

Perlindungan hukum pemegang saham publik atas pengelolaan perseroan terbuka yang mengakibatkan kerugian bagi perseroan atau pemegang saham = Legal protection of public shareholder related to public company management causing lost to the company or shareholder / Yulean

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Abstrak

ABSTRAK

Perseroan terbuka mempunyai sistem manajemen yang berbeda dengan perseroan tertutup. Dalam perseroan terbuka harus terdapat transparansi yang dapat dipertanggungjawabkan kepada publik, mengingat banyaknya pemegang saham publik. Pemegang saham dalam suatu perseroan dapat terdiri dari pemegang saham minoritas dan pemegang saham mayoritas. Hal tersebut dapat dibedakan dari jumlah kepemilikan saham dalam suatu perseroan. Dikarenakan pemegang saham minoritas memiliki persentase kepemilikan saham yang lebih kecil dibandingkan dengan pemegang saham mayoritas, maka seringkali dirugikan atau ada ketidakpuasan terhadap keputusan-keputusan yang diambil oleh manajemen perseroan. Terlebih apabila manajemen perseroan didominasi oleh pemegang saham mayoritas, sehingga keputusan terkait perseroan yang diambil cenderung mewakili kepentingan pemegang saham mayoritas. Bahkan pada saat pengambilan keputusan melalui Rapat Umum Pemegang Saham ("RUPS"), maka pemegang saham minoritas akan mengikuti keputusan (dari pemegang saham mayoritas/melalui) RUPS. Bertitik tolak dari permasalahan tersebut di atas, maka masalah-masalah yang timbul sebagai berikut: pertama, bagaimana hak pemegang saham publik yang mengalami kerugian dalam perseroan terbuka karena nilai saham menurun yang disebabkan oleh tindakan pemegang saham mayoritas, kelalaian anggota direksi ataupun dewan komisaris; kedua, kesulitan apa yang dihadapi oleh pemegang saham minoritas dalam menuntut hak-haknya; ketiga, bagaimana hak anggota direksi untuk melakukan pembelaan terhadap setiap gugatan pemegang saham; keempat, apakah pemegang saham minoritas sudah cukup mendapat perlindungan hukum. Dari penelitian kepustakaan yang menggunakan metode atau bersifat yuridis normatif dengan metode pengumpulan data kepustakaan, hasil penelitian menemukan jawaban bahwa pemegang saham publik yang dirugikan dapat mengajukan gugatan derivatif, yaitu menggugat direksi atau dewan komisaris atas nama perseroan apabila mewakili minimum 1/10 dari jumlah seluruh saham perseroan, dan direksi sebagai pengelola perseroan dapat melakukan pembelaan atas adanya gugatan yang timbul dengan menggunakan prinsip Business Judgement Rule. Namun demikian, pemegang saham minoritas dalam perseroan terbuka belum cukup

mendapat perlindungan hukum karena masih terdapat kesulitan dalam pembuktian. Disarankan agar prinsip keterbukaan perlu dimiliki dan diterapkan dalam perseroan terbuka serta otoritas lembaga, khususnya Otoritas Jasa Keuangan dan Bursa Efek Indonesia memainkan peran sentral dalam melindungi kepentingan pemegang saham dengan membuat peraturan-peraturan yang meningkatkan transparansi dan akuntabilitas pengelolaan perseroan publik.

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ABSTRACT

A public company has a different system of management as opposed to a closed company. A public company is required to implement transparency accountable to the public, considering the huge number of the public investors. The shareholders in a company may distinct into minority shareholders and majority shareholders. That differentiation may be based on the portion of the shares ownership in the company. Due to the portion of the minority shareholders hold the shares in less number than the majority shareholders, often they are damaged or not satisfied by way the decision are made by the management of the company. This is based on the fact that the management of the company is dominated by the majority shareholders, thus corporate decision is taken for the benefit and interest of the majority shareholders. Even at the voting at the General Meeting of Shareholders, the minority shareholders shall follow the decision made by the majority shareholders. In the view of that, the issues are as follows: firstly, what are the rights of the public shareholders that incurred loss in a public company due to the value of the shares collapse as a result of the majority shareholders action, including the negligence of the Board of Directors members or even the Board of Commissioners members; secondly, what are the obstacles faced by the minority shareholders in the pursue for their rights; thirdly, what are the rights of the Board of Directors to defend itself against any claims of the shareholders; fourthly, are there adequate legal protection to the minority shareholders. Through literature data collating based on legal normative form by using library research methods it has summarized several answers, among others are that public shareholders who experience damages may use derivative action to claim on behalf of the company if the shareholders as the claimant represent all together minimum 10% voting rights of the entire shares issued by the company, and the Board of Directors may use the principle of Business Judgment Rule to defend itself of any claim raised against it. However, the minority shareholders in a public company are not adequately legally protected due to the obstacle in the implementation considering most of the claims must be proven. It is advisable that the transparency principle must be uphold and implemented in a public company and the related authorities, mainly Otoritas Jasa Keuangan (Financial Services Authority) and the Stock Exchange of Indonesia has a central role in the protection of the shareholders interest in the capital market by issuing provisions to enhance the transparency and accountability practice in the management of a public

company.