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Legal Protection of Minority Shareholders in Notarial Deeds of General Meetings of Shareholders

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Abstract. *Minority shareholders in a Limited Liability Company are vulnerable to the actions or decisions of majority shareholders that could potentially disregard their legal rights. This study aims to analyze the form of legal protection for minority shareholders and the strategic role of Notaries in ensuring the fulfillment of these rights, especially in PT Pollux Hotels Group Tbk. The research method used is normative juridical with a statute approach, a conceptual approach, and a case approach. The results of the study indicate that legal protection for minority shareholders is realized through the granting of information rights, voting rights, and the position of Notarial Deeds as authentic evidence that provides legal certainty. Notarial Deeds function as preventive instruments that validate procedures and transparency, in order to mitigate potential oppression by controlling shareholders.*
Keywords: *Authentic; Minority; Legal; Protection; Shareholders.*

1. Introduction

A Limited Liability Company (PT) is an independent legal entity that serves as the backbone of modern economic activity in Indonesia. According to Law Number 40 of 2007, the corporate structure consists of a General Meeting of Shareholders (GMS), a Board of Directors, and a Board of Commissioners.[1]The GMS holds a strategic position as the highest organ that has absolute authority in making crucial decisions, from changes to the articles of association to corporate action policies that determine the future direction of the company.[2]However, the implementation of GMS often faces various legal challenges, particularly regarding the validity of the resulting authentic documents. Crucial legal issues often arise when the validity of the GMS Minutes Deed is questioned by interested parties, such as in cases of dismissal of board members. In this context, the procedural accuracy and legality of the deed certified by a Notary are crucial, considering that formal defects in the deed's preparation can be classified as an unlawful act that

[1]Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies, Article 1 number 2 and Article 1 numbers 4, 5, and 6.
[2]Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies, Article 75 paragraph (1).

invalidates the meeting's decisions.[3] In the internal dynamics of a company, the imbalance in ownership composition between majority and minority shareholders inherently creates an imbalance of power. This condition creates a systemic risk in the form of oppression of the minority, which is often manifested in the form of ownership dilution through a disproportionate rights issue mechanism or the neglect of economic rights to dividends. This requires a justice mechanism that can guarantee the rights of investors who have a low bargaining position. Legal protection for minority shareholders doctrinally includes preventive and repressive aspects to ensure the fulfillment of the constitutional rights of legal subjects in the corporation. Transparency through mandatory disclosure is a fundamental principle in realizing Good Corporate Governance. Without adequate legal protection, minority shareholders will only become administrative accessories without real power to oversee the management of the company. The transformation of a private company into a Public Company (Tbk) brings legal consequences in the form of the emergence of principal-principal conflicts. In a concentrated ownership structure, controlling shareholders often have absolute power to make policies that benefit their own group at the expense of the public interest. This risk is increasingly significant for public investors who are not directly involved in operational management but have a legitimate economic interest in the value of their investment. This study aims to analyze the form of legal protection for minority shareholders and the position of Notary deeds in guaranteeing the fulfillment of these rights at PT Pollux Hotels Group Tbk.

2. Research Methods

This research is normative juridical legal research that focuses on literature studies on positive legal norms. The approaches used in this research include the statute approach, the conceptual approach, and the case approach. The main legal sources consist of primary legal materials including the Limited Liability Company Law (UUPT), the Notary Law (UUJN), and the Financial Services Authority Regulation (POJK) Number 15/POJK.04/2020 concerning the Planning and Implementation of General Meetings of Shareholders of Public Companies.[4] In addition, secondary legal materials were used in the form of legal literature, scientific journals, and relevant previous research findings. All data was analyzed qualitatively and descriptively to provide a comprehensive analytical overview of the issues under study.

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[3] See Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies, especially Articles 78 to 91 concerning the GMS.

[4] Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana, 2017.

3. Results and Discussion

3.1. Legal Protection of Minority Shareholders against Potential Oppression

Legal protection for minority shareholders is a fundamental issue in corporate law, particularly in companies with concentrated ownership structures. Theoretically, the imbalance in the number of shares directly impacts shareholders' ability to influence corporate decisions. Shareholders with a dominant shareholding have a greater ability to influence voting outcomes at the GMS, while minority shareholders generally have a weaker bargaining position. While this situation is a logical consequence of the one share, one vote principle, it can also create room for abuse of majority power if not balanced with adequate legal protection mechanisms.[5]

From a corporate law perspective, this problem is known as minority oppression, a situation where the power held by majority or controlling shareholders is used in such a way that the interests of minority shareholders are unfairly harmed. This oppression does not always take the form of actions that directly violate the law, but can arise through the use of corporate procedures that are formally legal but substantially result in injustice to minority shareholders.[6]Thus, protection for minority shareholders is not only assessed based on the fulfillment of formal procedures, but also needs to consider whether the use of this authority is carried out fairly and does not deviate from the interests of the company.

In this context, the Limited Liability Company Law provides a number of preventive protection instruments. Preventive protection is intended to provide minority shareholders with the opportunity to obtain information, participate in decision-making, and exercise their corporate rights before a company decision results in losses. Article 52 of the Limited Liability Company Law grants shareholders the right to attend and vote at the General Meeting of Shareholders (GMS), receive dividend payments and distribution of assets resulting from liquidation, and exercise other rights under the Limited Liability Company Law.[7] These rights indicate that status as a shareholder, even though in a minority position, still provides a set of legal rights that cannot be ignored by the company or the controlling shareholder.

One crucial preventive instrument is the right of shareholders to obtain information regarding the company and the General Meeting of Shareholders (GMS). Adequate information is a prerequisite for shareholders to vote rationally and based on sufficient knowledge regarding the agenda to be decided. In public companies, the need for information transparency becomes even more crucial

[5]F. Hodge O'Neal and Robert B. Thompson, O'Neal and Thompson's Oppression of Minority Shareholders, 2nd ed., West Group, 2004.
[6]Ibid.
[7]Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies, Article 52 paragraph (1).

because some shareholders are public investors who are not directly involved in company management. Therefore, regulations regarding the announcement, summons, agenda, and materials of the GMS have a protective function that is not only administrative but also substantive in providing minority shareholders with the opportunity to understand and respond to the policies to be decided.[8]

In addition to the right to obtain information, minority shareholders have the right to actively participate in the GMS. The Company Law allows shareholders who meet certain requirements to request the convening of a GMS and propose meeting agenda items. This mechanism is an important form of minority protection because it provides room for minority shareholders to raise specific issues within the company's decision-making forum. Thus, minority shareholders are not simply placed as recipients of majority decisions, but are given the opportunity to exercise their procedural rights in determining the agenda and direction of GMS discussions.

However, the existence of these procedural rights does not automatically result in effective protection. The effectiveness of protection depends heavily on the ability of minority shareholders to exercise those rights. In highly concentrated ownership structures, minority shareholders may face rational apathy, a tendency not to exercise their rights because the costs, time, information, and energy required to do so are perceived to outweigh the potential economic benefits. This situation is a significant issue for public companies because the dispersal of public shareholders can result in a significant minority shareholder inactivity in the GMS decision-making process.

These issues can become even more complex if GMS decisions are made through acclamation or mutual consent. Procedurally, decisions made by consensus can create efficiency in the GMS. However, from a minority protection perspective, this mechanism has the potential to eliminate the opportunity for minority shareholders to express their individual disapproval if they choose to follow the majority decision. Therefore, it is important to distinguish between the normative existence of rights and the actual effectiveness of their exercise. Legal protection that is only formally available but not utilized by minority shareholders can ultimately result in what is theoretically referred to as formal protection without substantive protection.

In public companies, protection against conflicts of interest is also a crucial tool in preventing abuse of power. OJK Regulation No. 15/POJK.04/2020 regulates the mechanism for holding a General Meeting of Shareholders (GMS) for Public Companies, while capital market regulations recognize a mechanism for independent shareholder approval for certain transactions with potential conflicts of interest. This mechanism is principally intended to prevent parties with vested

[8]Financial Services Authority, Financial Services Authority Regulation Number 42/POJK.04/2020 concerning Affiliated Transactions and Conflict of Interest Transactions.

interests from using their voting power to authorize transactions that could potentially harm other shareholders. Therefore, capital market law not only upholds the majority principle but also establishes certain exceptions to that principle when there is a risk of conflict of interest.

The next protection instrument is the right to file a lawsuit under Article 61 of the Company Law. This provision gives every shareholder the right to file a lawsuit against the company in the District Court if the shareholder suffers a loss due to the company's actions that are deemed unfair and without reasonable grounds as a result of decisions of the GMS, the Board of Directors, and/or the Board of Commissioners.[9]This provision is important because it provides a repressive mechanism against corporate actions that substantially harm shareholders. Article 61 can therefore be understood as a form of remedial protection that allows minority shareholders to seek court intervention when the company's internal mechanisms fail to provide adequate protection.

In addition to lawsuits under Article 61, the Company Law also provides a protection mechanism through appraisal rights. Under Article 62 of the Company Law, shareholders who disagree with certain company actions and comply with applicable provisions can request that their shares be purchased by the company at a fair price. This right applies to certain corporate actions, including changes to the articles of association, transfers or pledges of company assets worth more than 50% of the company's net assets, and mergers, amalgamations, takeovers, or separations.[10] The existence of appraisal rights demonstrates that corporate law does not always force minority shareholders to accept majority decisions. Under certain circumstances, the law provides an exit mechanism for shareholders who disagree with corporate decisions.

However, appraisal rights cannot be positioned as a protection mechanism that can be used against all forms of actions deemed detrimental. This right can only be used against company actions that explicitly fall within the scope of Article 62 of the Company Law and must meet the requirements stipulated by laws and regulations. Therefore, if the losses to minority shareholders arise from company policies or decisions that do not fall within this category, then appraisal rights cannot necessarily be used as a settlement instrument. This condition shows that legal protection in company law is multi-layered, consisting of various instruments, each with a different scope and requirements.

Protection for minority shareholders can also be seen through the principle of equal treatment. Shareholders in the same class of shares should essentially be treated equally in accordance with the rights inherent in their shares. This principle is crucial in public companies because public shareholders share an equal

[9]Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies, Article 61 paragraph (1).
[10]Ibid., Article 62 paragraph (1).

interest in the company's integrity and economic value. If a controlling shareholder uses their power to obtain special benefits not available to other shareholders, the issue that arises is no longer simply a difference between the majority and the minority, but a potential deviation from the principles of good corporate governance.[11]

From a Good Corporate Governance perspective, minority shareholder protection is closely linked to the principles of transparency, accountability, responsibility, independence, and fairness. The fairness principle requires fair treatment of all shareholders, while the transparency principle requires that material information relating to the company be adequately available to shareholders. Therefore, minority shareholder protection mechanisms cannot be separated from overall corporate governance. The better the implementation of Good Corporate Governance principles, the less room there is for controlling shareholders to use their ownership structure excessively.[12]

When related to PT Pollux Hotels Group Tbk, the issue of minority shareholder protection becomes relevant because its status as a public company places the company within both corporate law and capital market law. Public shareholders have the right to obtain information and participate in the GMS, but at the same time face structural limitations if the number of shares they own is significantly smaller than that of the controlling shareholder. Therefore, the effectiveness of protection cannot be solely assessed based on the existence or absence of legal provisions, but must also be seen in terms of the extent to which these mechanisms can actually be used by minority shareholders in the GMS process.

In this context, a paradox exists regarding legal protection. On the one hand, the Company Law and capital market regulations provide various protection mechanisms, including the right to obtain information, the right to attend and vote, the right to propose agenda items, the right to file a lawsuit, and the right to appraisal. However, on the other hand, the existence of these mechanisms does not necessarily result in substantive protection if minority shareholders do not exercise their rights or face structural barriers to exercising them. Thus, the primary issue is not simply the absence of legal protection, but can also be its ineffectiveness.

This demonstrates that the concept of minority shareholder protection must be understood in two dimensions: the normative dimension and the functional dimension. The normative dimension relates to the existence of regulations that grant rights and legal remedies to minority shareholders. Meanwhile, the functional dimension relates to the ability of these mechanisms to effectively prevent, correct, or compensate for actions that harm minorities. In the context

[11]OECD, G20/OECD Principles of Corporate Governance 2023, OECD Publishing, Paris, 2023.
[12]National Committee for Governance Policy, General Guidelines for Good Corporate Governance in Indonesia, Jakarta, 2006.

of this research, this distinction is crucial for assessing whether the protection instruments available under the Company Law and capital market regulations have provided effective protection for minority shareholders of PT Pollux Hotels Group Tbk.

Thus, legal protection for minority shareholders cannot be based solely on the principle that GMS decisions are determined by majority vote. While the majority principle is a fundamental mechanism in corporate law, it must be tempered by the obligation to respect individual shareholder rights, the principle of fairness, the prohibition on abuse of power, and a corrective mechanism if a company decision results in unreasonable losses. With this balance, the GMS not only serves as a forum for legitimizing majority shareholder decisions but also provides space for participation and protection for minority shareholders.

Ultimately, it can be said that the Indonesian legal system provides multiple layers of protection against potential oppression of minority shareholders. These protections include preventive protection through the right to information and participation in the General Meeting of Shareholders (GMS), protection against conflicts of interest, and repressive protection through the right to sue under Article 61 of the Limited Liability Company Law and the right to appraisal under Article 62 of the Limited Liability Company Law. However, the effectiveness of all these mechanisms depends heavily on their use by minority shareholders. Therefore, the success of legal protection lies not solely in the number of legal instruments available, but rather in the ability of these instruments to provide effective remedies against actions that substantially harm minority shareholders.

3.2. The Position and Effectiveness of the GMS Minutes as a Transparency Instrument

As a public official with direct attributive authority under the law, a notary public plays a crucial role in ensuring legal certainty regarding actions and decisions outlined in authentic deeds. In the context of the GMS, a notary public must carry out their duties independently, autonomously, and impartially to the interests of any shareholder or corporate body. This position is crucial because the GMS is the company's decision-making forum, which can directly impact the interests of all shareholders, including minority shareholders.[13]

The Deed of Minutes of the GMS made by a Notary is in principle an authentic deed as referred to in Article 1868 of the Civil Code, as long as it is made in the form determined by law, by or before an authorized public official, and at a place where the official is authorized. An authentic deed has perfect evidentiary power as stated in Article 1870 of the Civil Code. Therefore, the Deed of Minutes of the GMS has an important position in providing certainty regarding the process and facts stated therein, especially regarding the holding of the GMS, the attendance

[13]Habib Adjie, Indonesian Notary Law: Thematic Interpretation of the Notary Law, Refika Aditama, Bandung, 2015, pp. 15–17.

of shareholders, the course of discussions, the delivery of opinions, and the decisions taken at the GMS.

Doctrinally, the evidentiary power of an authentic deed can be seen from three aspects, namely the external evidentiary power (uitwendige bewijskracht), the formal evidentiary power (formele bewijskracht), and the material evidentiary power (materiele bewijskracht). The external evidentiary power relates to the deed's ability to prove itself as an authentic deed as long as it cannot be proven otherwise. The formal evidentiary power relates to the certainty regarding the formalities or events described in the deed as something done, seen, or heard by the official who made the deed. Meanwhile, the material evidentiary power relates to the truth regarding the matters described in the deed as long as they relate to what is within the authority and knowledge of the official who made the deed.[14]

In the context of the GMS, this position plays a crucial role in protecting minority shareholders. The GMS Minutes Act can serve as an instrument for objectively documenting the company's decision-making process. This becomes even more relevant when there are differences of opinion between majority and minority shareholders, particularly when minority shareholders object to an agenda item or decision at the GMS. By officially recording the deed, such objections are not merely verbal statements made at the GMS but are documented to demonstrate that minority shareholders have exercised their rights in the decision-making process.[15]

The effectiveness of a notarial deed as a transparency instrument is also related to the notary's obligation to carry out his/her duties in a trustworthy, honest, thorough, independent, impartial manner, and to safeguard the interests of all parties involved in legal actions, as stipulated in the Notary Law. In the implementation of the GMS, the notary not only plays a role in producing a formal document, but also has a professional responsibility to accurately and appropriately state the facts that occurred in the GMS. Therefore, the deed can provide a reliable picture of the GMS process.

In the event of objections, differing opinions, or rejection of a decision, clear recording in the Minutes of the GMS is essential. For example, if a minority shareholder objects to a particular decision, the objection should ideally be recorded in the minutes in accordance with the actual circumstances. This recording has strategic value because it can demonstrate that the minority shareholder has expressed their position in the GMS forum and did not immediately accept the decision taken. This documentation can then serve as

[14]GHS Lumban Tobing, Regulations on the Position of Notary, Erlangga, Jakarta, 1999, pp. 55–59.
[15]Abdul Ghofur Anshori, Indonesian Notary Institution: Legal and Ethical Perspective, UII Press, Yogyakarta, 2009, pp. 45–48.

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evidence if a dispute arises later regarding the GMS decision or the company's actions.

In holding GMSs of public companies, transparency has also been further developed with the introduction of electronic GMS mechanisms. OJK Regulation No. 15/POJK.04/2020 regulates the planning and implementation of GMSs for public companies, including the electronic authorization mechanism and the use of electronic GMS systems.[16]The use of electronic systems can essentially increase the efficiency and accessibility of shareholders to attend the GMS, but at the same time still requires certainty regarding the identity of shareholders, attendance, use of voting rights, and documentation of the resulting decisions.

In the case of a GMS being held electronically, a distinction must be made between the electronic system's function as the GMS organizer and the function of a Notary. The electronic system supports the administrative and technical processes of holding a GMS, while the Notary continues to perform his/her official function of preparing or recording the minutes of the GMS in accordance with statutory provisions. Therefore, the effectiveness of legal protection is not solely determined by the existence of an electronic system, but also by the quality of the documentation, accuracy, and independence of the Notary in recording the facts that occurred during the GMS.

The GMS Minutes Deed thus serves a broader function than simply a company administrative document. It can serve as an instrument of transparency, accountability, and legal protection by providing authentic documentation of the company's decision-making process. For minority shareholders, such documentation is crucial to ensure that their procedural rights, such as the right to attend, express opinions, vote, or object, are not lost due to the dominant vote of the majority shareholder.

However, the effectiveness of the GMS Minutes Deed as a legal protection instrument cannot be separated from the behavior and courage of minority shareholders in exercising their rights. A Notarial Deed does not automatically prevent abuse of power by majority shareholders. The deed is more appropriately understood as an instrument of evidence and transparency that provides a documentary basis for shareholders to take legal action if there are company decisions or actions that are detrimental to their interests. In the event of losses due to unfair or unlawful company actions, shareholders must still use the protection mechanisms provided by the Limited Liability Company Law, including the right to file a lawsuit as stipulated in Article 61 of the Company Law and the right to request that their shares be purchased at a fair price as stipulated in Article 62 of the Company Law under conditions that meet legal requirements.[17]

[16]Financial Services Authority Regulation Number 15/POJK.04/2020 concerning Planning and Implementation of General Meetings of Shareholders of Public Companies.
[17]Law Number 40 of 2007 concerning Limited Liability Companies, Article 61 and Article 62.

Thus, the effectiveness of the GMS Minutes Deed as a transparency instrument can be seen in two dimensions. First, the formal dimension, namely the deed's ability to provide certainty and evidentiary power regarding the process and facts contained therein. Second, the substantive dimension, namely the extent to which the deed can truly support shareholders, especially minority shareholders, in obtaining information, documenting objections, and utilizing available legal protection mechanisms. It is at this point that the role of the Notary becomes crucial, because a carefully and objectively drafted deed can be an instrument to prevent the loss of legal trace of objections and differences of opinion that arise at the GMS.

In the context of PT Pollux Hotels Group Tbk, the existence of a Deed of Minutes of the GMS is relevant to determine the extent to which the company's decision-making process has provided adequate space for minority shareholders. The deed not only shows the final results of the GMS decisions but is also important to observe the process leading to those decisions, including whether there were objections, dissenting opinions, or the exercise of voting rights by minority shareholders. Therefore, the more complete and objective a deed is in recording the GMS process, the greater its transparency and evidentiary value.

Based on the above description, the GMS Minutes Deed can be positioned as a legal shield for minority shareholders, but not as the sole protection mechanism. The deed provides certainty regarding the documentation of the GMS process and can strengthen the shareholder's evidentiary position in the event of a future dispute. Meanwhile, substantive protection remains dependent on the use of shareholder rights granted by the Company Law and capital market regulations. Therefore, the effectiveness of legal protection for minority shareholders is an interrelated relationship between the quality of the notary's documentation, the transparency of the GMS process, the notary's independence, and the minority shareholder's willingness to utilize available legal mechanisms.[18]

4. Conclusion

Legal protection for minority shareholders is a manifestation of the principle of justice in corporate law, which is realized through structural rights in the UUPT and the vital role of Notaries in validating these rights. The position of the Deed of Minutes of the GMS as an authentic deed provides legal certainty and perfect evidentiary power, ensuring that every decision-making process in the company, especially at PT Pollux Hotels Group Tbk, is documented in a transparent and accountable manner to prevent unilateral domination by controlling shareholders. Notaries are required to always maintain professionalism and independence in organizing GMS, especially in public issuers, in order to maintain the integrity of the capital market and prevent the practice of oppression of the minority. On the

[18]National Committee for Governance Policy, General Guidelines for Good Corporate Governance in Indonesia, KNKG, Jakarta, 2006.

other hand, minority shareholders are advised to be more proactive in using their procedural rights and make the Notary deed the main evidence base in taking legal action if there are company policies that harm their economic rights.

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