Tata Usaha Negara di Peradilan Tata Usaha Negara*, Pidato Pengukuhan Guru Besar Fakultas Hukum Universitas Brawijaya, 2008, hlm. 2.
[4] Marwan Mas, "*Pengantar Ilmu Hukum"* (Bogor: Ghalia Indonesia, 2004), hlm. 116
[5] Satjipto Rahardjo, *Hukum dan Perubahan Sosial Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia*, Yogyakarta: Genta Publishing, 2009, hlm. 74.
[6] *Ibid*, hlm. 74.
[7] Kansil. CST, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, hlm. 102

Theory of agreement

Agreement pursuant to Article 1313 of the Civil Code is an act that occurs between one person and another person or more who joins himself to another person or more. In general, the agreement is not tied to any particular form, and can be made orally and in writing. The act that occurs in accordance with the formalities of existing laws depends on the conformity of the will of two or more. Agreement is an event in which a promise to another person or two people it promised each other to do something. These events will give rise to a relationship between two people concerned who called the engagement. Agreement there must be the subject of agreement or the parties are bound by a treaty. Civil Code distinguishes three categories relating to an agreement, namely: the parties to the agreement itself, their heirs and those who get the right thereof, a third party.[1]

Pursuant to Article 1338 (1) of the Civil Code regarding freedom of contract then the person or parties are free to make an agreement. "All the agreements made legally valid as law for those who make it."

It is certainly related to the freedom of contract is with the validity requirements necessary approvals four conditions as mentioned in Article 1320 of the Civil Code, namely: they agreed to bind themselves, able to make a commitment, a certain thing, a cause that kosher.

The terms of validity of the agreement can be described as follows: an agreement on a treaty will begin from the element of the offer (offer) by one of the parties, followed by acceptance of the offer (acceptance) of the other party, each person is competent to make an appointment. Proficient in a legal sense is called bekwaam or has a legal capacity. This means that a person could commit an act or acts of law if the person is an adult and are not under guardianship or trusteeship. It is used as its subject, is an item or object that is at least the specified type. An agreement without cause, or that have been made because of a false or illicit reasons, do not have the power. One reason is prohibited where prohibited by law, are contrary to morality and public order.

Terms prowess and agreement on the terms of an agreement subjectively. If not met, then the agreement is "irrevocable". Terms specific object and the cause or causes of kosher is objective requirements, so that if not met will result in an agreement "null and void".

All agreements are made in good faith and is legally valid as law for those who make it. These treaties can not be revoked other than by agreement of the parties or for reasons specified by law. Agreement binding not only for things that are expressly stated therein, but also for everything that, by the nature of the agreement required by propriety, customs and laws.

Based on the terms of the validity of the agreement can be distinguished, namely the core, this subsection referred esensialia and parts which are not core called Naturalia and aksidentalia. Esensialia is part of a nature that should exist in the agreement, which determines the nature or cause of the agreement is created. Naturalia is an innate part of the agreement, so secretly attached to such agreement ensures there are no defects on the items for sale. Average Aksidentalia which is part of this is inherent in the treaty expressly agreed by the parties. In addition to the source of legislation, the engagement can be born out of the agreement. This can be seen in the provisions of Article 1233 (1) of the Civil Code which states that: each engagement is born, either because of an agreement, as well as legislation.

Merger is basically an agreement, but the laws governing the procedures for the merger, so we need a separate strategy to reach the desired destination by the shareholders of the company, among others, for the benefit of the merger agreement made.

Merger is a merger of two or more companies, which one company or several companies merged will dissolve itself (without the liquidation), and only 1 (one) the company will stand or exist.

Merger of Companies is an effective alternative to a business group that wants to develop rapidly in a short time. Some of the reasons a company wishes to take over or merge with other companies, among others:[2]

1. Accelerating the growth of the company

Common reasons that the acquisition is to accelerate the process of growth and expand business with the transactions executed by the process specified by the regulations.

2. Vertical Integration

That is to get companies which resulted in the company mastered the production of upstream to downstream. This is done so that companies who bought or surviving have certainty in the supply of raw materials, stability in the marketing, facilitate control in terms of marketing, and provide greater profits for eliminating intermediate agents.

3. Acquisition of something that is intangible and employees

Purchase of a company in general to get a particular asset including intangible assets that are not owned by the company that would take over. For example, the seller has the technology, network marketing, contracts, licenses are not transferable to other companies, and other things that is hard to duplicate or implemented by the

[1] Mariam Darus Badrulzaman, *Aneka Hukum Bisnis*, Bandung: Alumni, 1994, hlm.22

[2] Joseph M Morris, *Merger and Acquisitions Business Strategies for Accountants*, Canada: John Wiley & Sons. Inc, 2000, hlm.3-5.

company that will take or who will receive a merger. For companies that have weaknesses in the field of human resources can be aided by other companies better human resources, and business development leads to the use of advanced technological means necessary human resource capacity are adequate. Small firms will be difficult to follow this development due to it required a fairly high cost, except by raising ourselves, among others by mergers and acquisitions.[1]

4. Investment Portfolio

The Company intends to invest the excess cash the company to earn a higher income than the deposit or other investments. By conducting unrelated business diversification, which aims to minimize the risk if the current income from various businesses in the portfolio are not related positively. Framework for efficient capital markets, it can be questioned how keep the ability to portfolio investment strategy is to create value for shareholders.

5. Changes in the industry

The company wants to enter in an industrial business that is completely new, or another, usually acquired entity have a relationship with the "core business" of his companies. The corporate takeover is a fastest way to expand than to build a new company.

6. Marketability of Stock

If the company that will take over or will receive a merger is a public company, and will take over a company that is a business that is new or different, it will affect the company's stock price will take.

Every mergers, consolidations and acquisitions, based on Law Number 40 of 2007 regarding Limited Liability Company Law, subject to the approval of the General Meeting of Shareholders (GMS). It is regulated in Article 6 of Regulation 27 of 1998 which states as follows:

(1) "Merger, Consolidation, and Acquisition can only be done with the approval of the General Meeting of Shareholders.

(2) Merger, Consolidation and Acquisition made by decision of the General Meeting of Shareholders attended by shareholders representing at least ¾ (three quarters) of the total shares with voting rights are legitimate and approved by at least ¾ (three-quarters) part of such votes.

(3) For Public Companies, in terms of the conditions referred to in paragraph two (2) is not reached, the requisite attendance and decision making are determined in accordance with the laws and regulations in the capital market ".

Company Limited has characteristics which are: has a wealth of its own, there are shareholders who act as suppliers of capital, his responsibilities do not exceed the paid-up capital, there should be a committee organized to represent the company in carrying out its activities.

Shareholder Primacy is a doctrine which says that the only purpose of the company is to seek as much wealth for shareholders (maximizing return to shareholders).[2] The presumption that the duty of directors is to maximize profits for shareholders.[3] It would be unacceptable to consider the interests of other stakeholders that will potentially increase the cost or reduce profits. Companies only exist to make profits for shareholders sebesarnya. Strength of directors or management in work and act in the interests of shareholders. Law firms are effectively structured to maximize shareholder value. Directors or management ignored measures to maximize other stakeholders (stakeholders).

According to Boatright in its analysis that the appointment by the shareholders of these contractual nature, because it creates rights and obligations of directors to shareholders.[4]

Merger ideally be said the goal is to create value for the shareholders of the acquirer or the surviving company, and increase the market value (market value) of the merged company.[5] The views of shareholders for this merger is to provide added value for shareholders, or minimum stay.

Voting at the GMS by the Limited Liability Company Law uses the principle of one share one vote or 1 (one) share of 1 (one) vote means that each shareholder having 1 (one) share is entitled to issue 1 (one) vote at the GMS merger.

This principle is closely related to the principle of majority rule as one of the pillars of the Limited Liability Company Law, which, if the principle of majority rule is applied can fundamentally potential occurrence of abuse of power[6] that led to the minority shareholders are not powerless in the face of the authority

[1] Munir Fuady, *Hukum Tentang Merger*, cetakan pertama, Bandung : PT Citra Aditya Bakti, 1999, hlm.55.
[2] Adolph Berle, *Corporate Powers as Powers in Trust*, Harvard Law Review. 1049, 1931, dalam Lynn A. Stout, *Bad and Not-So-Bad Argument for Shareholder Primacy*, Southern California Law Review, Vol. 75: 1189, 2002, hlm. 1189
[3] Charles F Phillips Jr, "*What is wrong with profit maximization*?" (1963) 6:4 Business Horizons, hlm 73.
[4] John R. Boatright, *Fiduciary Duties and The Shareholder-Management Relation: What's so Special about Shareholders?*, Business Ethics Quarterly, Volume 4, Issue 4, 1994, hlm. 399., hlm. 396.
[5] Joseph M Morris, *Merger and Acquisitions Business Strategies for Accountants*, Canada: John Wiley & Sons. Inc, 2000, hlm. 5
[6] Elizabeth J. Boros, *Minority Shareholder's Remedies,* New York: Oxford University Press Inc, 1995, hlm 5.

of the majority shareholder. However, the system is considered the most democratic, because the more a person shares in PT, the greater the risk of loss to be borne.

Enforcement of this system without adequate protection for minority shareholders to make the position of majority shareholders and minority shareholders become unbalanced.

This merger event is usually accompanied by asymmetry of information between the majority shareholders with minority shareholders. Therefore the majority shareholder has more complete information on the target company (because it comes from the same group) and shareholders also holds majority control over two companies that transact such transactions, it can be suspected based on the interests of shareholders majority, which can cause harm to the minority shareholders.

Increasingly concentrated control of the company will result in the majority shareholder position in the company to become stronger and so happened they were to take personal advantage to be lowering the value of the company and detrimental to minority shareholders.

In the practice of the merger, the majority shareholder in control so that minority shareholders can not do anything except follow the will of the majority shareholder, it is in this context that the most disadvantaged are minority shareholders, given in relation to keberlakukan shareholder primacy doctrine in the law firm, the most concerned with profits earned by the company are the shareholders, especially the majority shareholder.

To improve the protection of minority shareholders posed by transactions which contain conflict of interest as above, the need for regulation of merger transactions that conflict of interest. The essence of this rule is that any merger transaction conflict of interest must be approved by minority shareholders. The consequence of this rule is that even though the shareholders have agreed to a transaction representing a conflict of interest, but if minority shareholders do not approve the transaction can not be executed.

The shift of the conflict between the shareholders with management becomes a conflict between the majority shareholders with minority shareholders (minority shareholders) give rise to a new agency problem. Minority shareholders as the parties have shares in limited amounts or slightly so it is not uncommon to only be used as a complement in a company. The pattern of decision-making is based on the percentage of shares held so that the decision-making mechanisms in the company can be assured of minority shareholders will always be less than the majority shareholder. This resulted in the majority shareholders have absolute control over minority shareholders, thus providing the opportunity for the majority shareholder to perform actions that benefit themselves and disadvantage minority shareholders.

Their concentration in the ownership structure may lead to the risk of expropriation of the minority shareholders. Majority or controlling shareholder who is the majority shareholder of a company can also control either directly or indirectly through other companies. The ability of the controlling shareholders to expropriate increases when the controlling shareholders are also involved in the management so that the ability of the controlling shareholder will be greater in influencing company policy.

Minority shareholders should also be more vigilant against acts of arbitrary of companies whose shares are owned by a single majority shareholder.

Weak legal protection against small investors which led investors to feel less exposed will be trying to protect themselves by becoming a majority shareholder or controlling. Majority or controlling shareholder who has full control will tend to take advantage of the company to generate personal benefits to be gained by minority shareholders.

A majority or controlling shareholder can perform actions such as abuse of power through control right that is protected. When the private benefits of control exerted over the large, majority or controlling shareholder will seek to allocate the company's resources to generate the private benefits. If a majority or controlling shareholder to control the company effectively, then their policies tend to lead to the expropriation of the minority shareholders.

Implementation of a merger does not always go smoothly, sometimes causing problems, one of which is the problem of the protection of the interests of minority shareholders. This problem can arise, both before and after the occurrence of this legal act.

Usually minority shareholders objected to this plan. Objection minority shareholders this can create a dilemma situation, on one hand, would be detrimental to minority shareholders and on the other hand if the plan is canceled it will be detrimental to the majority shareholder who has approved this plan.

Limited Liability Company Law applied that No. 40 2007 have not been fully provide legal protection to minority shareholders, but with six rights set forth in the Limited Liability Company Law plus the principle of one share one vote set forth in Article 99 paragraph (1) less providing legal protection for minority shareholders / independent in investing in company domiciled in the legal territory of Indonesia. It is certainly less fair, since minority shareholders will still lose in decision-making in a company because of losing the dominance of the majority shareholder, is in line with that of minority shareholders should accept the consequences, because the consequences of the risk if shareholders suffer losses in order merger and will be larger borne minority shareholders.

At the time of the merger the majority shareholder may act arbitrarily against minority shareholders because the minority shareholders do not have the same position. Where the role of legislation, especially the Limited Liability Company Law to accommodate the minority shareholders of the arbitrariness of the majority shareholder (the tyranny of the majority), because it is well known that the nature of the decision by the majority in decision-making merger of a company is not always fair for minority shareholders, although the method of taking the majority decision is considered to be the most democratic. Therefore, the system of majority decision, can only one who has put money into the company up to 24% with the stock holding of 24% in relation to the control and decision-making within the company, they have accrued are exactly the same in voting by shareholders 1%, and will be very different to the shareholders 51%. It becomes unfair. Therefore, to maintain that there should be justice for the shareholders, whether he is the majority shareholder and minority shareholders, then came the concept of so-called "majority rule with minority protection" (majority rule minority protection). With the enactment of the Limited Liability Company Law No. 40 In 2007, the position of shareholders of both majority and minority is considered equivalent, with no difference in the number of votes cast in policy making within the company.

Secondly, we discuss the role in the protection of minority shareholders in the case of merger transactions which contain conflict of interest (conflict of interest) and the necessity of the principle of openness and respect for the rights of the shareholders based on the principle of equality among shareholders of both minority and majority.

In the opinion of William Friedman, a sociologist of law, said that the rule of law depends upon, among other things, a legal substance in the form of legislation and judicial decisions, as well as the legal culture of society. Legal certainty is a prerequisite of economic development success. So with the regulation of the legal protection for minority shareholders in the laws and regulations in Indonesia is expected to run well by all stakeholders of a company so as to further enhance the development of the national economy and provide a solid foundation for the business world in the face of the world economy and the progress of science knowledge and technology in the era of globalization to ensure the implementation of a conducive business climate.

In the merger that the majority shareholder in control so that minority shareholders can not do anything except follow the will of the majority shareholder, it is in this context that the most disadvantaged are minority shareholders, given in relation to the most concerned with the gains by shareholders is the majority shareholder. The concept and legal regulation of the principle of the protection of minority shareholders in the merger is a new thing and lack a sufficient portion legislation in Limited Liability Company Law.

The case of the merger of the purchase method can be categorized as a transaction with conflict of interest, since in providing the necessary legal protection to minority shareholders.

Merger purchase method associated with the conflict of interest that may understate the value of stocks and shares composition so it does not protect the interests of minority shareholders of deeds majority shareholder who did the merger transaction of the purchase method with the authority of the board of directors and the GMS, where directors could be governed in the interests of the majority shareholders.

Limited Liability Company Law Law provides protection to minority shareholders in the event of company mergers provided for in Article 126 Limited Liability Company Law which states:

1. Legal actions should be obliged to consider the merger of the company:
    a. The Company, minority shareholders and employees of the company.
    b. Creditors and other business partners of the company.
    c. Community and fair competition in doing business.
2. Shareholders who do not agree with the decision of the GMS regarding the Merger, Consolidation, Acquisition of or separation as referred to in paragraph (1) may only use rights as referred to in Article 62.

This provision confirms that the merged company may not be possible if prejudicial to the interests of certain parties. If the rights of minority shareholders to sell their shares at a fair price this can not be done, the minority shareholders may not approve the plan of merger, consolidation and acquisition of the proposed Board of Directors and exercise their rights as stated in Article 62 of Limited Liability Company Law which shareholders can ask the company to be shares purchased at a reasonable price.

The minority shareholders have the right to sell its shares in accordance with a reasonable price. Practice, determine a reasonable price is likely to create some difficulties, the share price can not be agreed upon. In general, a reasonable price is the price corresponding to the market price or the price determined by an expert appraiser. Rate this reasonable stock price of each expert using some assumptions and risks of use of each expert assumptions vary by itself, produce a different outcome.

The Board of Directors will determine whether or not a PT healthy, because the key is in the balance of the fair treatment or treatment of shareholders, including the issue of providing information. The lack of this information (lack of information) can be detrimental to minority shareholders because it relates to a decision to be taken by the shareholders at the GMS merger.

Limited Liability Company Law No. 40 Year 2007 regarding Limited Liability Company in its regulation are ambiguities concerning the protection of minority shareholders in the merger for in article 126 paragraph (1) is only set a legal act of merger or amalgamation shall take into account the interests of minority shareholders. Then, in article 126 paragraph (2) shall shareholders did not approve the merger of the Company is entitled to request that their shares be purchased in accordance with a reasonable price. According to Government Regulation No. 27 of 1998 on the merger, consolidation and acquisition Company Limited in Article 4 paragraph (3) that the shareholders did not agree with the decision of the General Meeting of Shareholders regarding the merger can only exercise his right to be a share holding was bought at a reasonable price, and article 4 paragraph (4) stipulated that the implementation of the rights referred to in paragraph (3) will not stop the implementation of the merger.

Merger cases can be categorized as a transaction with conflict of interest, because in giving protection to minority shareholders is precisely by opening the possibility of the implementation of the quota system in the voting of the general meeting of shareholders on the principle of one share one vote. Minority shareholders or minority shareholders not infrequently only be used as a complement to the corporate transactions that have merged. The mechanism of decision-making in the company in order merger of minority shareholders can be assured it will always be less than the majority shareholder, for a decision tree based on the magnitude of the percentage of shares held. Such a situation will get worse, if it turns out the majority shareholder to use the opportunities this merger to control the company based on their interests and ignore the interests of minority shareholders.

4. Conclusion

Status of minority shareholders in the merger based on Limited Liability Company Law No. 40 Year 2007 regarding Limited Liability Company in its regulation are ambiguities concerning the protection of minority shareholders in the merger for in article 126 paragraph (1) is only set a legal act of merger or amalgamation shall take into account the interests of minority shareholders. Then, in article 126 paragraph (2) shall shareholders did not approve the merger of the Company is entitled to request that their shares be purchased in accordance with a reasonable price. According to Government Regulation No. 27 of 1998 on the merger, consolidation and acquisition Company Limited in Article 4 paragraph (3) that the shareholders did not agree with the decision of the General Meeting of Shareholders regarding the merger can only exercise his right to be a share holding was bought at a reasonable price, and article 4 paragraph (4) stipulated that the implementation of the rights referred to in paragraph (3) will not stop the implementation of the merger.

Merger purchase method associated with the conflict of interest that may understate the value of stocks and shares composition so it does not protect the interests of minority shareholders of deeds majority shareholder who did the merger transaction of the purchase method with the authority of the board of directors and the GMS, where directors could be governed in the interests of the majority shareholders.

5. Recommendations

1. The government should really make a clear legal device that is about the rules governing the legal protection for minority shareholders, especially regarding the implementation of the merger in order to protect minority shareholders from the arbitrariness of the majority shareholder to incur losses of minority shareholders.
2. The government should immediately revise and clarify the intent of the provisions contained in Article 126 paragraph 1 and 2 of Limited Liability Company Law No. 40 Year 2007 regarding Limited Liability Company, Article 4 paragraph 3 of Government Regulation No. 27 of 1998 on the merger, consolidation and acquisition Company Limited so as not to cause multiple interpretations which may result in legal uncertainty and conduct a review of the rules on conflicts of interest for the future merger transaction will no longer occur exproriation to minority shareholders.

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