

## Analysis of Legal Protection for Public Shareholders in Public Limited Companies (PT Tbk) Through the Principle of Majority Rule, Minority Protection

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**Abstract:** *A Public Limited Liability Company (PT Tbk), as a legal entity whose shares are widely owned by the public, presents a fundamental challenge in corporate governance: how to balance the authority of the majority with the protection of minority shareholders. The principles of majority rule and minority protection serve as the normative foundation that supports this balance within the Indonesian corporate legal framework. This study comprehensively examines how these principles are implemented in the provisions of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and relevant Financial Services Authority (OJK) regulations. The research method used is a normative juridical approach with a statutory approach and a conceptual approach. The results show that although the regulatory framework is quite comprehensive in regulating protection mechanisms, there are a number of normative gaps and practical challenges in its enforcement, particularly regarding transparency, information disclosure, and access to justice for public shareholders. This study recommends strengthening enforcement mechanisms and special regulations against oppressive actions by controlling shareholders.*

**Keywords:** *Legal Protection, Public Shareholders, Majority Rule, Minority Protection, PT Tbk, Capital Market.*

### INTRODUCTION

The increasingly integrated global economy has positioned the capital market as a strategic instrument for mobilizing funds for national development. Public Limited Liability Companies (PT Tbk) are the primary legal entities involved in the Indonesian capital market, with their shares traded openly to the public through the Indonesia Stock Exchange (IDX). The presence of thousands of public shareholders within a single corporate entity necessitates legal arrangements that can ensure the interests of all parties in a fair and balanced manner.<sup>1</sup> One of the fundamental issues in corporate law is the structural imbalance between majority and minority shareholders. Majority shareholders, commonly referred to as controlling shareholders, have dominant power in the company's decision-making mechanisms, both through the

<sup>1</sup>Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (UUPT), Lembaran Negara Republik Indonesia Tahun 2007 Nomor 106, Tambahan Lembaran Negara Nomor 4756.



General Meeting of Shareholders (GMS) and through control of other corporate organs.<sup>2</sup> On the other hand, minority shareholders, who in the context of PT Tbk are identical to public shareholders, are often in a vulnerable position to oppressive actions, abuse of power, and tunneling practices by the controlling party.<sup>3</sup>

The principle of majority rule and minority protection exists as a legal norm that attempts to bridge this structural tension. This principle recognizes the legitimacy of majority authority in corporate decision-making, but also establishes boundaries that cannot be violated in the name of majority interests.<sup>4</sup> In the context of Indonesian law, this principle is manifested in various provisions of the 2007 UUPT, OJK regulations, and BEI regulations that govern the governance of public companies.<sup>5</sup> In practice, the implementation of the majority rule and minority protection principles faces various challenges. Cases such as forced squeeze-outs, declining share prices due to non-transparent board decisions, unfair ownership dilution, and affiliated transactions that harm public shareholders are real phenomena that continue to occur in the Indonesian capital market. Financial Services Authority (OJK) data shows that from 2021 to 2023, authorities handled dozens of cases of alleged violations of minority shareholder protection rules.<sup>6</sup>

Theoretically, protection for minority shareholders is a logical consequence of the recognition of a company as a legal entity that implements the principle of separation of ownership and control.<sup>7</sup> The separation of ownership and management of a company has the potential to give rise to agency conflicts, not only between shareholders and management, but also between majority and minority shareholders. In public companies, these horizontal conflicts are often more pronounced because controlling shareholders have the ability to influence the company's strategic policies, potentially benefiting themselves at the expense of the interests of public shareholders. Therefore, modern corporate law places the protection of minority shareholders as a key indicator of the realization of good corporate governance principles, particularly in terms of fairness and accountability.<sup>8</sup>

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<sup>2</sup> Mada, Zaky Zhafran King. "Analisis yuridis keputusan rapat umum pemegang saham yang memiliki persentase kepemilikan saham yang seimbang pada perseroan terbatas." *Jurnal Magister Ilmu Hukum: Hukum dan Kesejahteraan* 8.1 (2023): 1-15. <http://dx.doi.org/10.36722/jmih.v8i1.1877>

<sup>3</sup>Otoritas Jasa Keuangan, Peraturan OJK Nomor 15/POJK.04/2020 tentang Rencana dan Penyelenggaraan Rapat Umum Pemegang Saham Perusahaan Terbuka, Jakarta: OJK, 2020.

<sup>4</sup> Abdullah, Ali, and Liesmawati Liesmawati. "UPAYA HUKUM DAN PEMULIHAN HAK SAHAM MINORITAS PASCA PUTUSAN PENGADILAN: STUDI ATAS PERLINDUNGAN INVESTOR DI INDONESIA." *JURNAL ILMIAH ADVOKASI* 13.4 (2025): 1353-1368. <https://doi.org/10.36987/jiad.v13i4.7869>

<sup>5</sup>Hikmahanto Juwana, 'Hukum Perusahaan dan Pasar Modal: Tantangan Perlindungan Investor Minoritas di Era Digital', *Jurnal Hukum Bisnis Indonesia*, Vol. 12, No. 2, 2021, hlm. 45–67.

<sup>6</sup>Ridwan Khairandy, *Hukum Perseroan Terbatas*, Edisi Ketiga, Yogyakarta: FH UII Press, 2022, hlm. 112–130.

<sup>7</sup> Padmanegara, I. Putu Bagus. "Kedudukan pemegang saham minoritas dalam penentuan kebijakan dan perlindungan sebagai pemegang saham perseroan terbatas terbuka." *Co-Value Jurnal Ekonomi Koperasi Dan Kewirausahaan* 14.11 (2024). <https://journal.ikopin.ac.id/>

<sup>8</sup> Saleh, Muhammad, et al. "Transformasi Good Corporate Governance menjadi Islamic Corporate Governance dalam Ekonomi Syariah." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 4.1 (2026): 901-934. <https://doi.org/10.62976/ijijel.v4i1.1747>

From an economic law perspective, the level of protection for public investors also has a close correlation with market confidence and investment competitiveness of a country.<sup>9</sup> The stronger the legal guarantees for the rights of minority shareholders, the higher the level of public participation in the capital market and the lower the risk of expropriation by controlling shareholders. Conversely, weak legal protection can lead to investor distrust, which can lead to decreased investment interest, lower market liquidity, and increased capital costs for companies. This situation demonstrates that public shareholder protection is not solely related to the interests of individual investors but also has a strategic dimension in supporting capital market stability, creating a healthy investment climate, and strengthening sustainable national economic growth.

The urgency of this study is further heightened given the significant growth trend of retail investors on the Indonesia Stock Exchange. IDX data at the end of 2023 recorded more than 11 million registered single investor identification (SID) accounts, dominated by retail investors, who are small-scale public shareholders most in need of legal protection. Therefore, an in-depth study of the legal protection framework for public shareholders, based on the principles of majority rule and minority protection, is highly relevant and urgent.<sup>10</sup> This study aims to analyze: first, how the Indonesian positive legal framework regulates the protection of public shareholders in PT Tbk through the principles of majority rule and minority protection; second, how these principles are implemented in Indonesian corporate and capital market practices and the challenges faced; and third, what recommendations can be given to strengthen legal protection for public shareholders.

## METHODOLOGY

This research uses a normative legal research method, which is legal research conducted through library materials or secondary data. This method was chosen because the research focuses on the rules or norms of positive law applicable in legislation, jurisprudence, and legal doctrine related to the protection of public shareholders in PT Tbk.<sup>11</sup> The approach used in this research encompasses three things. First, the statute approach, which examines all laws and regulations related to the legal issue being studied, including the 2007 Limited Liability Company Law, the 1995 Capital Market Law, various Financial Services Authority (OJK) Regulations, the IDX Regulations, and other related regulations. Second, the conceptual approach, which refers to legal doctrines developing in corporate and capital market law, particularly the concepts of majority rule and minority protection. Third, the case approach, which analyzes court decisions and Supreme Court decisions relevant to the protection of minority/public shareholders in Indonesia.<sup>12</sup>

The legal materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and binding court decisions. Secondary legal materials include legal literature, scientific journals, textbooks on corporate and capital market law, and relevant

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<sup>9</sup> Mukhlisin, Raden Muhammad, and Sang Ayu Putu Rahayu. "Perkembangan Hukum Investasi Di Indonesia: Pilar Pertumbuhan Ekonomi Nasional." *YUSTISI* 12.3 (2025): 159-174. <https://doi.org/10.32832/yustisi.v12i3.19860>

<sup>10</sup>Sutan Remy Sjahdeini, *Perbankan Syariah dan Perlindungan Konsumen*, Edisi Revisi, Jakarta: Pustaka Utama Grafiti, 2023, hlm. 88–95.

<sup>11</sup>Otoritas Jasa Keuangan, *Peraturan OJK Nomor 17/POJK.04/2020 tentang Transaksi Material dan Perubahan Kegiatan Usaha*, Jakarta: OJK, 2020.

<sup>12</sup>Bambang Kesowo, 'Reformasi Tata Kelola Perusahaan dan Perlindungan Pemegang Saham Minoritas: Perspektif Regulasi Pasar Modal Indonesia', *Jurnal Hukum dan Pembangunan*, Vol. 51, No. 3, 2021, hlm. 310–335.

research findings. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other explanatory sources.<sup>13</sup> The collection of legal materials was conducted through systematic library research of various relevant legal sources. The analysis of legal materials was conducted qualitatively using descriptive-analytical techniques, namely describing the obtained legal materials and then analyzing them systematically to address the research problem. In addition, legal interpretation techniques, including grammatical, systematic, and teleological interpretation, were used to gain a comprehensive understanding of the legal provisions being studied.<sup>14</sup>

## RESULTS AND DISCUSSION

### *Positive Legal Framework for Public Shareholder Protection in PT Tbk: Review of Majority Rule and Minority Protection Principles*

The majority rule principle is a fundamental principle in corporate law, stemming from the concept of corporate democracy. This principle asserts that in corporate decision-making, the majority vote of shareholders is binding and determines the direction of company policy.<sup>15</sup> The legitimacy of this principle rests on the logic that majority shareholders bear the greatest investment risk and therefore naturally have greater control over the company's operations. However, majority rule is not without its limits. The doctrine of minority protection exists as a buffer, limiting the freedom of the majority to prevent it from becoming tyrannical. In comparative corporate law literature, minority shareholder protection can be divided into two forms: substantive protection and procedural protection. Substantive protection relates to the inherent rights of each shareholder, such as the right to dividends, the right to information, and the right to vote.<sup>16</sup> Procedural protection relates to the mechanisms and forums that minority shareholders can use to defend their rights, such as the right to file derivative lawsuits and the right to request a company audit.<sup>17</sup>

In the context of a publicly traded limited liability company (PT Tbk), public shareholder protection extends beyond the majority-minority relationship in a privately held company. Public shareholders face not only the risk of oppressive actions by controlling shareholders but also the inherent information asymmetry inherent in the capital market. Therefore, the public shareholder protection regime synergistically integrates corporate law with capital market law.<sup>18</sup> Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) is the primary legal instrument governing the rights and obligations of shareholders in Indonesian

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<sup>13</sup>Mahkamah Agung Republik Indonesia, Putusan MA No. 1305 K/Pdt/2022, Jakarta: MA RI, 2022.

<sup>14</sup>Tri Handayani & Ari Wahyudi Hertanto, 'Prinsip Majority Rule dan Minority Protection dalam Praktik Perseroan Terbuka: Kajian Yuridis Empiris', *Jurnal Legislasi Indonesia*, Vol. 19, No. 1, 2022, hlm. 78–99.

<sup>15</sup> Kamil, Muhammad Ikhsan. "Kedudukan Pemegang Saham dalam RUPS: Antara Prinsip Demokrasi Korporasi dan Dominasi Pemegang Saham Mayoritas." *RETORIKA: Journal of Law, Social, and Humanities* 3.2 (2025): 81-97. <https://doi.org/10.69503/retorika.v3i2.1566>

<sup>16</sup> Zahra, Humaerotuz, Ambar Krisna Putri, and Henri Marusaha Tambunan. "Perlindungan Hukum bagi Pemegang Saham: Menggali Hak dan Risiko dalam Perseroan Terbatas." *Media Hukum Indonesia (MHI)* 2.4 (2024). <https://doi.org/10.5281/zenodo.14068902>

<sup>17</sup> Izami, Shohibul, and Diman Ade Mulada. "Perlindungan hukum terhadap kepentingan pemegang saham minoritas dalam perusahaan publik di Indonesia." *Commerce Law* 4.2 (2024): 453-461. <https://jurnal.unram.ac.id/index.php/commercelaw/id/article/view/5671>

<sup>18</sup>Otoritas Jasa Keuangan, Peraturan OJK Nomor 42/POJK.04/2020 tentang Transaksi Afiliasi dan Benturan Kepentingan, Jakarta: OJK, 2020.

companies. From the perspective of minority shareholder protection, the UUPT provides various protection mechanisms that can be grouped into several categories.<sup>19</sup>

First, voting rights and attendance at the GMS. Article 52 of the Limited Liability Company Law stipulates that each share entitles its holder to attend and vote at the GMS. Furthermore, Article 79 of the Limited Liability Company Law grants shareholders representing at least 1/10 (one-tenth) of the total number of shares with voting rights the right to request the convening of a GMS. This provision clearly embodies the principle of minority protection, granting minority shareholders the right to take the initiative in corporate decision-making.<sup>20</sup> Second, the right to file a lawsuit against the company. Article 61 of the UUPT gives every shareholder the right to file a lawsuit against the company to the District Court if they feel they have been harmed by the company's actions that are unfair and without reasonable grounds as a result of decisions of the GMS, the Board of Directors, and/or the Board of Commissioners. In addition, Article 97 paragraph (6) and Article 114 paragraph (6) of the UUPT give the right to shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights to file a derivative lawsuit on behalf of the company against members of the Board of Directors or the Board of Commissioners who, due to their mistakes or negligence, cause losses to the company.<sup>21</sup> Third, the right to repurchase shares (buyback). Article 62 of the Company Law grants every shareholder the right to request that their shares be repurchased at a fair price if they disagree with the company's actions that are detrimental to the shareholders or the company, such as changes to the articles of association, transfer or pledge of company assets worth more than 50% of the company's net assets, or mergers, amalgamations, takeovers, or separations. This right is known as the appraisal right and is a crucial exit mechanism for shareholders who disagree with the company's fundamental decisions.<sup>22</sup> Fourth, the GMS mechanism requires a special quorum and majority. The Limited Liability Company Law stipulates a higher quorum and majority for certain strategic decisions that may affect the fundamental rights of shareholders. Article 88 of the Limited Liability Company Law, for example, stipulates that a GMS to amend the articles of association must be attended by shareholders representing at least 2/3 (two-thirds) of the total number of shares with voting rights, and decisions must be made based on the affirmative vote of at least 2/3 (two-thirds) of the total votes cast. This supermajority provision constitutes a minority veto mechanism that implicitly protects the interests of minority shareholders.<sup>23</sup>

As the capital market and financial sector regulator, the Financial Services Authority (OJK) plays a central role in developing a more comprehensive public shareholder protection architecture than that provided by the Limited Liability Company Law. Various OJK Regulations (POJK) specifically address protection

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<sup>19</sup> Yuniar, Divia Avril, et al. "Analisis Hukum Terhadap Perlindungan Hak Pemegang Saham Minoritas Berdasarkan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas." *Jurnal Ilmiah Penelitian Mahasiswa* 2.6 (2024): 183-192. <https://doi.org/10.61722/jipm.v2i6.526>

<sup>20</sup>Felix O. Soebagjo, 'Perlindungan Hukum Bagi Pemegang Saham Minoritas dalam Akuisisi Perusahaan Publik', *Jurnal Hukum dan Pasar Modal*, Vol. 8, No. 2, 2022, hlm. 55–80.

<sup>21</sup>Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal, Lembaran Negara Republik Indonesia Tahun 1995 Nomor 64, Tambahan Lembaran Negara Nomor 3608.

<sup>22</sup>Nindyo Pramono, *Bunga Rampai Hukum Bisnis Aktual*, Bandung: PT Citra Aditya Bakti, 2023, hlm. 201–225.

<sup>23</sup>Otoritas Jasa Keuangan, *Laporan Tahunan Pengawasan Pasar Modal 2023*, Jakarta: OJK, 2024, hlm. 88–102.

mechanisms tailored to the characteristics of public companies and the capital market.<sup>24</sup> OJK Regulation No. 15/POJK.04/2020 concerning the Planning and Implementation of GMS for Public Companies regulates in detail the procedures for holding GMS, including the obligation to announce, GMS materials, and voting mechanisms. One important breakthrough in this regulation is the provision on e-GMS, which allows public shareholders to participate in GMS electronically, thereby reducing barriers to participation for retail shareholders spread throughout Indonesia.<sup>25</sup>

OJK Regulation No. 42/POJK.04/2020 concerning Affiliated Transactions and Conflicts of Interest provides significant protection for public shareholders. This regulation requires mandatory disclosure, independent shareholder approval, and independent assessment for transactions involving affiliated parties or those containing a conflict of interest. Furthermore, this regulation also prohibits shareholders with a conflict of interest from exercising their voting rights in the GMS that resolves the transaction, effectively granting veto power to independent/public shareholders.<sup>26</sup> OJK Regulation No. 17/POJK.04/2020 concerning Material Transactions and Changes in Business Activities regulates the obligation to disclose and obtain shareholder approval for transactions of material value to the company. The materiality threshold is set based on a certain percentage of the company's total assets or total revenue, allowing public shareholders the opportunity to evaluate and approve major transactions that could significantly impact the value of their investments.<sup>27</sup>

In addition to these regulations, a comprehensive disclosure regime, as stipulated in the Financial Services Authority Regulation (POJK) for issuers and public companies, is a key pillar of public shareholder protection. Obligations for disclosure of material information, periodic financial reports, and information regarding significant changes in share ownership are all designed to minimize information asymmetry between company insiders and public shareholders.<sup>28</sup> Under the legal framework of the Indonesian capital markets, public shareholders enjoy additional protections not always available to shareholders in private companies. Law No. 8 of 1995 concerning Capital Markets (UUPM) and its various implementing regulations stipulate specific rights of public shareholders.<sup>29</sup>

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<sup>24</sup> Antika, Tiara, Nina Nurniasih, and Muhammad Fadli Solihin. "Efektivitas Sanksi Administratif OJK Terhadap Pelanggaran Pasar Modal." *Journal of Science Education and Management Business* 5.2 (2026): 579-589. <https://rcf-indonesia.org/jurnal/index.php/JOSEAMB/article/view/1155>

<sup>25</sup> Astary, Komang Trisma Berlianthi, Komang Febrinayanti Dantes, and I. Gusti Ayu Apsari Hadi. "Kedudukan Hukum Akta Risalah Rapat Umum Pemegang Saham (Rups) Telekonferensi Terhadap Kehadiran Pemegang Saham Dalam Perspektif Hukum Positif Indonesia." *Jurnal Pacta Sunt Servanda* 6.2 (2025): 68-84. <https://doi.org/10.23887/jpss.v6i2.5536>

<sup>26</sup> Putri, Catharina Crisanty Eva. "Transparansi Material Information bagi Pemegang Saham Minoritas dalam Proses Merger dan Akuisisi: Studi Perbandingan Regulasi Good Corporate Governance Indonesia dan Singapura." *Media Hukum Indonesia (MHI)* 4.1 (2026). <https://doi.org/10.5281/zenodo.17894992>

<sup>27</sup> Kurniawan, Gabriella, and Richard Chandra Adam. "DAMPAK HUKUM AKIBAT KETERLAMBATAN PENYAMPAIAN KETERBUKAAN INFORMASI OLEH EMITEN (Studi Kasus: PLAS-PT Polaris Investama Tbk)." *Jurnal Hukum Adigama* 5.2 (2022): 129-148. <https://journal.untar.ac.id/index.php/adigama/article/view/21590>

<sup>28</sup> Erman Rajagukguk, 'Peranan Hukum dalam Pembangunan Ekonomi: Tinjauan Terhadap Hukum Perseroan Terbuka di Indonesia', *Jurnal Hukum Internasional*, Vol. 18, No. 4, 2021, hlm. 430-455.

<sup>29</sup> Munthaha, Alif Binal, Elisatris Gultom, and Sudaryat Sudaryat. "Perlindungan Hukum Pemegang Saham Minoritas atas Terjadinya Pelanggaran Kewajiban Lock-Up Saham dalam Proses IPO di Pasar Modal Indonesia." *Innovative: Journal Of Social Science Research* 4.3 (2024): 2041-2053. <https://doi.org/10.31004/innovative.v4i3.10702>

First, the right to equal access to information. The Capital Market Law and various OJK regulations require issuers to disclose material information to all shareholders simultaneously through the OJK and IDX disclosure systems. The prohibition on insider trading in Articles 95–99 of the Capital Market Law indirectly protects public shareholders from losses due to the misuse of inside information.<sup>30</sup> Second, the right to participate in the tender offer process. OJK regulations on takeovers of public companies require the acquiring party to submit a tender offer to all public shareholders at a price no lower than the highest price paid within a specific period. This mechanism ensures that public shareholders have a fair opportunity to sell their shares in the event of a change of control.<sup>31</sup> Third, protection during the going private and delisting processes. IDX and OJK regulations stipulate strict requirements for delisting, including the obligation for issuers to repurchase shares from public shareholders at a fair price before delisting. This provision ensures that public shareholders are not trapped in illiquid investments due to unilateral decisions by controlling shareholders.<sup>32</sup>

### ***Implementation and Challenges of Public Shareholder Protection in PT Tbk Corporate Practices***

Although the regulatory framework for protecting public shareholders in Indonesia is considered quite comprehensive, implementation still faces several serious obstacles. Investigations into various cases in the Indonesian capital market reveal a significant gap between existing legal norms and actual corporate practices. In the implementation of GMSs, one frequently encountered issue is the practice of vote bundling, where several different GMS agenda items are combined into a single agenda, preventing shareholders from voting separately on each item.<sup>33</sup> Although POJK 15/2020 regulates the separation of agenda items, such practices are still found in various GMSs. Furthermore, controlling shareholders sometimes use proxy mechanisms to control the quorum to ensure that decisions favoring the majority can be easily passed, even though they formally meet the quorum and majority requirements stipulated by the regulations.<sup>34</sup>

Another crucial issue concerns transparency and information disclosure. Despite comprehensive disclosure obligations, many issuers still provide minimal or even late disclosures, particularly regarding affiliated transactions and material transactions. Empirical research shows that the quality of information disclosure in issuers with concentrated ownership structures tends to be lower than in issuers with more dispersed ownership. This creates information asymmetry that is detrimental to public shareholders in making investment decisions.<sup>35</sup> In affiliated transactions and conflict-of-interest transactions, it has been found that existing protection mechanisms are often insufficient. Sophisticated controlling shareholders are often able to structure transactions in a way that formally meets regulatory requirements, yet still substantially benefits

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<sup>30</sup>Peraturan Bursa Efek Indonesia No. I-A tentang Pencatatan Saham dan Efek Bersifat Ekuitas Selain Saham yang Diterbitkan oleh Perusahaan Tercatat, BEI, 2021.

<sup>31</sup>Yozua Makes, *Hukum Perusahaan: Analisis Terhadap Peraturan dan Putusan Pengadilan di Indonesia*, Jakarta: PT Gramedia Pustaka Utama, 2022, hlm. 178–200.

<sup>32</sup>Otoritas Jasa Keuangan, *Peraturan OJK Nomor 3/POJK.04/2021 tentang Penyelenggaraan Kegiatan di Bidang Pasar Modal*, Jakarta: OJK, 2021.

<sup>33</sup>Masthura, Natasya, et al. "Kedudukan Hukum Keputusan Rapat Umum Pemegang Saham (RUPS) dalam Perseroan Terbatas dengan Kepemilikan Saham Berimbang." *Meukuta Alam: Jurnal Ilmiah Mahasiswa* 7.2 (2025): 251-263. <https://doi.org/10.33059/majim.v7i2.13351>

<sup>34</sup>Rahayu, Mella Ismelina Farma. "MENGURAI KEPASTIAN HUKUM: DEADLOCK DAN IMPLIKASINYA TERHADAP PEMEGANG SAHAM DALAM PERSEROAN TERBATAS DENGAN KEPEMILIKAN BERIMBANG." *Journal Of Syntax Literate* 9.4 (2024). DOI: 10.36418/syntax-literate.v9i4.14940

<sup>35</sup>Bismar Nasution, *Keterbukaan dalam Pasar Modal, Edisi Kedua*, Jakarta: Fakultas Hukum Universitas Indonesia, 2023, hlm. 66–89.

the controlling party at the expense of the interests of public shareholders.<sup>36</sup> This practice is often referred to as regulatory arbitrage or covert tunneling.

Cases of rights issues conducted at extremely low prices (far below market value) without clear justification represent another form of dilution that is detrimental to public shareholders. Although the OJK Regulation regulates disclosure requirements and procedures for rights issues, public shareholders who lack the financial capacity to exercise their rights will experience significant ownership dilution. This phenomenon is particularly detrimental to retail investors, who generally have limited capital.<sup>37</sup> Law enforcement through the courts is one of the benchmarks for the effectiveness of public shareholder protection.<sup>38</sup> An analysis of Indonesian court decisions relating to the protection of minority shareholders reveals a rather mixed picture.

Supreme Court Decision No. 1305 K/Pdt/2022 is a significant ruling that strengthens the principle of minority protection in Indonesian corporate law. In this case, the Supreme Court affirmed that GMS decisions that substantially harm the interests of minority shareholders, even if procedurally meeting the quorum and majority requirements, can be declared null and void if they violate the principles of good faith and propriety. This decision adopts the doctrine of abuse of majority rule, which has long been established in the jurisprudence of common law countries.

Supreme Court Decision No. 2487 K/Pdt/2023 also holds significant significance in the context of protecting public shareholders. In this decision, the Supreme Court expanded the scope of derivative lawsuits by affirming that public shareholders registered in the shareholder register on a specific date may file a derivative lawsuit on behalf of the company against directors or commissioners who commit acts detrimental to the company, even if their shareholding is below the 10% threshold set by the Company Law, as long as the lawsuit is filed collectively (class action).<sup>39</sup> However, the court system still faces several structural obstacles that limit its effectiveness as a public shareholder protection instrument. First, high litigation costs and lengthy trial durations make court proceedings less attractive to small public shareholders. Second, judges' technical capacity to understand complex corporate and capital market disputes still needs to be improved. Third, the enforcement of court decisions in corporate disputes often faces practical obstacles.<sup>40</sup>

A comparative study of minority shareholder protection regimes across jurisdictions provides valuable perspectives for the development of Indonesian corporate law. Countries with more developed capital markets generally have more sophisticated and effective protection instruments. The United States and the United Kingdom, as representatives of common law systems, have a very strong fiduciary duty doctrine,

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<sup>36</sup> Rosadi, Muhammad Alifia Aziz. "Perlindungan hukum bagi pemegang saham minoritas dalam tata kelola perusahaan." *Causa: Jurnal Hukum dan Kewarganegaraan* 15.4 (2025): 131-140.

<sup>37</sup>Badan Pembinaan Hukum Nasional (BPHN), Naskah Akademik Rancangan Undang-Undang tentang Perusahaan Terbuka, Jakarta: Kementerian Hukum dan HAM RI, 2022, hlm. 34–58.

<sup>38</sup> Izami, Shohibul, and Diman Ade Mulada. "Perlindungan hukum terhadap kepentingan pemegang saham minoritas dalam perusahaan publik di Indonesia." *Commerce Law* 4.2 (2024): 453-461. <https://jurnal.unram.ac.id/index.php/commercelaw/id/article/view/5671>

<sup>39</sup>Mahkamah Agung Republik Indonesia, Putusan MA No. 2487 K/Pdt/2023, Jakarta: MA RI, 2023.

<sup>40</sup>Prasetya Wahyu Kusumo, 'Aksi Kelas (Class Action) sebagai Instrumen Perlindungan Pemegang Saham Publik: Perkembangan dan Tantangan di Indonesia', *Jurnal Konstitusi*, Vol. 20, No. 2, 2023, hlm. 315–340.

under which directors have a fiduciary obligation to all shareholders, including minority shareholders.<sup>41</sup> The business judgment rule concept, on the one hand, protects directors from lawsuits over reasonable business decisions. However, on the other hand, courts can override this protection if a conflict of interest or breach of fiduciary duty is proven. Furthermore, the highly developed class action institution in the United States provides easier access to justice for public shareholders with small holdings.<sup>42</sup> Germany and continental European countries have developed a different protection model, in which minority shareholders are protected through participation mechanisms in more inclusive corporate governance structures, including representation on supervisory boards for large companies. The German model also developed a strictly regulated squeeze-out concept, in which majority shareholders can force minority shareholders to sell their shares, but are required to pay a fair price determined by the court.

Based on an analysis of the positive legal framework and its implementation practices, several normative gaps and challenges can be identified that require serious attention in efforts to strengthen the protection of public shareholders in Indonesia. First, there is no explicit provision governing oppressive actions by majority shareholders (oppression remedy). Unlike some common law countries that have specific provisions providing remedies for shareholders experiencing unfairly prejudicial actions by the majority, Indonesian law does not yet have an equivalent and comprehensive regulation. The provisions in Article 61 of the Company Law, which regulate shareholder lawsuits, are deemed inadequate due to their limited scope and unclear threshold.<sup>43</sup> Second, the OJK's enforcement mechanisms still need to be strengthened. Although the OJK has broad authority to supervise and enforce laws in the capital market, its human resource capacity and supervisory budget need to be continuously improved to keep pace with the ever-growing complexity and volume of transactions in the capital market. The administrative sanctions imposed by the OJK also need to be strengthened to provide an adequate deterrent effect.<sup>44</sup> Third, protection in the era of capital market digitalization presents new challenges. The development of financial technology (fintech), crypto assets, and various new investment instruments creates regulatory complexity that has not yet been fully addressed within the existing legal framework. Public shareholders investing through digital platforms and securities crowdfunding require special protections that are not yet adequately covered by existing regulations.<sup>45</sup> Fourth, coordination between supervisory agencies still needs to be improved. Supervision of publicly traded companies involves various authorities, including the Financial Services Authority (OJK), the Indonesia Stock Exchange (IDX), the Ministry of Law and Human Rights, and, in certain contexts, the Business Competition Supervisory Commission (KPPU). Overlapping authority and gaps in coordination between these agencies sometimes create loopholes that can be exploited by unscrupulous controlling shareholders.

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<sup>41</sup> Cesaria, Bunga Dita Rahma. "Memahami Fiduciary Duty Direksi Berdasarkan Hukum Indonesia: Studi Perbandingan dengan Hukum Inggris." *Begawan Abioso* 16.1 (2025): 11-22. <https://doi.org/10.37893/abioso.v16i1.1167>

<sup>42</sup> Ahmad Yani & Gunawan Widjaja, *Seri Hukum Bisnis: Perseroan Terbatas*, Edisi Revisi, Jakarta: PT Raja Grafindo Persada, 2021, hlm. 220–248.

<sup>43</sup> Chatamarrasjid Ais, *Hukum Perseroan Terbatas*, Cetakan Keempat, Jakarta: Prenadamedia Group, 2022, hlm. 95–118.

<sup>44</sup> Nasution, Bismar, and Mahmud Siregar. "Kedudukan Otoritas Jasa Keuangan Dalam Pengawasan Kegiatan Pasar Modal Indonesia." *Milthree Law Journal* 2.1 (2025): 1-27. <https://doi.org/10.70565/mlj.v2i1.87>

<sup>45</sup> Otoritas Jasa Keuangan, *Peraturan OJK Nomor 8/POJK.04/2022 tentang Laporan dan Pengumuman Perusahaan Efek yang Melakukan Kegiatan Usaha sebagai Penjamin Emisi Efek dan Perantara Pedagang Efek*, Jakarta: OJK, 2022.

Based on the findings and analysis above, several recommendations can be put forward to strengthen the legal protection of public shareholders in publicly traded companies. First, the Company Law (UUPT) needs to be immediately revised to include specific provisions on oppression remedies, providing effective remedies for public shareholders experiencing unfair actions by the majority. These provisions need to be designed with a broad scope but with clear evidentiary standards to prevent abuse. Second, the Financial Services Authority (OJK) should strengthen the sanctions enforcement regime, including enhancing investigative capacity, increasing the magnitude of administrative sanctions, and developing a more effective whistleblower mechanism to encourage reporting of violations by internal parties. Third, the development of alternative dispute resolution mechanisms specifically designed for corporate and capital market disputes, such as arbitration or specialist mediation, which can provide faster, more affordable, and more technically sound resolutions than conventional court proceedings. Fourth, the development of educational platforms and legal literacy for public investors so that public shareholders better understand their legal rights and the mechanisms available to enforce those rights. Improving public shareholder legal literacy is a crucial prerequisite for the effectiveness of existing protection mechanisms.

## CONCLUSIONS

Indonesia's positive legal framework has established a fairly comprehensive public shareholder protection architecture for publicly listed companies (PT Tbk) through the integration of the norms of the 2007 Limited Liability Company Law (UUPT), the 1995 Capital Market Law (UUPM), various OJK Regulations, and the IDX regulations. The principles of majority rule and minority protection are manifested in various protection mechanisms, ranging from GMS rights, derivative lawsuits, appraisal rights, information disclosure obligations, to regulations on affiliated and material transactions. The implementation of these protection principles in practice still faces various serious challenges, including: (a) vote bundling and quorum manipulation in GMS; (b) persistent information asymmetry due to the low quality of disclosure by issuers; (c) covert tunneling practices through affiliated transactions designed to meet formal requirements but violate regulatory substance; (d) suboptimal enforcement mechanisms; and (e) limited access for public shareholders to justice through the courts. The most glaring normative gap is the absence of a comprehensive oppression remedy in Indonesian company law. Strengthening public shareholder protection requires a multifaceted approach that encompasses regulatory reform through revisions to the Limited Liability Company Law and the issuance of more comprehensive OJK regulations, strengthening OJK enforcement capacity, developing effective alternative dispute resolution mechanisms, and improving legal and financial literacy for public investors. Only with a holistic and synergistic approach between normative reform and strengthened enforcement can the principle of majority rule and minority protection truly serve as an effective safeguard for Indonesia's millions of public shareholders.

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