

Legal Protection for Shareholders of Dissolved Insurance Companies

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ABSTRACT

The capital market is the meeting place between supply and demand in trading securities, including stocks, which is proof of ownership of a company in exchange for shareholders' rights to profits or dividends. Although there are two main groups of shareholders, namely majority and minority, both groups have equal status in company ownership. To protect shareholders, capital market and limited liability company laws provide legal protection, including in cases of dissolution of insurance companies. In this research, normative legal methods were used to analyze relevant laws. The results show that shareholders' legal protection is contained in capital market and limited liability company laws, which give shareholders the right to file a lawsuit or request a company inspection if they feel aggrieved. The case of the dissolution of an insurance company by OJK shows that the institution can carry out its supervisory role and guarantee legal protection for shareholders by ensuring the company is responsible for losses incurred.

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1. Introduction

The capital market is all activities that become the meeting point between supply and demand, which refers more to the form of trading securities (Rokhmatussa'dyah & Suratman, 2011, p. 166). One of these securities is shares (Asra, 2020; Rizkiana et al., 2021). Shares are defined as securities that are evidence of ownership of a company for capital investment provided with reciprocal rights to shareholders in the form of profit distribution or dividends of the company without the maturity of shares, and there is no certainty of fixed income for shareholders (Rahmayanti et al., 2022; Untung, 2011, p. 7). In stock trading activities, there are two main groups, namely majority shareholders and minority shareholders. Nevertheless, both still have the same status as a shareholder. So, to ensure security for shareholders, there is legal protection for shareholders regulated in Law Number 8 of

1995 concerning capital markets and in Law Number 40 of 2007 concerning Limited Liability Companies.

Humans certainly cannot be separated from carrying out various kinds of activities in undergoing or maintaining life (Rahmayanti et al., 2022). Various activities carried out can sometimes also provide risks that can threaten safety and can even potentially lead to death (Dondo et al., 2021). So, security guarantees are needed for all activities carried out by humans, and one of these guarantees is insurance. Insurance is a word derived from the Dutch phrase *assurance*, which means coverage.

Table 1. Number of Insurance Companies in Indonesia in 2019-2021

Year	Total
2019	229
2020	228
2021	223

Based on Table 1, it is known that the number of insurance companies decreased from 2019 to 2021. This proves that insurance companies also have a risk of bankruptcy or stopping their operations. The failure of an insurance company is usually influenced by several factors, including failed asset management, imbalance of wealth flows against obligations to be met, imbalance between the value of wealth against obligations to be met in any foreign currency, insufficient premiums, and inability to carry out obligations to meet claims (Hartono, 1997, pp. 30–31). With the risk to the insurance company, it will certainly have an impact on the shareholders of the insurance company. In insurance companies in the form of a PT, according to article 142 of Law No. 40 of 2007 concerning Limited Liability Companies in lieu of Law No. 1 of 1995, the dissolution of a PT can occur if there is a decision from the General Meeting of Shareholders (GMS), (Andani, 2021), there is a period of standing that has been stipulated in the articles of association, a determination from the court, the revocation of bankruptcy based on a commercial court decision, the bankruptcy assets of the PT that are in a state of insolvency, and a revoked business license which then requires the PT to liquidate. The district court can also dissolve a PT based on Article 146 paragraph 1 of Law No. 40 of 2007 if there is a request from the prosecutor's office on the grounds that the PT has violated the public interest or laws and regulations, there is a request from the interested party for the legal defect of the deed of establishment of the PT and a request from the majority shareholder or the board of directors and commissioners for reasons stating that the PT is no longer possible to continue. A PT is said to be impossible to continue if the PT has been inactive for three years or more based on the notification letter given to the tax authority (Yosephin, 2021), most shareholders cannot know if there is a balance in the ownership of the PT which results in the GMS being unable to make valid decisions and the amount of assets of the PT that can no longer be used to run the PT (Leta, 2023).

The shareholder of a PT is someone who provides a certain amount of funds to the company so that in addition to being referred to as a *stakeholder*, it can also be referred to as a *bagholder* (Fuady, 2005, p. 89). Therefore, based on this position, a shareholder has the right to be guaranteed his security through legal protection contained in Law No. 40 of 2007 concerning Limited Liability Companies as a substitute for Law No. 1 of 1995. There are at least two examples of insurance

companies with Tbk status that have been officially dissolved by OJK, namely the dissolution of PT. Himalaya Protector Insurance in 2020 based on the decision of members of the OJK Board of Commissioners No. KEP-38/D.05/2020 and the dissolution of PT. Multi Artha Insurance Brokers in 2019 through OJK Board of Commissioners Decree No. KEP-46/NB.1/2019. Based on the example of the case, a study was made to determine the legal protection for shareholders of insurance companies that have been dissolved.

2. Materials and Methods

The research was conducted using normative legal methods, namely methods that emphasize more on the problems that occur in the literature study undertaken. In addition, the form of approach taken is a *statute approach* or interpreted as an approach that refers to the activities of reviewing and analyzing all provisions contained in the Law especially relevant to limited liability companies and shareholders, namely in Law No. 40 of 2007 concerning limited liability companies as a substitute for Law No. 1 of 1995. The analysis was conducted on two main variables, namely, the legal protection of insurance company shareholders who were dissolved to the company's shareholders. The types of data used in the study are primary legal data in the form of law no. 40 of 2007, secondary legal data in the form of journals related to similar research that has been conducted and articles discussing the legal protection of shareholders of dissolved insurance companies. Analysis of these data is carried out in a qualitative descriptive manner, namely by describing an explanation of the results of processing the data that has been obtained, which can then be the result of an analysis of the legal protection of shareholders of insurance companies dissolved according to Law no. 40 of 2007.

3. Result and Discussion

In the research conducted, results were obtained regarding legal protection for shareholders of insurance companies dissolved according to Law No. 8 of 1995 concerning capital markets and Law No. 40 of 2007 concerning limited liability companies.

Legal Protection of Shareholders of Disbanded Insurance Companies

Investment law is regulated in Law No. 25 of 2007 concerning investment, this is because investment is defined as an activity to give a certain amount of money to a certain asset with the aim of getting profits from the asset (H. S. Salim & Sutrisno, 2008, p. 31). There are two investment groups, namely direct and indirect investments. Direct investment is usually done by investing in companies or assets that are done alone without using intermediaries generally, these investors are also involved in managing the company or its investment assets (Anggraeni, 2021). Indirect investment is an investment that involves a third party as an intermediary to channel the capital to certain companies or assets that make investors not much or even not involved at all in asset management. The term share itself is contained in Article 60, paragraph 1 of Law No. 40 of 2007. Article 52, paragraph 1, contains the rights of shareholders, which include voting rights in the General Meeting of Shareholders (GMS), receipt of dividends, and the remaining assets resulting from liquidation.

Currently, the purchase of shares cannot be done directly between investors and companies but must use a third party called a securities company. So, stock trading activities can be grouped into the category of indirect investment. Along with the development of technology today, stock buying activities through securities companies are increasingly easy to do online. This certainly provides new risks to investors regarding the security or reputation of the selected securities company. Based on this phenomenon, the Financial Services Authority or OJK has an important role as a supervisor in all activities of the financial services sector, including securities companies (Masyhud, 2023). OJK has the authority to be able to protect investors who want to carry out stock trading activities through securities companies. Another form of protection is through Law No. 11 of 2008 concerning Electronic

Information and Transactions, better known as the ITE Law. Through this Law, stock trading activities through securities companies carried out online must provide clarity and truth of all information supplied, this is then able to be a guarantee for investors to be able to carry out stock buying or selling activities safely and legally guaranteed. Furthermore, OJK is the party that has the main role in maximizing the legal function so as to prevent risks from securities companies, which is then contained in OJK Regulation No. 1 / POJK.07 / 2013 concerning consumer protection in the financial services sector, which is also the basis for the establishment of the Investment Alert Task Force (Buana, 2022). To realize security in stock trading, investors must also have the understanding to be able to choose a safe securities company based on its status as a legal company and have been licensed and supervised by the OJK in order to get a better legal protection guarantee.

In addition to legal protection from securities companies, legal protection guarantees are also provided to shareholders through the Capital Market Law and Limited Liability Company Law to protect shareholders from the risks provided by PT. In Law No. 8 of 1995 concerning the capital market, it is stated that no one, including majority shareholders, should ignore minority shareholders. The legal protection of shareholders from the Capital Market Law is also strengthened in article 85, which contains information disclosure that issuers who have licenses must provide open reports to Bapepam. Those who are proven to have committed violations will get sanctions in the form of fines which are also contained in article 102 of the Capital Market Law. Bapepam's authority to conduct inspections of companies is contained in Article 100 of the Capital Market Law, which states that Bapepam is authorized to perform checks on any party suspected of violating the Capital Market Law and its implementing regulations (A. R. Salim, 2016, p. 217).

Complete legal protection of shareholders is regulated in the Limited Liability Company Law of 2007, especially those contained in Article 54 Paragraph 1, article 55, article 66 Paragraph 2, article 67, article 110 Paragraph 3, and Article 117 Paragraph 1. It is stated in Article 61, paragraph 1, that shareholders have the right to file a lawsuit against the company to the district court if they feel aggrieved by the company's actions that are considered unfair or unreasonable as a result of the GMS, directors, or commissioners. Then it is also written in Article 62, paragraph 1, which states that shareholders have the right to ask the company to buy its shares at a fair price if they do not agree to the company's actions that are considered detrimental to shareholders or companies that include changes to the articles of association (Sukmadilaga et al., 2021). Transfer or borrowing of company assets with a value of more than 50% of the company's net worth and the occurrence of mergers, takeovers, separation, or amalgamation of companies. Thus, shareholders also have the right to contribute to the determination of company policies held in the GMS (Nasarudin, 2010, p. 89).

Legal protection is also provided through derivative actions stipulated in Article 97, paragraph 6 of the Limited Liability Company Law, which states that shareholders who represent at least 1/10 of all shares are able to file a lawsuit through the district court against members of the board of directors for errors or omissions that then create losses to the company. Through this article, shareholders have the right to be able to file a lawsuit in the district court if the company's board of directors causes a company loss. In addition to having the right to file a lawsuit, shareholders also have the right to apply for a company examination with the interest of obtaining data or information contained in Article 138 of the Limited Liability Company Law, provided that if the company is suspected of having committed actions that are contrary to the law and result in losses to shareholders or third parties and if members of the board of directors or communications are suspected of also committing acts that Violating the law so as to make the company or shareholders suffer losses. Application for the examination can be done by sending a written application to the district court in accordance with the company's area of residence. It can only be done by shareholders representing at least 1/10 part of the total shares. These other parties have authority based on laws and regulations or agreements made by the company and the prosecutor's office in the public interest.

However, before applying, the previous shareholder must have the required company data and information; if the company refuses or ignores the effort, then the application for examination can still be submitted but must be included with reasonable reasons and in good faith.

In the phenomenon of the dissolution of the insurance company PT Asuransi Himalaya Pelindung through the Decree of Members of the OJK Board of Commissioners No. KEP-38 / D.05 / 2020, it is known that the dissolution of the company was caused by violations committed by the company, including the number of commissioners who did not meet the requirements, solvency achievement ratio, investment adequacy ratio, minimum amount of equity that did not meet the provisions and the value of claim debt that has an age of more than 30 days. However, even though it was officially dissolved by OJK in 2020, there are still accountability efforts carried out by PT Asuransi Himalaya Lindung, namely by forming a liquidation team that aims to settle bills owned by certain parties to PT Asuransi Himalaya Pelindung. The bills include debt bills, insurance claims, and stock sales. This action shows that OJK, together with its authority, is able to carry out legal protection to PT Asuransi Himalaya shareholders to obtain their rights, namely share buyback from PT Asuransi Himalaya. Another phenomenon that occurred was the dissolution of the insurance company PT. Multi Artha Insurance Broker through OJK Board of Commissioners Decree No. KEP-46 / NB.1 / 2019 on the grounds that the company violated premium provisions where the company was unable to pay premiums more than 30 days after the premium was received, and the company was unable to overcome the problem since OJK gave it business activity restriction sanctions. Similar to the case of PT Asuransi Himalaya, the form of responsibility carried out by PT. Multi Artha Insurance Broker is buying back its shares from shareholders; it once again shows the role of OJK in realizing legal protection for shareholders of PT. Multi Artha Insurance Broker. Based on the two cases that have been described, it can be seen that both companies have been able to give responsibility in accordance with Article 62 Paragraph 1 of Law No.40 of 2014 concerning limited liability companies, namely by buying back shares owned by shareholders after the company is declared dissolved by the Financial Services Authority of Indonesia.

4. Conclusion

Based on the results of the research that has been conducted, it can be concluded that the legal protection of shareholders in dissolved companies is contained in the Capital Market Law of 1995 and the Limited Liability Company Law of 2014. Legal protection in the Capital Market Law is more likely to provide guarantees to shareholders not to be ignored, accept company information disclosure, and authorize Bapepam to conduct inspections of the company if violations are suspected that harm the company or shareholders. In addition, complete shareholder legal protection is contained in the Limited Liability Company Law, which states that shareholders have the right to apply for a company inspection and file a lawsuit against the company through the district court if there are actions that create losses for the company or shareholders. Shareholders are also legally guaranteed to be able to resell shares to the company concerned at a fair price. Based on the case of the dissolution of PT Asuransi Himalaya Pelindung and PT Multi Artha Insurance Broker by OJK (Financial Services Authority of Indonesia), it can be concluded that OJK has succeeded in becoming an institution that firmly implements applicable laws and regulations and is able to properly guarantee legal protection to shareholders through supervisory actions carried out to companies to be responsible for losses created to shareholders. Both companies can also be said to have succeeded in carrying out their responsibilities in accordance with Article 62, paragraph 1 of the Limited Liability Company Law by buying back shares from shareholders after the dissolution of the company by OJK (Financial Services Authority of Indonesia).

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