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THE LEGAL CAPITAL MARKET PROTECTION: JUSTICE FOR MINORITY STOCK INVESTORS

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ABSTRACT

The capital market is a critical component of a nation's economy, facilitating capital formation and allocation. Fraudulent practices, manipulation, lack of transparency, dishonesty and injustice in capital market activities must be dealt with firmly. This is because injustice can cause losses for minority stock investors. This study aims to analyze and evaluate the minority stock investor protection system in Indonesia, as well as efforts to improve justice and equality for all shareholders and examines the existing legal frameworks designed to protect minority stock investors and assesses their efficacy in ensuring justice. This study was a normative legal study, with a State approach, a Conceptual approach and a Case approach. The results of the study indicate that in the legal protection system according to Indonesian capital market law there are several findings that can result in injustice to Minority Investors. Building corporate governance that prioritizes and upholds the principle of honesty. Enforcement of the Transparency Principle in the implementation of capital market activities, both before listing, during listing, and after listing by changing the formulation of civil sanctions in the form of fines and compensation decided by the Financial Services Authority. As well as the involvement of minority investors in making important decisions in the issuing company.

1. Introduction

Capital markets are essential for economic growth, providing a platform for companies to raise funds and for investors to participate in corporate ownership. A healthy market depends on investor confidence, which is heavily influenced by the perception of fairness and the protection of investor rights. Within a corporate structure, a significant power disparity exists between majority and minority shareholders. While majority shareholders can control corporate decisions through their voting power, minority investors are vulnerable to actions that may benefit the controlling parties at their expense, a phenomenon known as expropriation. Expropriation can manifest in several ways, such as insider trading, related-party transactions, and freeze-out mergers, where majority shareholders force minority shareholders to sell their shares at an unfair price. These abuses undermine market integrity and deter

potential investors, particularly smaller, individual ones. Therefore, the legal protection of minority shareholders is not merely a matter of corporate law but a cornerstone of a functional and just capital market. This paper investigates the legal and regulatory mechanisms in place to address this issue and proposes ways to strengthen them. The capital market is one of the alternative financing institutions, namely to collect funds from the public for corporate interests and as an investment vehicle for the community[1]. Basically, the trend of capital market development fluctuates according to political, economic, legal, socio-cultural, defense and security developments in society[2].[3]

Amidst various challenges of global geopolitical uncertainty and the momentum of the domestic political year, throughout 2024 the development of the Indonesian Capital Market continues to show its resilience. This is evidenced by the positive trend in various indicators such as market stability, level of trading activity, amount of fundraising, and an increase in the number of retail investors. Including the number of companies listed on the Indonesia Stock Exchange (IDX) has increased significantly. The increase in these indicators can be seen in the Last Week of September 2024, there was an increase in Early September Late September in Market Capitalization of IDR 13,390 trillion Average Daily Transaction Value of IDR 14.98 trillion increased by 40.10% Average Daily Transaction Volume 23.34 billion shares 21.97 billion shares 10.79%, Average Daily Transaction Frequency of the Stock Exchange 1.14 million transactions 1.12 million transactions 1.66%, IHSG to level 7,812,131 level 7,798,154 0.18%, Number of Investors 14.81 million SID 12.21 million SID 2.6 million SID.[4] Other instruments such as Mutual Funds as of December 24, 2024, in terms of Asset Under Management (AUM), were recorded at IDR 840.07 trillion or increased by 1.37 percent ytd. Meanwhile, from the Sharia Capital Market, as of December 27, 2024, the Indonesian Sharia Stock Index (ISSI) was recorded at 213.86 or grew by 0.57 percent, with a capitalization value for fundraising activities in the Capital Market, as of December 27, 2024, 187 public offerings have been recorded, including 35 new Issuers, with a total fundraising value reaching IDR 251.04 trillion which has exceeded the target of IDR 200 trillion[5].

The development of the Indonesian capital market is inversely proportional to the problem that is often ignored, namely the injustice experienced by minority share investors. Along with the development of technology in Indonesia, it has

1 Elza Syarief and Junaidi., Perlindungan Hukum Pemegang Saham Minoritas Terhadap Implikasi Praktik Insider Trading Dalam Perdagangan Saham Di Pasar Modal, *Journal of Law and Policy Transformation*, Vol.6 No.1, 2021, page. 72

2 Garnita Amalia and Arman Nefi., Perlindungan Hukum Pemegang Saham Minoritas Akibat Forced Delisting Di Indonesia Dan Amerika Serikat, *Jurnal Darma Agung*, No.6, 2023, page. 327–344

3 Otoritas Jasa Keuangan Republik Indonesia., P*asar Modal Indonesia Resilien Sepanjang 2024 Penutupan*, 2024, https://ojk.go.id/id/.

4 Fitria Puteri Sholikah, Windi Putri, and Rosalinda Maria Djangi., Peranan Pasar Modal Dalam Perekonomian Negara Indonesia, *ARBITRASE: Journal of Economics and Accounting*, Vol.3 No.2, 2022, page. 341–345

5 Otoritas Jasa Keuangan Republik Indonesia., *Pasar Modal Indonesia Resilien Sepanjang 2024 Penutupan*, 2024, https://ojk.go.id/id/.

an impact on the economy in Indonesia.[6] Minority investors are shareholders who have a relatively small number of shares compared to majority shareholders[7]. Shares as a means of legitimacy are proof of identity for the person holding them to claim the rights attached to the share certificate[8]. As a minority shareholder, according to Law No. 8 of 1995 concerning the Capital Market, and Law No. 40 of 2007 concerning Limited Liability Companies, they have the same rights as majority shareholders that may not be reduced in the Articles of Association[9], but in practice, they are often ignored and do not have significant influence in corporate decision making.

As a prospective public investor, he has been required by law to read the prospectus when ordering shares in the primary market[10]. The prospectus is a medium for prospective investors to analyze the prospects of the issuer company where prospective investors will place their funds. The provisions regarding the obligation to have the opportunity to read the prospectus are a form of protection for minority shareholders, in understanding the stock prices offered on the primary market and the secondary market[11].

In principle, the prospectus is material information related to the public offering. Which information is of course prepared by the prospective issuer, whose shares are controlled by the founders of the majority shareholder group. Majority shareholders are shareholders who have an interest in supervising a company[12]. In terms of information disclosure, there is often a gap between minority and majority shareholders. The minority position certainly does not have fast and accurate access to various matters contained in the prospectus concerning the condition of the emiten[13], therefore in capital market practice various problems often occur[14].

Some problems that often cause injustice to minority shareholders can occur in various forms, such as: *First;* Non-transparent and unfair decision making. *Second*; Abuse of authority by majority shareholders. *Third*; Lack of access to information and participation in decision-making; *Fourth:* discrimination in the distribution of dividends and other derivative rights. In principle, the focus of

6 Alum Simbolon and Desy Indriani Grace Sinaga., The Legality of Cryptocurrency Transactions in Indonesia, *JDH: Jurnal Daulat Hukum*, Vol.5 Issue.3, September 2022, page. 196-210

7 Elza Syarief and Junaidi Junaidi., Perlindungan Hukum Pemegang Saham Minoritas Terhadap Implikasi Praktik Insider Trading Dalam Perdagangan Saham Di Pasar Modal, *Journal of Law and Policy Transformation*, Vol.6 No.1, 2021

8 Nindyo Pramono., ed. Kurniawan ahmad. Variza Octifanny Rahmadianti, *Hukum Perseroan Terbatas*, Jakarta: Amirah Ulinnuha, Pertama. 2024.

9 Yahya Harahap., *Hukum Perseroan Terbatas*, 6th ed. Jakarta: PT Raja Wali Pres, 2016.

10 Pemerintah RI., *Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal,* Covering Globalization. 2016. https://jdih.kemenkeu.go.id/

11 Bismar Nasution., *Keterbukaan Dalam Pasar Modal*, Jakarta: Pertama. 2001.

12 Elza Syarief and Junaidi., Perlindungan Hukum Pemegang Saham Minoritas Terhadap Implikasi Praktik Insider Trading Dalam Perdagangan Saham Di Pasar Modal, *Journal of Law and Policy Transformation*, Vol.6 No.1, 2021

13 I Putu Gede ary Suta., *Menuju Pasar Modal Modern*, ed. Marthen Selamat Susanto dan Sri Unggul azul Sjarifrie Adi Hidayat, Pertama. Jakarta: Yayasan Sad Satria Bhakti, 2000.

14 I Kadek Sridana, I Nyoman Putu Budiartha, and I Putu Gede Seputra., Perlindungan Hukum Terhadap Pemegang Saham Minoritas Pada Perseroan Terbatas Yang Melakukan Merger, *Jurnal Analogi Hukum*, Vol.2 No.1, 2020, page. 59–62

the problem is on legal protection for minority investors in the capital market.

In previous studies that have been studied first by Alifa Husna, Mahlil Adriaman entitled Analysis of Minority Shareholder Protection Reviewed from Indonesian Law[15], the results of the study are that in legal protection for minority shareholders there is the right to sue, the right to access information, the right to the running of the company, the right to fair treatment. Also in principle there is equal protection, namely the principle that tends to provide equal voice and rights for shareholders. *Second*, by Elza Syarief, et al., Legal Protection of Minority Shareholders Against the Implications of Insider Trading Practices in Stock Trading in the Capital Market[16], the results of the study are Legal protection for minority shareholders in insider trading practices in stock trading in the capital market is carried out by applying the theory of legal effectiveness by Soerjono Soekanto including factors of Law, Infrastructure, people and law enforcement factors. Third, by Yola Safitri, et al Title: Comparison of Legal Protection for Minority Shareholders in Forced Delisting, the results of the study are that legal protection for shareholders is regulated generally in Law No. 40 of 2007 concerning Limited Liability Companies (law of capital market)[17], but not specifically in capital market regulations related to forced delisting. Handling of forced delisting by the Indonesia Stock Exchange (IDX) is carried out through a multi-layered process, starting from the announcement of potential delisting to hearings with related parties, before finally carrying out forced delisting.

The principle of the capital market is to provide welfare to the community, through ownership of part of the issuer's shares, as an effort to invest indirectly (indirect investment). The rights of minority stock investors must be guaranteed by law, so that public interest in investing increases, the capital market can run fairly, transparently, fairly and justly. Fraudulent practices, manipulation, lack of transparency, dishonesty and injustice must be dealt with firmly. Because, this injustice can cause losses for minority stock investors, both financially and psychologically. This study aims to analyze and evaluate the minority stock investor protection system in Indonesia, as well as efforts to improve justice and equality for all shareholders.

2. Research Methods

This research was normative legal research, with a statute approach, conceptual approach and a case approach. which focuses on analyzing legal texts through primary, secondary and tertiary legal literature studies if necessary.[18] It was qualitative descriptive in nature, through library research taking secondary data which was analyzed hermeneutically, namely explaining

15 Alifa Husna and Mahlil Adriaman., Analisis Terhadap Perlindungan Pemilik Saham Minoritas Ditinjau Dari Hukum Indonesia, *Ensiklopedia of Journal*, Vol.6 No.3, 2024, page. 6–12.

16 Elza Syarief and Junaidi., Perlindungan Hukum Pemegang Saham Minoritas Terhadap Implikasi Praktik Insider Trading Dalam Perdagangan Saham Di Pasar Modal, *Journal of Law and Policy Transformation*, Vol.6 No.1, 2021

17 Yola Safitri and Imam Hakiki., Perbandingan Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dalam Keadaan Forced Delisting, Vol.1 No.2, 2024, page. 121–28.

18 Bernard Nainggolan., Conceptualizing Intellectual Property Laws as A Bankruptcy Property (Beodel) In Indonesian Laws: A Normative Juridical Approach, *Law Development Journal*, Vol.4 No.4, 2022, page. 611-626

the concepts, principles, theories, bases and legal norms in various laws and regulations by interpreting, systematizing, combining and formulating between each concept until an adequate conclusion can be found.

3. Results and Discussion

3.1 Legal Protection System and Minority Investor Suffering

The legal protection system will be based on the theory of the legal system. According to Lawrence Fredmen,[19] the legal system contains several elements, namely the existence of legal substance, the existence of legal structure and the existence of legal culture. In the capital market legal system, there are various norms that form the basis of legal protection, especially for minority investors[20].

In the laws and regulations, there is no definite understanding of who a minority investor is. Minority shareholders are minority shareholders, namely interests and shareholders who have a total number of shares below 5% (fifty percent)[21]. While the majority shareholders, in the general sense, are those who can control the company. According to the Decree of the Chairman of the Capital Market Supervisory Agency Number: Kep-85 /PM/1996 dated January 24, 1996, the meaning of Controlling Shareholders is those who own 25% or more shares. In addition to controlling shareholders, there are also major shareholders, which based on the Decree of the Chairman of the Capital Market Supervisory Agency Number: 22/PM/1995 dated 16 August 1995, Regulation Number IX.D.2 concerning Tender Offers, in letter c, the term major shareholder means any party, either directly or indirectly, owning at least 20% of the shares.

In principle, every shareholder has the same responsibilities, rights and obligations. In order to exercise the rights as stipulated in Law No. 40 of 2007 concerning Limited Liability Companies, shares must first be recorded in the shareholder register in the name of the owner[22]. In the theory of legal objectives, the law aims to protect the interests of people[23]. Effective law should not only offer procedural justice but also be able to identify the aspirations of the public and be committed to achieving substantive justice.[24]

Preventive legal protection, a form of protection given to a person regarding

19 Lawrence M. Friedman., *The Legal System: A. Social Perseptifve*. New York: Russel Sage Foundation, 1975.

20 Vidya Noor Rachmadini., Perlindungan Hukum Bagi Investor Dalam Pasar Modal Menurut Undang-Undang Pasar Modal Dan Undang-Undang Otoritas Jasa Keuangan, *Pena Justisia*, Vol.18 No.2, 2019, page. 89–96.

21 Taqiyuddin Kadir., Gugatan Derivatif : Perlindungan Hukum Pemegang Saham Minoritas, *Jurnal Review Pendidikan Dan Pengajaran (JRPP)*. Vol. 07, 2024, page. 8.

22 Nindyo Pramono., ed. Kurniawan ahmad. Variza Octifanny Rahmadianti, *Hukum Perseroan Terbatas*, Jakarta: Amirah Ulinnuha, Pertama. 2024

23 Satjipto Raharjo., *Ilmu Hukum, Bandung*. Bandung: Citra Aditya Bakti, 2000.

24 Aan Suhanan, Gunarto, & Anis Mashdurohatun., The Weaknesses in Handling Fraud in The Capital Market Practices, *Law Development Journal*, Vol.5 No.4, December 2023 page. 659-666

the rights they have which is useful for preventing problems from arising[25], for shareholders based on Article 52 paragraph (1) of the Law of capital market, which states that shares give their owners the right to: attend and vote at the General Meeting of Shareholders (GMS); receive dividend payments and remaining assets from liquidation; exercise other rights based on law.

Preventively, based on the Law of capital market, especially minority shareholders, have five (5) rights, *First*; have the right to examine the Limited Liability Company documents in Article 138 paragraph 1 of the Law of Limited Liability Companies, it is stated that "examination of a Limited Liability Company can be carried out with the aim of obtaining data or information in the event that there is suspicion that the Limited Liability Company has committed an unlawful act that is detrimental to shareholders or third parties. Shareholders, including minority shareholders (Article 138 paragraph 3 letter a of the Law of Limited Liability Companies have the right to request an examination of the Limited Liability Company by the district court whose jurisdiction covers the domicile of the Limited Liability Company. *Second:* have the right to request the holding of a GMS when minority shareholders feel that there are important matters that need to be decided in the meeting. *Third;* in the event that the Board of Directors or Commissioners do not summon the GMS, then minority shareholders can make their own summons based on Article 80 paragraph (1) of the Law of capital market, minority shareholders have the right to submit an application to the chairman of the district court whose jurisdiction covers the place where the Limited Liability Companies was established, to grant permission to the applicant to make their own summons. Fourth: Minority shareholders have the right to receive justice even though the voting rights held by minority shareholders are less than those of majority shareholders because minority shareholders are the owners of the Limited Liability Companies. *Fifth*; a contrario, based on Article 3 paragraph (1) of the Law of capital market, they have the right to be released from their responsibilities if the company's losses are not caused by their fault.

To provide protection for minority shareholders who are often the injured party, the Limited Liability Company Law provides protection through its articles that can be used as the basis for the rights of minority shareholders[26]. Repressive legal protection as a form of protection for someone to resolve a case, such as filing a lawsuit in court[27], provides rights to public shareholders (minority share investors) in the form of derivative rights, namely that every shareholder who owns 1/10 of the total number of shares with valid votes can exercise certain rights. For example, on behalf of the company, they can sue the directors, commissioners, and decisions of the GMS that are considered detrimental to the company. However, this is very difficult to implement, considering that minority investors (the public) do not have access to accurate data and information about the condition of the issuer. On the contrary, many public investors are

25 Philipus M Hadjon., *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 2012.
26 Alifa Husna and Mahlil Adriaman., Analisis Terhadap Perlindungan Pemilik Saham Minoritas Ditinjau Dari Hukum Indonesia, *Ensiklopedia of Journal*, Vol.6 No.3, 2024
27 Philipus M Hadjon., *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 2012.

harmed by the company, due to the actions of the directors, commissioners, or decisions of the GMS[28].

For example, First; the determination of a suspect as a Minority shareholder in the People's Credit Bank Fianka, which was felt to be unfair in a case of alleged banking crime by the Special Criminal Investigation Directorate of the Riau Regional Police. This case emerged after a husband and wife, Halim Hilmy (53) and Bie Hoi (49), reported the loss of Rp 3.2 billion in deposit money which was allegedly disbursed illegally. The determination of the suspect status of a minority shareholder in the name of Helen has raised controversy, with a number of parties suspecting that this legal process was forced[29].

Second; An interesting case about financial manipulation, which could harm minority shareholders in a company in Korea. Samsung Electronics Director Jay Y. Lee is accused of accounting fraud and stock price manipulation involving the merger of Samsung C&T and Cheil Industries affiliates worth US$8 billion or around Rp124 trillion in 2015. According to Korean prosecutors, the action violated the Capital Markets Act, allowing the merger in 2015 to occur, which helped the Director take greater control of the Samsung Electronics group's flagship company, thereby gaining profits at the expense of minority investors. The act is also said to have abused the authority granted by the company and shareholders for the personal interests of the group leader and abused extreme information imbalance[30].

Third; The case of the lack of transparency in financial reports. PT Nusa Konstruksi Enjiniring Tbk (DGIK) is known to have revised its financial report in the first quarter of 2023, from previously recording a loss of IDR 5.22 billion to a profit of IDR 5.12 billion or a net profit that jumped 198% in the General Meeting of Shareholders (GMS). Financial Reports that are not prepared in accordance with accounting principles can result in minority shareholders, creditors and potential investors making wrong investment or financing decisions, and have the potential to cause losses[31].

Some of these examples are findings that there are indeed some minority investors who receive injustice from the actions of the majority who control the company's shares.

3.2 Efforts to Improve Justice and Equality for Minority Investors

In addition to ensuring legal certainty and providing benefits, the law functions to realize justice in the life of society[32]. According to John Rawls, there are two

28 Sandra Dewi., Prinsip Piercing The Corporate Veil Dalam Perseroan Terbatas Dihubungkan Dengan Good Corporate Governance, *Jurnal Hukum Respublica*, Vol.16 No.2, 2018, page. 252–266

29 Zulfan Taufik., Helen., *Pemegang Saham Minoritas BPR Fianka, Bantah Lakukan Tindak Pidana Perbankan,* 2024, https://riauaktual.com/.

30 Bos Samsung, Electronics Jay, and Y Lee., *Bos Samsung Electronics Dituntut 5 Tahun Penjara Untuk Tuduhan Manipulasi Saham,* 2023.

31 Khoirifa Argisa Putri., *Laporan Keuangan Janggal, OJK Dan BEI Diminta Periksa Nusa Konstruksi (DGIK)*, Infobanknews.Com, 2023, https://infobanknews.com/

32 M. Zulfa Aulia., Hukum Progresif Dari Satjipto Rahardjo, *Undang: Jurnal Hukum*, Vol.1 No.1, 2018, page. 159-185

principles of justice, *First:* everyone has the same right to the broadest basic freedoms, as broad as the same freedom for everyone. *Second:* social and economic inequality must be regulated in such a way that; 1) It can be expected to benefit everyone, and 2) All positions and offices are open to everyone[33].

According to Aristotle there are two kinds of justice[34], namely; first: Distributive justice, in this concept justice is concerned with the distribution of goods and honor to each person according to their place in society. This justice requires: that "people who have the same position receive the same treatment before the law. Second, Corrective justice, in this concept contains the meaning that justice provides a measure for implementing everyday law. In implementing everyday law, there must be a general standard to correct the consequences of people's actions. Criminal law corrects what has been done by crime. Recovery corrects civil wrongs[35]. Compensation returns profits that have been obtained wrongfully. In addition, there is substantive justice and procedural justice, which are always problems in practice.

According to Teresa L. Cyrus, Talan B. I˙Scan and Sheena Starky, who stated: The shareholder protection measure focuses on one-share–one-vote rules, a series of anti-director rights and mandatory dividends[36]. Shareholder protection measures focus on the one-share-one-vote rule, a series of anti-director rights and mandatory dividends. The concept of Indonesian capital market law recognizes the principle of one share one vote, derivative rights to revoke directors, and dividend distribution. Based on this theory of justice, there are several efforts that can be made to improve justice and equality for Minority Investors.

3.3 Healthy Governance

Healthy corporate governance is a form of protection for business actors in economic development[37]. Legal protection provided to external investors, both creditors and shareholders, and external shareholders can influence the behavior of the company's management. One of the principles of legal protection for the management of a company is transparency in its management. The obligation of transparency/openness of information (full disclosure) in the management of a company is a fundamental thing that must be done to realize the principle of Good Corporate Governance. This is also stated by the Organization for Economic Cooperation and Development (OECD) as quoted by Siswanto Sutojo and E John Aldridge in Rahmat Setiawan, stating

33 John Rawls., *John Rawls, A Theory of Justice*. Cambridge Massachusetts: The Belknap Press Of Harvard University Press, 1999.

34 Sudiyana and Suswoto., Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencari Keadilan Substantif, *Qistie*, Vol.11 No.1, 2018, page. 107–36

35 Theo Huijbers., *Filsafat Hukum*, Cetakan Pe. Yogyakarta: Kanisius, 1991.

36 Talan B. I˙Scan and Sheena Starky Teresa L. Cyrus., Investor Protection and International Investment Positions: An Empirical Analysis, *Journal Compilation* Blackwell, Dalhousie University. 2006.

37 Rahmat Setiawan And Risno Mina., Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dikaitkan Dengan Penerapan Good Corporate Governance (Gcg), *Jurnal Yustisiabel*, Vol.3 No.2, 2019, page. 135

"the corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company". This quote gives the meaning that transparency and timely disclosure of company information (including financial conditions, company performance, ownership and corporate governance) are one of the cores of Good Corporate Governance.[38]

In the context of a holding company, the implementation of GCG can be carried out by methods of guaranteeing shareholder rights which are carried out by the Ownership Registration Method, Transferring (covey) or transferring shares, Obtaining relevant information about the company in a timely and periodic manner, Participating and voting in the GMS, Electing members of the board of commissioners, Receiving a share of the company's profits. The next method is that Shareholders have the right to participate adequately and obtain information regarding decisions related to fundamental changes in the company, Shareholders must have the opportunity to participate effectively and vote in the GMS (general meeting of shareholders) and must obtain information regarding laws and regulations, including the voting process that affects the GMS, Capital structures that allow certain shareholders to obtain a level of control that is disproportionate or commensurate with their equity ownership must be disclosed, Markets for corporate control must function efficiently and transparently, for example, regulations and procedures that affect the acquisition of corporate control in the capital market, and extraordinary transactions such as mergers, and other corporate actions, Shareholders, including institutional investors, must consider the costs and benefits of exercising voting rights.[39]

Currently, many Issuers are experiencing a very severe financial crisis, which is caused by, among other things, affiliated members of the board of directors and commissioners, so that in making decisions they tend to prioritize personal or group interests over the interests of shareholders. This is certainly contrary to the principles of good corporate governance. So far there are 4 (four) principles in the principles of good corporate governance, namely the principles of justice, transparency, accountability, and the principle of responsibility. It needs to be developed towards honesty. Stakeholders, especially directors, commissioners and major shareholders, including capital market players, such as securities companies (brokers, underwriters, investment managers, etc.) need to apply the principle of honesty in their business.[40]

In our daily lives, we are encouraged to always be honest, both to ourselves and to our community. Honesty is important for everyone because it makes life

38 Rahmat Setiawan And Risno Mina., Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dikaitkan Dengan Penerapan Good Corporate Governance (Gcg), *Jurnal Yustisiabel*, Vol.3 No.2, 2019, page. 135.

39 Syailendra Wisnu Wardhana., Upaya Perlindungan Pemegang Saham Minoritas Dalam Perusahaan Holding, *Dharmasisya*, Vol.2 No.3, 2022, page. 1391–1402.

40 Sudiyana., *Hukum Pasar Modal*, edisi Pert. Sleman, Yogyakarta: KEPEL Press, 2021.

safer and more comfortable.[41] In Arabic, the word "honest" has the same meaning as "ash-shidqu" or "shiddiq," which means real, true, or telling the truth. The opposite of this word is "lie," or in Arabic "al-kadzibu." Literally, honesty or ash-shidqu means there is agreement between words and actions, agreement between information and reality, steadfastness and firmness of heart; and goodness that is not mixed with lies.[42]

3.4 Enforcement of the Principle of Transparency (*Full Disclosure)*

The main standard or principle in capital market activities is the principle of transparency or openness (*Full Disclosure*), which can be called the soul of the capital market itself[43]. There are several functions of the Principle of Transparency, First; to maintain public trust in the market. The principle of transparency has an important role for investors before making a decision to invest because through transparency an assessment of the investment is formed[44]. Second, to create an efficient market mechanism, namely that the stock price is entirely a reflection of all available information. The principle of transparency can play a role in increasing the supply of correct information, so that accurate market prices can be determined. Third; The principle of transparency is important to prevent fraud.

In the Indonesian capital market legal system, the principle of transparency is regulated in Law No. 8 of 1995 concerning the Capital Market (hereinafter referred to as the Capital Market Law), which consists of; First; implementation of the principle of transparency in Pre-Listing and during listing on the Stock Exchange, namely through the issuance of a Prospectus[45]. Based on Article 70 paragraph (1) of the Capital Market Law, only Issuers who have submitted a Registration Statement to the Capital Market Supervisory Agency to offer or sell Securities to the public and the Registration Statement has been effective may conduct a Public Offering. The registration statement is a document, one of the attachments of which is a Prospectus[46], namely any written information relating to a Public Offering with the aim of getting other Parties to buy Securities[47]. In America (USA), it is called a preliminary prospectus.[48]

This information contains material facts[49], namely important and relevant information or facts regarding events, incidents, or facts that may affect the

41 Ghufron Ghufron, Ahmad Royani, Nilai-Nilai Kejujuran Dalam Pendidikan Presfek Tif Al-Qur'an (Tela`Ah Kitab Safwah Al-Tafasir, Karya Syekh Muhammad Ali As Sabuni), *Fenomena*, Vol.19 No.2, 2020, page.162-175

42 Adha., *Kisah Teladan Dan Ajaran Islam,* Muslim.Com, 2015, page.1–7, https://kisahimuslim.blogspot.com/

43 Sudiyana., *Hukum Pasar Modal*, edisi Pert. Sleman, Yogyakarta: KEPEL Press, 2021.

44 Munir Fuady., *Pasar Modal Modern (Tinjauan Hukum)*, Pertama. Bandung: Citra Aditya Bakti, 1996.

45 Sudiyana., *Hukum Pasar Modal*, edisi Pert. Sleman, Yogyakarta: KEPEL Press, 2021.

46 Asril Sitompul., *Pasar Modal, Penawaran Umum & Permasalahannya*, Edisi Pert. Bandung: Citra Aditya Bakti, 1996.

47 RI, Pasal 1 butir 26 Undang-Undang Nomor 8 tahun 1995 tentang Pasar Modal.

48 Asril Sitompul., *Pasar Modal, Penawaran Umum & Permasalahannya*, Edisi Pert. Bandung: Citra Aditya Bakti, 1996.

49 Nindyo Pramono, *Capital Market Law*, ed. Liberty (Yogyakarta(ID): PT Go Public, 2013).

price of Securities on the Stock Exchange and/or the decisions of investors, prospective investors, or other Parties interested in the information or facts[50]. Public offering activities are often called Initial Public Offerings. In the legal structure, the task of supervising these public offering activities is the Capital Market Supervisory Agency, which since 2013 has shifted to the Financial Services Authority. Therefore, the Financial Services Authority (FSA) has the task of regulating and supervising capital market activities, including Initial Public Offerings (IPOs), to ensure transparency and fairness in the financial market.[51]

Second; through periodic financial reports, both semi-annual reports and annual reports, and Third; through other important reports in the event of an event that may affect investors, such as a merger, acquisition, consolidation, spinoff, and others. Based on Article 86 paragraph (1) of the Capital Market Law and Article 2 of the Financial Services Authority Regulation (SFA) Number: 31/POJK.04/2015 Concerning Disclosure of Information or Material Facts by Listed Companies or Public Companies, Listed Companies are obliged to submit periodic reports to the Capital Market Supervisory Agency, now the Financial Services Authority (SFA) and to announce the report to the public. Violations of the obligation to implement the principle of transparency are more administrative and civil in nature. Based on Article 81 paragraph (1) of the Capital Market Law, Any Party that offers or sells Securities using a Prospectus or in other ways, either written or oral, that contains incorrect information about Material Facts or does not contain information about Material Facts and the Party knows or should have known about it must be responsible for losses arising from the said actions.

Capital Market Supervisory Agency, which is a supervisory institution that acts as a quaite adjudicatory[52], can provide administrative sanctions, in the form of written warnings to revocation of permits or termination of the implementation of Registration. Civil sanctions, the mechanism must be through a lawsuit in Court, this is based on Article 111 of the Capital Market Law, which states that any Party that suffers losses as a result of violations of this Law and/or its implementing regulations can claim compensation, either individually or together with other Parties who have similar claims, against the Party or Parties responsible for the violation.

The concept built into capital market law is not easy to implement. Minority investors who are victims of market behavior that is more in control of information[53], then with all the efforts that minority investors have, they will certainly not be able to face the more powerful party. As in the rule of natural

50 RI, Pasal 1 angka 7 Undang-Undang Nomor 8 tahun 1995 tentang Pasar Modal.

51 Alifia Jasmine et al., "Initial Public Offering: Perlindungan Hukum Pemegang Saham Minoritas Dan Pengaruh Terhadap Kinerja Perusahaan," *Jurnal Hukum & Pembangunan* 54, no. 1 (2024), https://doi.org/10.21143/jhp.vol54.no1.1606.

52 Fuady, *Pasar Modal Modern (Tinjauan Hukum)*.

53 Hurhayati Napitupulu et al., Aspek Hukum Prinsip Keterbukaan Perdagangan Saham Oleh Profesi Penunjang Pasar Modal. Vol.5, 2019, page. 107–13.

law[54], whoever is strong will win in any fight, including in court cases. Capital market violations consist of administrative violations and criminal offenses, as stipulated in Law No. 8 of 1995, which was later amended by Article 22 of Law No. 4 of 2023. Meanwhile, the role of Bapepam (the Financial Services Authority) in handling capital market violations has been transferred to the Financial Services Authority (OJK) as stipulated in Law No. 21 of 2011. The Financial Services Authority (OJK) is the supervisor, regulator, and supervisor of day-to-day capital market activities. In carrying out its law enforcement function, the OJK also has the authority to examine, impose administrative sanctions, and investigate criminal offenses, which will be processed and resolved through the criminal justice system. On the other hand, based on the principle of una via, the OJK can also decide not to proceed to the investigation stage for suspected criminal acts by imposing administrative sanctions in the form of a fine accompanied by a written order. In carrying out its law enforcement function, the OJK enforces criminal law both preventively and repressively.[55]

The new formulation in the application of civil sanctions, is more directed at the authority of the Capital Market Supervisory Agency, which in this case is the Financial Services Authority. For each party. who is administratively proven to have violated the provisions of the principle of transparency, Capital Market Supervisory Agency has the authority to directly impose fines including compensation.

3.5 Strengthening the involvement of Minority Investors in determining Company Policy

The involvement of public shareholders (Minority Investors) in decision-making on company policy is carried out through the GMS. Based on Article 79 paragraph (10) of Law No. 40 of 2007 concerning Limited Liability Companies, which states that the Implementation of the GMS of Public Companies is subject to the provisions of this Law as long as the provisions of laws and regulations in the capital market sector do not determine otherwise.

Based on the principle of lex specialis derogat lex generalis, the holding of a GMS for public companies is regulated in Financial Services Authority Regulation Number 32/POJK.04/2014 concerning the Planning and Implementation of General Meetings of Shareholders of Public Companies, dated December 8, 2014. In order to strengthen Shareholder involvement in determining Company Policy, several things are done, including Regarding the Implementation of GMS, based on regulations In accordance with Article 3 of Financial Services Authority Regulation Number 32/POJK.04/2014, which states that the holding of a GMS can be held at the request of: 1 (one) or more shareholders who together represent 1/10 (one tenth) or more of the total number of shares with voting rights, unless the articles of association specify a smaller number. At the

54 Achmad Ali., *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence)*, Pertama, C, Jakarta: Kencana Prenada Media Group, 2009.

55 Hidayat, D., Aji, A. B. W., & Aziz, M. I. (2023). The Role of the Financial Services Authority in Supervising Capital Market Flows in Indonesia. *Al-Ishlah: Jurnal Ilmiah Hukum*, 26(1), 26-38. https://doi.org/10.56087/aijih.v26i1.368

request of shareholders, the Board of Directors is required to announce the GMS to shareholders no later than 15 (fifteen) days from the date of the request to hold the GMS.

One of the important things in holding a GMS is regarding the latest material information regarding the company, the company, and all its activities. In accordance with Article 15 paragraph (1) of Financial Services Authority Regulation Number 32/POJK.04/2014, Public Companies are required to provide meeting agenda materials to shareholders. Meeting agenda materials must be available from the date of the GMS notice until the GMS is held, which can be requested in writing by shareholders and/or accessed through the public company's website. To be able to participate in GMS decision-making, each meeting participant needs to master the meeting agenda materials. Based on Article 20 of Financial Services Authority Regulation Number 32/POJK.04/2014, at the time of the GMS, shareholders have the right to obtain information regarding the meeting agenda and related materials as long as it does not conflict with the interests of the Public Company.

In practice, information related to the meeting agenda can only be obtained during the meeting, so shareholders cannot study it in advance, in order to prepare for the rights that need to be conveyed at the meeting. In the general provisions of the GMS, Article 75 paragraph (2) of Law No. Law No. 40 of 2007 concerning Limited Liability Companies states that in the GMS, shareholders have the right to obtain information related to the Company from the Board of Directors and/or Board of Commissioners, as long as it is related to the meeting agenda and does not conflict with the Company's interests.

Minority investors are parties outside the company's management, so it is very unlikely that they have important information related to the meeting agenda. To understand the meeting agenda, shareholders are required to know and understand the latest material information and at the latest at the same time the meeting agenda material is available. Based on Article 25 paragraph (1) of Financial Services Authority Regulation Number 32/POJK.04/2014 concerning the Planning and Implementation of General Meetings of Shareholders of Public Companies, GMS decisions are made based on deliberation to reach consensus. If a decision based on deliberation to reach consensus is not reached, the GMS decision is based on a vote (the principle of one share, one vote). GMS decisions are based on one share, one vote, so minority investors who disagree always lose in the GMS decision-making process. Thus, the wishes of public shareholders (minority investors), which may not necessarily be the same as those of the majority shareholders, cannot be accommodated. And if deliberation for consensus is held, public shareholders lack bargaining power, meaning the public (minority) lacks the ability to negotiate.

Based on a comparative study, the Australian capital markets system operates under a "twin peaks" model of financial regulation.[56] Under this model,

56 Generally Hill, J.G., Why Did Australia Fare So Well in the Global Financial Crisis?' in Ferran, E., Moloney, N., Hill, J.G. and Coffee, J.C. Jr., *The Regulatory Aftermath of the Global Financial Crisis.* Cambridge: Cambridge University Press, 2012, page. 235, 221-225.

regulatory responsibilities are shared between the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC). APRA oversees depositories, general insurance, life insurance, and superannuation, while ASIC is responsible for business conduct and consumer protection. While there are clear conceptual distinctions between the responsibilities of each institution, there is some overlap in the financial services sector. It has been argued that some responsibilities have blurred over time as a result of capital market developments and policy changes.[57]

Other organizations within Australia's financial markets regulatory framework include the Reserve Bank of Australia, which oversees monetary policy, systemic stability, and the payments system, and the Australian Securities Exchange (ASX), the primary stock exchange. The ASX is responsible for monitoring compliance with its operating rules (the "ASX Listing Rules") and promoting corporate governance standards.

Legal protection for minority shareholders plays a crucial role in creating fairness in the modern business environment. Although the Limited Liability Company Law provides a clear legal basis, its implementation still faces various obstacles, including majority domination and a lack of transparency. Regulatory reforms involving strengthened legal oversight and the implementation of good corporate governance are needed to ensure that minority shareholders' rights are optimally protected. This step not only improves corporate stability but also strengthens global economic competitiveness. Furthermore, improving legal literacy among minority shareholders is crucial to ensuring they better understand and exercise their rights. Improving access to dispute resolution mechanisms is expected to create a more inclusive and equitable legal system for all company stakeholders.[58]

Legal protection for minority shareholders in the capital market is crucial to creating justice and legal certainty. Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) grants several rights to minority shareholders, such as the right to attend and vote at General Meetings of Shareholders (GMS), the right to obtain information, and the right to be treated fairly. However, in practice, minority shareholders often face challenges in realizing their rights, primarily due to the dominance of majority shareholders. Preventive legal protection is demonstrated by provisions requiring guidance, education, and supervision from stock exchange and supervisory authorities, while repressive legal protection involves the imposition of sanctions in the form of administrative sanctions as an ultimum remedium for parties who violate legal provisions in capital market regulations.

57 Australian Government., *The Department of Treasury's Submission to the Financial System Inquiry*, page. 26, 84-86; Also see. Financial System Inquiry, Interim Report (Commonwealth of Australia, 2014), Chapter 7, page. 3-92. 3 April 2014.

58 N. A Wardani, T., M Polontoh, H., Prihatin, L., Tuhumury, H., & Na'afi, S., Perlindungan Hak Pemegang Saham Minoritas dalam Perseroan Terbatas: Analisis Terhadap Implementasi Ketentuan UU Perseroan Terbatas dalam Keadilan dan Kepastian Hukum di Lingkungan Bisnis Modern. *Jurnal Ilmu Hukum, Humaniora Dan Politik*, Vol.5 No.4, 2025. page. 3674–3686.

4. Conclusion

Legal protection for minority stock investors is a fundamental pillar of a fair and efficient capital market. While various legal frameworks exist to safeguard their interests, persistent challenges—rooted in power imbalances, information asymmetry, and weak enforcement—continue to undermine justice. By implementing a combination of robust legal reforms, empowering regulatory bodies, and fostering shareholder activism, it is possible to create a more equitable environment where all investors, regardless of their size, can participate with confidence. The pursuit of justice for minority investors is not just an ethical imperative but a necessity for the long-term health and stability of the global financial system. In the legal protection system according to Indonesian capital market law, there are several findings that can result in the suffering of Minority Investors, such as criminal reporting of alleged embezzlement of customer savings funds, manipulation of financial data or information that results in the transfer of control of the issuer company, and financial reports related to profit and loss, which have the potential to cause losses to Minority Investors. There needs to be corporate governance that prioritizes and adds the principle of honesty, in addition to the four principles that have been implemented in Good Corporate Governance. Enforcement of the Principle of Transparency in the implementation of capital market activities, both pre-listing, during listing and post-listing by changing the formulation of civil sanctions in the form of fines and compensation decided by the Financial Services Authority. As well as the involvement of minority investors in making important decisions at the issuer company, both through meeting schedules and agendas, and decision making with the principle of deliberation.

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