Legal Protection Against Minority Shareholders in Limited Company Dissolution According to Law No 40 Of 2007

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Abstract. A Limited Liability Company (LLC) is a type of capital partnership formed under the provisions of a contract that undertakes commercial activities with permitted capital that is completely divided into shares and complies with all applicable laws and regulations (Article 1 point 1 of Law Number 40 of 2007). The analysis took a statutory approach, which is a method of examining the regulations that apply to a limited responsibility arising from the activities of the GMS, the Board of Directors, and/or the Commissioners. Furthermore, any shareholder who does not agree with the company's acts that are harmful to the shareholders or the company has the right to propose that the firm buy his shares under Article 62 of the Company Law.

Keywords: UUPT; shareholder; derivative lawsuit

1 Introduction

A Limited Liability Company (LLC) is a legal entity that is a capital partnership formed pursuant to an agreement and that does business with permitted capital that is completely divided into shares while complying to the law and its implementing rules (Article 1 point 1 of Law Number 40 of 2007). This provision has the legal effect of separating a limited-liability corporation's (LLC) (hence referred to as the Company) rights, responsibilities, and assets from the founders' or shareholders' rights, obligations, and assets.

A limited liability company (LLC) is a legal entity with limited liabilities wholly different from other individuals and is founded by law, and the court considers it to be an artificial person. It's a stockholders' organization (or even a single shareholder if allowed by law in a given nation). The limited liability company can receive, maintain, and transfer assets, as well as sue and be sued, and carry out other powers granted by relevant legislation since it has the capacity for continuous existence and as a legal entity. [1]

Dissolution is an action that causes the company to cease its existence and no longer carry out business activities for good. Then followed by the administrative process in the form of notifications, announcements, and termination of employment with employees [2]. According to According to the rules of Article 114 of Law Number 1 of 1995 about Limited Liability Companies, the firm dissolves because [3]:

a. GMS resolutions;
b. The time limit set forth in the Articles of Association has passed;
c. Court Determination.

ICLSSEE 2022, April 16, Semarang, Indonesia

DOI 10.4108/eai.16-4-2022.2320100

Law No. 40 of 2007 respecting Limited Liability Companies, article 142 paragraph (1) which is a substitute for Law Number 1 of 1995 determines that the dissolution of the company can occur because [4]:

a. Based on the decision of the GMS;
b. Because the period of establishment stipulated in the Constitution has expired;
c. Based on the determination of the Court;
d. The company's bankruptcy property is insufficient to satisfy the costs of bankruptcy due to the revocation of bankruptcy based on a permanent legal decision of a commercial court;
e. Because a company has been declared bankrupt; or is in a state of insolvency as defined by the Bankruptcy and Deferred Payment of Debts Law; or is in a state of insolvency as defined by the Bankruptcy and Deferred Payment of Debts Law; or is in a state of insolvency as defined by the Bankruptcy and Deferred Payment of Debts Law; or is in a state of insolvency as defined by the Bankrupt.
f. Due to the revocation of the firm's business license, the company must execute liquidation in accordance with the law's regulations.

Furthermore, It is determined that the provisions of Article 117 paragraph (1) of Law Number 1 of 1995, as amended by Article 146 paragraph (1) of Law Number 40 of 2007, District Court may dissolve the company on [5]:

a. Application for prosecution based due to a violation of the public interest or a criminal act committed by the corporation in violation of legislation;
b. Application of interested parties based on the reason for the legal defect in the deed of incorporation;
c. The application of shareholders, directors, or commissioners based on the company's reasons is not possible to proceed.

The reasons for the corporation are explained in the elucidation of Article 146 paragraph (1) letter c being impossible to continue are, among others [6]:

a. As demonstrated by a notice letter submitted to the tax agency, the company has not carried out business activities (non-active) for 3 (three) years or more.
b. if the majority of the shareholders' addresses are unknown, despite the fact that they have been summoned via newspaper advertisements, preventing the holding of a GMS;
c. if the company's ownership balance is such that the GMS cannot make valid decisions, such as when two (two) groups of shareholders each own 50 percent (fifty percent) of the shares; or if the company's ownership balance is such that the GMS cannot make valid decisions, such as when two (two) groups of shareholders each own 50 percent (fifty percent) of the shares; or
d. The company's assets are decreased to the point that it is no longer possible for the company to continue operating with its current assets.

Shareholders are one of the stakeholders in a limited liability company to other stakeholders, such as workers, creditors, investors, consumers, or society as a whole. Even more than that, the shareholders in a limited liability company are also parties who bring funds into the company, so apart from being referred to as stakeholders, they are also referred to as bag holders of the company [7].

Shareholders are grouped into two, Specifically, majority and minority shareholders. In essence, legal protection is provided to the majority shareholder, particularly through the process of the General Meeting of Shareholders, which ensures that if a resolution cannot be

reached through deliberation, it will be reached through a majority decision. This is where the problem begins, namely, if the decision is taken by the majority, what will the position of the minority vote be? Minority voices must also be protected, although they do not have to be the party that regulates the company. Minority shareholders are indeed vulnerable to exploitation.

As it is known that the Even while majority decision-making is considered the most democratic, the nature of majority decision-making in a GMS is not necessarily fair to minority shareholders. Through the Under the majority decision method, someone who has financed the company up to 48 percent can own a 48 percent part in to have the same voting position as holders of only 1% shares and will be very different with 51 percent shareholders in terms of control and decision making in the company, It's unjust.

As already mentioned, the issue of minority shareholder protection is relatively new in the Indonesian legal system. The overall arrangement has only been carried out since the issuance Law No. 1 of 1995 on Limited Liability Corporations, which was later revised by Law No. 40 of 2007 on Limited Liability Corporations. Previously, there was a reluctance to protect this minority shareholder, due to the following juridical reasons and reasons [4]:

a. The powerful principle applies that only the The corporation can be represented by a board of directors;
b. The opinion is strong that what is considered democratic is the party in power is the majority;
c. Strong reluctance of the courts to interfere in the business affairs of a company.

Legal personality stems from the fact that a corporation is separate from its shareholders and therefore shareholders are not responsible for the debts of the company. The verdict in this case later became a fundamental principle for British corporate law. That the corporate entity is a legally valid composition of elements, physically consisting of human assets and non-human assets which are dispersed corporate entities (corpus).

This entity is not a person and is not aware, but it serves as a legal protective mask or veil worn by agents, controllers, and stockholders in the business world and in the courts. This legal protection will have an impact on legal certainty which will eventually accelerate the movement of the national economy. The success of a company is generally based on good governance and working relationships between the elements or organs contained in it [8].

2 Research Methods

Legal research is all a person's activities to answer legal problems that are academic and practical, both those that are legal principles, legal norms that live and develop in society, like those relating to legal reality in society. The legal research method employed is normative legal research on the effectiveness of derivative claims for the legal protection of minority shareholders according to Law no. 40 of 2007 concerning Limited Liability Companies. The approach used in this study is a statutory approach, which is an approach taken to examine the rules that apply in a limited liability company [9].

3 Results and Discussion

3.1 The Republic of Indonesia's Limited Liability Company Law No. 40 of 2007 provides some legal protection for minority shareholders

In a limited liability business, the interests of the majority shareholder and the minority shareholder frequently clash. For this reason, to fulfill the element of justice, a balance is needed

so that the majority shareholder can still enjoy his rights as the majority, including regulating the company. On the other hand, the interests of minority shareholders also need to be considered and their rights cannot be ignored. To protect the interests of both parties, the legal science of the company is known as the principle of "Majority Rule Minority Protection". According to this principle, the ruler in the company remains the majority party, but the power of the majority party must be exercised by always protecting the minority party.

Based on the principle of Majority Rule Minority Protection, every company movement must not be intentional or result in the loss of minority shareholders. Many fraudulent actions can be carried out in the company by the directors who are controlled by the majority shareholder, whether intentional or not, which can harm the minority shareholders. Some examples of such fraudulent acts are as follows:

a. Actions that with the board of directors having a conflict of interes and or with the majority shareholder, such as internal acquisitions, self-dealing, corporate opportunities, and others.
b. Issuing more shares so that the minority party is diluted in the shares they hold.
c. Transferring the company's assets to another company, so that the value of the company that transfers it becomes small.
d. Offer various ways to buy shares from minority shareholders.
e. Running another company by taking the customer from the original company.
f. Making the company's expenses large, such as paying high salaries, so that the company's profits are reduced. As a consequence, the dividends to be distributed to minority shareholders are reduced.
g. Do not distribute dividends on time for various reasons.
h. Firing Minority shareholder-friendly directors and/or commissioners.
i. Issuing Minority shareholders may be harmed by special shares.
j. Eliminate Preemptive rights are recognized in the articles of association.

Thus, it is important to be accommodated by law for the existence of the majority rule minority protection principle Along with the implementation of the one-share-one-vote principle and the majority rule principle in a limited liability corporation, so that the one-share-one-vote and majority rule principles principles are both applied principle does not create the inequality that can harm the interests of shareholders. minority, as can be seen in the following quote:

The principle of one share, one vote, and majority rule is based on the idea that the majority shareholder, as the main funder, is always faced with two contradictory sides. On the one hand, he hopes to get a large dividend, but on the other hand, he is worried that he will bear the risk of a large loss according to the number of shares he owns. Therefore, it is not surprising that there is a tendency that the majority shareholder wants to monopolize power in PT. This problem will continue to be a never-ending problem if the problem is not completely resolved because the current working mechanism of PT has accepted the one share a voting principle [10].

The District Court can give legal protection to minority shareholders by issuing a court order about the company's dissolution, According to paragraph (1) of Article 142 of Law No. 40 of 2007 Concerning Limited Liability Companies, at the request of minority shareholders. It is a form of legal protection that can be provided by the court to minority shareholders. Through legal considerations as outlined in the determination. In the process of examining the application for the Limited Liability Company's dissolution, even though it is a case in voluntary jurisdiction, other parties should also be present (to be summoned to attend the trial) and ask for statements from the relevant parties from the Both A Limited Liability Company's Board of Directors and Board of Commissioners.

Minority shareholders can apply for legal protection to the District Court in two ways, namely: first, apply for a company examination based on Article 138 according to Article 141 of Law No. 40 of 2007; and secondly, apply for the company's dissolution within the requirements of Law Number 40 of 2007, Article 142 jo. Article 146. In terms of legal protection, it is not allowed to give a decision that is not requested by the applicant in the petitum.

Based on the principle of majority rule minority protection, the law recognizes several rights of minority shareholders, which when viewed from the way of implementation, there are various models of minority shareholder rights, namely as follows:

Positive Rights

What is meant by this positive right is if the minority shareholder is allowed to take certain initiatives so that the implementation of the company's business does not harm its interests. Without the initiatives taken by the minority shareholders, the company may ultimately harm the interests of minority shareholders. For example, minority shareholders are allowed to summon and determine the agenda for the general meeting of shareholders to discuss special matters.

Negative Rights

What is meant by negative rights is that minority shareholders are given the right to block/obstruct/veto certain actions taken by the company that harms the interests of minority shareholders. For example, concerning public companies, minority shareholders (independent shareholders) have the right to, if necessary, prohibit companies from conducting transactions that conflict with the interest of the directors/commissioners/majority shareholders.

Normalization Rights

What is meant by normalization rights is that minority shareholders are given the right to force the to ensure that the organization complies with all applicable laws and regulations or the company's articles of association.

Compensation Rights

What is meant by the right of compensation is that if there is an action that is detrimental to the minority shareholder, the minority shareholder is not given the right to inhibit or block the company's actions even though with the company's actions, the interests of the minority shareholder suffer losses because of it, then to him by law are given remedial rights, namely the right to receive compensation or compensation for the loss. For example, the granting of appraisal rights (rights to sell shares) to minority shareholders [11].

According to company law, the dissolution of a company has a double face. On the one hand, the majority shareholder can use the company's dissolution (and liquidation) institution to pressure the minority shareholders. However, in other circumstances, the dissolution of the company may be requested by the minority shareholders to protect their interests of the minority shareholders. If it is the majority shareholder who dissolves the company which harms the interests of the minority shareholder, then the minority shareholder can exercise all of his rights, in this case especially his right to request the cancellation of the dissolution to court, either through a derivative lawsuit or through a direct lawsuit.

However, the court's entry into limited liability company matters has its limitations and criteria. Courts may only interfere in the affairs of a limited liability company, among others, if there are actions that cause unfair prejudice to shareholders, in this case to minority shareholders.

Indirectly, The doctrine of this business decision is enforced Law No. 40 of 2007 on Limited Liability Corporations, which states, among other things, in Article 97 paragraphs (1) and (2), "Each member of the board of directors shall carry out his or her in good faith and with

full accountability for the company's interests and activities." The board of directors of a limited liability company are likewise subject to a fiduciary duty principle under Article 97 paragraphs (1) and (2).

Concerning the doctrine of business decisions, parties outside the company cannot interfere in the company and the actions of the directors cannot be blamed, for example by the court, if the directors have carried out their company's business decisions properly, which according to If the board of directors has carried out its duties According to paragraphs (1) and (2) of Article 97 of the Limited Liability Company Law:

a. Have good faith.
b. Full of responsibility
c. For the interests and business of the company (proper purpose)

3.2 Legal Efforts That Minority Shareholders Must Take in Protecting Their Rights in the Event of Dissolution of a Limited Liability Company

Equality of rights among shareholders is one of the rights of shareholders in addition to other rights. In principle, the rights of shareholders in a company are as follows: [12]

The right to management and control of the company, including but not limited to :

a. Voting rights to elect and remove directors and commissioners
b. Voting rights to make fundamental changes to the company
c. Voting rights to amend the articles of association in terms of arrangements regarding directors, commissioners, GMS, and others
d. The right to demand that the corporation be effectively managed for the benefit of the company, which includes all shareholders.

Company ownership rights, including but not limited to :

a. Right to dividend distribution
b. The right to a part of the company's assets when it is liquidated
c. The right to equitable treatment by management and majority shareholders in major transactions such as the issue of new shares, modifications to the articles of incorporation, and other matters.
d. The right to be included as a shareholder in the business registry;
e. The right to be exempt from personal liability for company debts (the privilege of immunity).

Remedial rights and other additional rights, including but not limited to:

a. Right to company information and inspection
b. The right to sue derivatives (on behalf of the company) to save the company or prevent losses to the company
c. The right to bring lawsuits and seek redress for violations of individual rights.

The embodiment of the element of equal protection between shareholders, especially between shareholders in the same classification, by the limited liability company law is regulated quite firmly and directly. It is stated in Article 53 paragraph (2) of the Corporations Law, which states: "every share in the same classification gives the holder the same rights."

4 Conclusion

Articles 61 and 62 of the nature of legal protection for minority shareholders is controlled by Law Number 40 of 2007, which governs Limited Liability Companies (UUPT). Any shareholder who has been harmed by the company's actions as a result of the GMS, the Board

of Directors, and/or the Commissioner's decision has the right to file a complaint Article 61 of the Corporations Law. Furthermore, each shareholder has the right to request, pursuant to Article 62 of the Company Law, that the If the shareholders do not agree with the firm's acts that are harmful to the shareholders, or the company, the company may purchase his or her shares.

Minority shareholders are one of the stakeholders in addition to other stakeholders, namely majority shareholders, directors, commissioners, employees, and creditors. Moreover, together with the majority shareholder, the minority shareholder is also the party who brings the coffers for the company (bag-holders). Therefore, it may or may not, the minority shareholders to some extent should be protected by law.

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