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The Phenomenon of Startup Investment and Minority Investor Protection: A Legal Analysis of Asymmetric Risk

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Abstract: *The rapid growth of the startup industry in Indonesia has raised new legal issues related to the protection of minority investors in a dynamic and institutionally unestablished ownership structure. This study analyzes how the risk of information asymmetry in the relationship between founders and investors creates inequality in legal relations that weakens the position of minority investors. Through a normative juridical approach, this study examines the effectiveness of the provisions in Law Number 40 of 2007 concerning Limited Liability Companies, especially Articles 61, 62, and 114, in providing substantive legal protection. The results of the study show that the existing legal mechanism is not fully adaptive to the complexity of the startup investment model, especially due to the weak application of fiduciary duty principles and the lack of application of good corporate governance principles. On the other hand, the practice of investment agreements often affirms the dominance of the majority shareholders through exploitative clauses. Therefore, a legal reformulation is needed that is able to bridge this normative vacuum, through the strengthening of hybrid legal instruments and responsive sectoral regulations. This research recommends legal policy reforms that emphasize the balance of interests, transparency, and substantive justice to create an inclusive, sustainable, and economically democratic startup ecosystem.*

Keywords: *Information asymmetry; Legal Protection of Minority Investors; Startup Investment*

INTRODUCTION

The growth of the startup industry in Indonesia has become a significant economic phenomenon in the last decade. The existence of information technology-based startups opens up new investment opportunities for investors who want to participate in the early stages of business development. In practice, investing in startups is not only long-term and high-risk, but also involves ownership structures that are not yet legally stable. This draws attention to the aspect of legal protection for financiers, especially minority investors who de facto do not have significant control over the company's strategic decision-making process.

In the internal structure of a startup, the position of minority investors is often marginalized due to the dominance of the founder or majority shareholder. According to agency theory in corporate law, the relationship between investors and company management creates a potential conflict of interest, especially

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when access to information and control over decisions is only owned by a majority group. Information asymmetry is a major issue that distorts fairness in corporate relations, where minority shareholders do not have equal bargaining power in determining the direction of the company or in protecting its investments from potential irregularities.[1]

Legal protection for minority investors has actually been normatively guaranteed in Law Number 40 of 2007 concerning Limited Liability Companies (PT Law), especially Article 61 which gives minority shareholders the right to file a lawsuit if losses occur due to adverse decisions. However, in the context of startups, the application of such norms is often ineffective because most startups are not in the form of public companies, and the internal mechanisms of startups do not provide comparable means of control or checks and balances. This creates a void of substantive legal protection for minority investors.

On the other hand, the role of the investment agreement mechanism or *term sheet* as a form of private arrangement between investors and startups has not been enough to guarantee legal justice. Many startups use agreement standards that favor majority shareholders, such as *drag-along* clauses, *conversion preference*, and *liquidation preference*, which, while contractually valid, can create inequities in the distribution of rights and benefits between the majority and minority. This condition reflects the weak principle of equality before the law in investment practices in non-traditional sectors such as startups.[2]

Theoretically, the principle of protection for minority investors rests on the concept of fiduciary duty and the principles *of good corporate governance*, namely transparency, accountability, and justice. However, in reality, startups often do not develop an adequate corporate governance system because they are perceived as hindering managerial flexibility and decision-making speed.[3] In fact, the implementation of good corporate governance should be a guarantee for all parties, including minority shareholders, to obtain their rights proportionately and without discrimination.[4]

The absence of sectoral regulations that specifically regulate the characteristics of the legal relationship between investors and startup business actors is a challenge in itself.[5] The Financial Services Authority (OJK) as a financial sector supervisory institution, although it has issued several guidelines on equity crowdfunding and fintech, has not provided guidelines that regulate in detail the legal protection models of minority investors in venture capital-based startups or bilateral investments. Within the framework of national investment law, this shows the urgency of building new legal instruments that are responsive to innovative investment models and unequal power relations in the startup ecosystem.

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Academically, the progressive legal approach requires the state to not only be based on legal-formalistic principles, but also on substantive justice that lives in society. Therefore, legal protection for minority investors must be framed within an adaptive and inclusive economic law framework. The law not only functions as an instrument of certainty, but also as a corrective mechanism against inequality that stems from unbalanced economic relations.[6] In this case, regulations must be directed to close the loophole in the weaknesses of legal protection that are currently allowed to grow along with the euphoria of startup investment.

Finally, the urgency of establishing a legal framework for the protection of minority investors in the startup sector must be seen as an integral part of building a just digital economy ecosystem. Legal reform not only includes strengthening substantive norms in the PT Law, but also the need to prepare derivative regulations or sectoral regulations that adjust to the characteristics of startups as business entities that are dynamic, disruptive, and not always subject to conventional corporate structures. The harmonization between corporate legal principles and modern contractual models is the key to creating an inclusive and sustainable investment ecosystem.

METHOD

This research uses a normative juridical method, which is an approach that focuses on the study of applicable positive legal norms, both in the form of laws and regulations, legal principles, and relevant legal doctrines. This approach is used to analyze how the law regulates and provides protection for minority investors in the ownership structure of startup companies, as well as how the concept of information asymmetry is positioned within the corporate legal framework.

The normative juridical method in this study is carried out through the study of primary legal materials, namely Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) as the main basis for legal protection for minority shareholders. In particular, the study focused on the provisions in Article 61, Article 62, and Article 114 of the Constitution which regulate the rights of minority shareholders, including the right to obtain information, the right to file a lawsuit against the board of directors or commissioners, and the right to protection from adverse actions.

In addition, secondary legal materials in the form of legal literature, academic journals, expert opinions (doctrine), and relevant court decisions are also used, in order to enrich normative analysis with theoretical and practical legal perspectives. The use of this secondary legal material aims to assess the conformity between the applicable norms and the practice of investor-startup relations in the context of modern and dynamic investment.

This research also uses a conceptual approach, where various legal concepts such as fiduciary duty, *good corporate governance* principles, and agency theory will be analyzed to assess their relevance to the legal protection needs of minority investors in the startup business model. With this approach, the researcher not only examines the applicable regulations, but also explores the philosophical meaning and rationality of legal protection as part of the corporate legal system.

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All analyses in this study are carried out in a descriptive-analytical manner, namely by systematically describing legal problems that arise due to the risk of information asymmetry and the dominance of majority shareholders in startups, then analyzing them normatively based on the provisions of the UUPT and modern corporate legal principles. This research is expected to be able to provide a complete picture of the effectiveness of applicable legal norms and the urgency of developing legal tools that are more responsive to the dynamics of the startup ecosystem

DISCUSSION

1. Information Asymmetry and Inequality of Legal Relations in Startup Investment

Information asymmetry is an inherent state in the legal relationship between investors and the founder or controlling shareholder in a startup entity. This situation creates an imbalance in the structure of legal relations due to the inequality of control of material information. In startup investment schemes, founders who hold majority control generally have full access to the company's strategic information, while investors, particularly minority shareholders, are in a position that is systematically prevented from obtaining equivalent information.[7]

Information asymmetry not only shows limited access to the company's internal data, but also has direct implications for guaranteeing legal protection for investors, especially in terms of disclosure of financial information, business projections, shareholder structures, and fundamental decision-making such as mergers, acquisitions, and other corporate actions such as the issuance of new shares or capital increases.[8] This imbalance weakens the principle of transparency which is one of the main principles in good corporate governance.

Through the agency theory approach, the relationship between the startup founder as an agent and the investor as the principal illustrates a shift in the classical structure. In startup practice, agents often hold full dominance, both in operational decision-making and in information control. This results in high agency costs due to conflicts of interest and misalignment of goals between fund owners and business managers.[9] When the internal oversight system is unable to run effectively, the legal relationship between the two becomes vulnerable to manipulative practices that have the potential to harm financiers.

This condition is exacerbated by the weak implementation of fiduciary duty by the management or controlling shareholders. In the doctrine of corporate law, fiduciary duty requires actions based on good faith, loyalty, and partiality towards the interests of the company and all stakeholders. However, in startup environments that are not subject to strict regulations or formal transparency practices, this principle is

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often overlooked. This opens up room for deviation of legal liability that should provide proportionate protection to minority shareholders.[10]

The normative framework in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) has regulated basic legal principles that should be a guideline for the protection of all shareholders, including the right to obtain information (Article 50 and Article 52) and the right to file a lawsuit if aggrieved by the decision of the majority shareholder (Article 62). However, the legal relationship model in startups is often formed through informal mechanisms and contractual instruments that have not been rigidly regulated by the UUPT, such as the use of convertible notes, liquidation preference, or vesting agreements that are not in full sync with conventional corporate law principles.

The unaffordability of formal investor protection mechanisms in this startup model also shows weaknesses in the positive legal system that tends to be unresponsive to the development of non-traditional corporate forms. This creates a normative gap in investor protection and increases the risk of dominance by controlling capital owners, who can manipulate information and decision-making processes for one-sided interests.

A reformulation of legal protection instruments for minority investors is needed, especially through strengthening the principles of disclosure, participation, and accountability in the internal legal structure of startups.[11] The shareholders agreement model prepared with a soft law approach based on the principles of prudence and contractual fairness can be one of the solutions to overcome the limitations of the written legal norms that are currently in force. In addition, the expansion of the application of the principle of fiduciary duty to all controlling and managing shareholders, as developed in the practice of Anglo-Saxon corporate law, can be a reference for creating a fairer and more balanced system.

Thus, the phenomenon of information asymmetry in startup investment is a complex and systemic legal issue, which demands a reinterpretation of the basic principles of corporate law, as well as the development of a legal framework that is able to guarantee investor protection in an innovative, dynamic, and less tied to the pattern of formalistic relationships as found in conventional corporations.

2. Effectiveness of Provisions for the Protection of Minority Investors in the Limited Liability Company Law

The protection of minority investors in the structure of a Limited Liability Company (PT) is a manifestation of the principles of fairness and transparency in sound corporate governance. In Indonesia's positive legal framework, Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) has normatively regulated legal instruments for minority shareholders to protect their economic and legal interests, especially in Articles 61, 62, and 114. However, the effectiveness of implementing these norms in practice, especially in the context of startups, faces a number of structural and substantial obstacles.[12]

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Article 61 of the UUPT gives every shareholder the right to file a lawsuit against the company if he feels aggrieved by the actions of the directors that are considered unfair or violate the provisions of the articles of association and laws and regulations. This provision represents the principle of derivative action in a limited manner, which is intended as a form of horizontal control of shareholders over management. However, in startup practices that generally have a concentrated ownership structure dominated by founders or venture capitalists, these rights are often not effectively accessible to minority investors due to internal power imbalances.

Furthermore, Article 62 of the Constitution gives the right to shareholders who do not agree with the decision of the General Meeting of Shareholders (GMS) to sell their shares to the company at a reasonable price, as long as the decision results in losses to them. Theoretically, this provision provides an exit strategy mechanism for minority investors in the face of expropriative decisions. However, in startups that do not have an established valuation or a transparent internal valuation system, the implementation of this provision tends to experience a legal vacuum due to the absence of an objective benchmark to assess the fairness of the stock price, as well as the often absence of internal liquidity to buy back the shares of minority investors.[13]

Article 114 of the Constitution which regulates the obligation of the board of directors to act in good faith and full of responsibility in managing the company is an essential ethical-legal norm to ensure fair treatment for all shareholders. However, in reality, startups often operate with an informal decision-making structure and are not rigidly subject to the principles of corporate governance, making it difficult to hold the accountability of the board of directorsr.[14] It is also not uncommon for the practice of conflict of interest to occur in stock allocation, profit distribution, or strategic decision-making without substantial involvement of minority shareholders.

On the other hand, the characteristics of startups that are dynamic, non-hierarchical, and often do not have a formal legal entity as a limited liability company (for example, still in the form of a civil partnership or do not have a complete AD/ART), obscure the effectiveness of the norms of minority investor protection as formulated in the UUPT. This shows that there is a normative gap between the reality of startup investment practices and corporate law standards governed by positive legislation.[15]

Thus, it can be argued that the effectiveness of the provisions of Articles 61, 62, and 114 of the Constitution in protecting minority investors depends on two main dimensions: (1) startup compliance with the formal legal structure of Limited Liability Companies, and (2) the willingness of the legal system to develop progressive interpretations of minority protection norms in the framework of digital and innovation-based businesses. Without legal reform or an adaptive interpretation expansion, the legal rights of minority investors will remain symbolic and have no coercive power in the dispute resolution forum.

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The urgency to formulate additional legal tools or derivative regulations specific to investor protection in the startup realm is important, considering the limitations of the UUPT which does not comprehensively anticipate the dynamics of digital corporations and early-stage ventures. A lex specialis approach that regulates the standard of protection of minority shareholders in legally and financially immature entities, as well as the strengthening of the role of alternative dispute resolution institutions (such as startup arbitration or investor ombudsman), can be a juridical solution that is remedial and preventive.

3. The Urgency of Reformulating Legal Instruments to Ensure Substantive Justice in the Startup Ecosystem

The urgency of reformulating legal instruments in the startup ecosystem is not solely based on changing technological landscapes and disruptive business models, but is also rooted in the deficit of legal protection for minority investors who are often in a structurally weak position. Existing positive legal instruments, such as Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), although it has regulated the principles of minority shareholder protection, are still not able to fully answer the complexity of investment relationships in the startup world which is high-risk, high-return, scalable, and highly dependent on tiered funding models.[16]

In practice, contractual instruments such as term sheets and shareholders agreements (SHA) have become the norm in startup investment agreements.[17] However, these documents are often colored by asymmetric bargaining power between institutional investors and founders and minority investors. This creates a substantive injustice gap because the contracts reflect a formal consensus that is dominant, rather than the outcome of equal negotiations.[18] Therefore, a legal reformulation is needed to standardize essential clauses in investment contracts, especially those related to the right of veto, anti-dilution clause, liquidation preference, and exit strategy so as not to contradict the principles of balance and good faith in contract law.

Furthermore, strengthening the principles of good corporate governance (GCG) must be the main foundation in the new regulatory framework. Principles such as transparency, accountability, responsibility, independency, and fairness must not only be upheld in the context of public corporations, but also in startups, especially in the growth stage when the complexity of ownership structures and capital flows begins to increase. It is not enough to supervise the implementation of GCG only through internal organs of the company such as commissioners and GMS, but also needs to be monitored by financial sector authorities such as the OJK through a flexible but binding legal tool.

In this case, harmonization between the private (civil) legal framework and sectoral public regulation is inevitable. The Financial Services Authority (OJK), as a regulatory and supervisory institution for the financial services sector, has a strategic role in establishing derivative regulations that provide legal certainty for venture capital-based startup investment schemes and equity crowdfunding. This

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[18] Priambudi, Z., Pambudi, B. R., & Sabila, N. I. (2023). Risiko Misleading Information Laporan Keuangan Penerbit UMKM pada Securities Crowdfunding: Mengimplementasikan BLU sebagai Auditor untuk menjamin Perlindungan Pemodal. *Jurnal Penelitian Hukum De Jure Vol*, *23*(2), 163-178.

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reformulation ideally adopts contemporary corporate legal principles that are responsive to the dynamics of economic digitalization, without neglecting the values of protection against structurally weak parties.

On the other hand, the urgency of legal reformulation also concerns the creation of a pro-business legal ecosystem while still upholding the principle of substantive justice. This can be realized by drafting a hybrid legal instrument, which is a regulatory apparatus that combines the norms of contract law, corporate law, and economic law principles that are oriented towards long-term interests. The goal is to ensure that every actor in the investment structure, whether majority or minority, has fair access to information, protection against abuse of managerial power, and a fast, fair, and efficient dispute resolution mechanism.[19]

Furthermore, it should be noted that substantive justice in the startup ecosystem is not enough to be guaranteed through normative norms, but must also be supported by a concrete and supervisory implementation mechanism. This includes disclosure requirements, internal and external audits, sustainability reporting, and the establishment of a special dispute resolution forum that handles startup corporate conflicts.[20] The existence of this kind of forum is important to answer the limitations of formal litigation forums which tend to be slow and not adaptive to the dynamics of the technology industry.

Finally, the reformulation of legal instruments to ensure substantive justice in the startup ecosystem is part of efforts to reconstruct the corporate law paradigm from one that was originally oriented towards certainty and efficiency, to a more inclusive, progressive, and equitable paradigm. Without a legal framework that is able to accommodate the diversity of investment structures and comprehensive protection of all stakeholders, the startup ecosystem has the potential to become an arena for exclusive capital accumulation that is far from the values of social justice and economic democracy as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia.

CONCLUSIONS

The phenomenon of information asymmetry in the startup investment ecosystem is a legal issue that is not purely technical, but reflects structural inequities that interfere with the principle of substantive justice. This inequality mainly arises due to the dominance of controlling shareholders over strategic material information, which results in minority investors being in a vulnerable and under-protected position. Although Law Number 40 of 2007 concerning Limited Liability Companies has provided a normative framework through Articles 61, 62, and 114, its effectiveness in the startup realm is still far from optimal because it is hit by informal structures and contractual practices that are dominant. This situation is exacerbated by the weak implementation of fiduciary duty principles and the lack of external oversight over the internal governance of startups. The asynchrony between positive legal norms and modern investment practices creates a legal vacuum that causes the protection of minority investors to be more symbolic than substantive. Therefore, a comprehensive and progressive legal reformulation is needed that integrates the principles of good corporate governance, information transparency, and the principles of contractual justice in every phase of investment. The reformulation must be carried out in harmony between private and public

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regulations, including the active role of the OJK in compiling derivative norms that are contextual and adaptive to the startup business model. The application of hybrid legal instruments based on the principle of prudence can be a solution approach that is able to answer the dynamics of law in the digital economy. Finally, strengthening protections for minority investors will not only ensure a healthy business climate, but also realize the values of social justice as mandated in the constitution

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