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Legal Reformulation of Derivative Action Regulations for Protection of Minority Shareholders in Indonesia: Comparative Study of Indonesia and Australia

Heni Rosida✉
Universitas Negeri Semarang, Semarang, Indonesia

✉ henirosida@students.unnes.ac.id

Abstract

The legal safeguards provided for minority shareholders in Law No. 40 of 2007, exhibit notable deficiencies. These limitations primarily manifest in the restricted access to litigation, objections, and the practical execution of derivative actions, especially when it concerns the protection of minority shareholders in the face of corporate decisions that shield themselves behind the supposed legality of General Meeting of Shareholders (GMS) resolutions. This pervasive influence of majority shareholders on GMS decisions has resulted in a palpable absence of justice for minority shareholders. This research aims to comprehensively assess the adequacy of the Derivative Action provisions within Company Law, which serves as the primary legal framework for safeguarding minority shareholder interests. Additionally, it seeks to establish a comparative analysis between Indonesia and Australia regarding their respective Derivative Action regulations. The overarching objective is to ascertain the extent to which the current Company Law safeguards minority shareholders and to identify disparities between the legal systems of the two

nations, ultimately providing valuable insights for potential amendments and enhancements to Indonesia's legal framework. This study adopts a normative research methodology, employing both a statutory analysis and a comparative approach. The findings of this legal research reveal specific aspects within the Australian Corporation Law that not only promote a sense of justice and legal certainty but also offer tangible benefits to minority shareholders. These findings can serve as a basis for potential legal reforms in Indonesia, aiming to enhance the protection of minority shareholders within its corporate governance framework.

Keywords
Derivative Action, Comparison of Legal Arrangements, Legal Reformulation, Legal Protection, Minority Shareholder

Introduction

In principle, the efficacy and equitable operation of economic activities necessitate the presence of well-crafted legal instruments. These instruments are indispensable for optimizing outcomes and ensuring fairness and protection for stakeholders involved in both specific economic endeavors and broader contexts. It is essential to recognize that the gears of the national and international economy now turn on the performance, capabilities, and innovative pursuits of business entities operating within the legal framework. Among these entities, the Limited Liability Company (*Perseroan Terbatas* hereinafter as PT) stands out as one of the most prevalent and extensively utilized structures in Indonesia, playing an important role in the domestic and global economic landscape.[1]

[1] John S Hill, *International Business: Managing Globalization.* (California: Sage Publications, 2008). One type of business entity that commonly operates within the realm of economic activities is a company, with shareholders holding dominant rights and obligations. Furthermore, within the realm of companies, a notable legal entity is the Limited Liability Company (PT), frequently adopted by businesses undergoing a transformation in their legal status. The transition to PT status is often motivated by its distinct feature of delineating the rights and obligations of the shareholders from those of the company. Additionally, a Limited Liability Company introduces a separation of assets, further distinguishing it as an attractive business framework. *See also* Henry Aspan, "Good Corporate Governance Principles in the Management of Limited Liability Company." *International Journal of Law Reconstruction* 1, No. 1 (2017): 87-100; Ratna Januarita, "The Newly Sole Proprietorship

Indonesia has established comprehensive regulations governing the governance mechanisms within Limited Liability Companies, as outlined in Law No. 40 of 2007, commonly referred to as UUPT (*Undang-Undang Perseroan Terbatas*). The Company Law encompasses various provisions, encompassing the establishment of PT legal entities, regulations pertaining to the Company's Articles of Association, management of Company Capital and Assets, the formulation of an Annual Report Work Plan and Profit Utilization, guidelines for General Meetings of Shareholders (GMS), delineation of authority, as well as the duties and responsibilities of both the Board of Directors and Commissioners. Additionally, the Company Law addresses matters related to corporate activities such as mergers, consolidations, acquisitions, and separations, and further outlines procedures for examining the Company, eventual dissolution, liquidation, and the termination of a Company's legal entity status.[2]

According to the provisions outlined in UUPT, the scope and work plan delineated in a company's Articles of Association serve as both a legal framework and a guiding document for implementing company policies, addressing the needs of stakeholders. Nevertheless, it's important to note that these provisions can be modified through the GMS, as stipulated in Article 19, paragraph (1) of Law No. 40 of 2007. In the GMS process, the mechanisms and vote counting procedures have been explicitly defined, with a clear emphasis on prioritizing the majority vote of the shareholders, as per Article 86 in conjunction with Article 88 of Law No. 40 of 2007. This majority vote serves as the primary determinant for reaching a final decision during the GMS. These legal provisions significantly impact a company's strategic policy direction, as they ensure that the decisions are dominated by the majority shareholders. Consequently, safeguarding the interests of minority shareholders becomes a matter of utmost importance.

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as Limited Liability Company in Recent Indonesian Company Law." *MIMBAR: Jurnal Sosial dan Pembangunan* 37, No. 1 (2021): 221-231; Ibrahim Nainggolan, "Establishment of a Limited Liability Company in Indonesia." *International Journal Reglement & Society (IJRS)* 3, No. 2 (2022): 124-128; Suwinto Johan, "The Function of Commissioner Based on the Principles of Good Corporate Governance." *Journal of Private and Commercial Law* 6, No. 1 (2022): 60-73.

2 Syofia Gayatri, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Pada Perusahaan Terbuka di Indonesia", *Thesis* (Lampung: Universitas Lampung, 2017). *See also* Apri Sya'bani, "Minority Shareholders' Protection in the Indonesian Capital Market." *Indonesia Law Review* 4, No. 1 (2014): 114-142; Sigit Somadiyono, "Legal Protection of Minority Shareholders (Acquisition Company in Indonesia and Malaysia)." *Wajah Hukum* 4, No. 1 (2020): 129-135; Ulya Yasmine Prisandani, "Shareholder Activism in Indonesia: Revisiting Shareholder Rights Implementation and Future Challenges." *International Journal of Law and Management* 64, No. 2 (2022): 225-238.

In the realm of legal protection, it becomes evident that majority shareholders enjoy more robust safeguards compared to their minority counterparts. This distinction is exemplified through the application of the majority rules and the principle of one share, one vote, as articulated in the UUPT. Specifically, these principles find expression in Article 87, paragraph (1) in conjunction with Article 87, paragraph (2), which is intricately linked to Article 84, paragraph (1) of Law No. 40/2007. These provisions essentially stipulate that decisions made during a general meeting are typically arrived at through deliberation and consensus. However, in the event that a consensus remains elusive, the law dictates that a decision is deemed valid if it garners the approval of more than 50% or at least half of the total voting rights held by the shareholders present at the general meeting.[3]

Referring to the stipulations outlined in Article 87, paragraph (1) in conjunction with Article 87, paragraph (2), which are intertwined with Article 84, paragraph (1) of the UUPT, it becomes evident that a majority shareholder is defined as one who possesses ownership exceeding 50% or half of the total shares within the PT. Consequently, this definition creates a situation wherein shareholders holding less than 50% or half of the total shares in the PT fall into the category of minority shareholders. This distinction presents a pressing issue: when decisions are made based on the majority vote, the legal protection of the minority vote becomes a subject of concern. Hence, it becomes imperative for minority shareholders to actively engage in safeguarding the legal protections associated with their rights, even though they are not the managing party of the company.

Furthermore, legal protection for minority shareholders has actually been regulated in the provisions of the Company Law which have provided it through the right to sue. The right to sue referred to in the UUPT itself is divided into 2 (two), namely the right to sue directly (direct action) and the right to sue derivative (derivative action). If we take a brief look at when a loss is experienced by a PT, shareholders will tend to seek settlement by means of a derivative lawsuit. This is due to the provisions contained in Article 97 paragraph (6) of the Company Law which do not provide restrictions on what may be requested and submitted in a derivative lawsuit to the panel of judges.

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[3] Lucky Suryo Wicaksono, "Kepastian Hukum Nominee Agreement Kepemilikan Saham Perseroan Terbatas." *Jurnal Hukum Ius Quia Iustum* 23, No. 1 (2016): 42-57; I Kadek Indra Setiawan, and I. Gusti Agung Ayu Dike Widhiyaastuti. "Kepemilikan Saham Mayoritas oleh Direktur Utama." *Journal Ilmu Hukum* 4, No. 3 (2016): 1-5; Herlien Budiono, "Arah Pengaturan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas dalam Menghadapi Era Global." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, No. 2 (2012): 187-198.

It is different from a direct lawsuit, where in the Company Law the limits on filing and request have been determined.

The implementation of Derivative Action itself seems difficult because there are still several provisions that are not in favor of minority shareholders in efforts to use Derivative Action as a legal protection measure for them. This can be seen from the provisions contained in Article 97 paragraph (6) of the Company Law which provides a single prerequisite in the form of only shareholders who can file a derivative lawsuit with a minimum ownership of 1/10 or 10% of the total shares in the PT.[4] This provision appears to be difficult to fulfill if the PT where the Directors are located is classified as a very large scale PT, so that even though the PT internally has a Register of Shareholders (DPS), it does not rule out the possibility that one shareholder and another shareholder do not know or understand each other.[5]

Another issue of concern relates to the ambiguity in the UUPT regarding the jurisdictional competence of courts for accepting, examining, and adjudicating Derivative Action cases. The question arises as to whether Derivative Actions should be filed in the jurisdiction where the Directors reside or in the jurisdiction where the PT is located. A further challenge pertains to the legal standing of parties seeking to initiate a Derivative Action. Article 97, paragraph (6) of Law No. 40/2007 states that the party bringing a derivative lawsuit must be a shareholder holding at least 1/10 or 10% of the total shares in the PT. However, the provision does not clarify whether this requirement pertains to a single shareholder holding 1/10 or 10% of the shares, or if it can also be met by multiple shareholders or groups collectively owning a total of 10% of the shares. Consequently, shareholders owning less than 1/10 or 10% of the shares may find themselves unable to bring a derivative lawsuit to court. This raises concerns about the adequacy of legal protection for minority shareholders, particularly those holding less than 1/10 or 10% of the shares, in safeguarding their rights.

Given the aforementioned issues, the authors contend that the regulations governing the Derivative Action mechanism in Indonesia exhibit notable shortcomings that hinder their ability to provide effective legal protection. In comparison to international standards, particularly when juxtaposed with the provisions found in the Corporations Act (Cth) 2001 in

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[4] Wachid Aditya Ansory, and Krisnadi Nasution. "Reformulasi Hukum Tentang Hak Gugat Bagi Pemegang Saham Dibawah 1/10." *Jurnal Hukum Bisnis Bonum Commune* 5, No. 1 (2022): 109-122.

[5] Ali Muhayatsyah, "Keputusan Bisnis dan Tanggungjawab Direksi dalam Prinsip Fiduciary Duties Pada Perseroan Terbatas." *AT-TIJARAH: Jurnal Penelitian Keuangan dan Perbankan Syariah* 1, No. 2 (2019): 37-56. Dwi Tatak Subagiyo, "Perlindungan Hukum Pemegang Saham Minoritas Akibat Perbuatan Melawan Hukum Direksi Menurut Undang-Undang Perseroan Terbatas." *Perspektif* 20, No. 1 (2015): 49-58.

Australia, it becomes evident that Indonesia's regulatory framework falls short of achieving an ideal level of legal protection.

To elucidate this point, this paper will undertake a comparative analysis of Derivative Action provisions within Indonesia's Company Law and those found in Australia's Corporations Act (Cth) 2001. This analysis aims to shed light on the deficiencies in Indonesia's legal framework and underscores the need for further technical regulations to bridge the existing gaps. Several pertinent studies, such as differences in the application of derivative action in Indonesia as a civil law country compared to countries adhering to the common law legal system will be drawn upon to inform this discussion.

Additional research delves into the topic of *Legal Protection for Minority Shareholders Suffering Losses Due to Directorial Errors or Negligence*. This study explores the provisions outlined in Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), which afford minority shareholders the avenue to seek recourse when they incur losses as a result of mistakes or negligence by members of the Board of Directors. Under these regulations, minority shareholders possess the option to either directly sue the Company (via a direct lawsuit) or file a lawsuit on behalf of the Company (through a derivative lawsuit).[6] In a related context, another study pertains to the *Legal Protection of Minority Shareholders in Public Limited Liability Companies*. This article underscores the necessity for PTs to uphold the principles of majority rule and minority protection when making decisions. Essentially, while those in positions of power typically constitute the majority shareholders, they are expected to conscientiously consider the interests of minority shareholders whenever feasible.[7]

While previous studies have comprehensively explored and analyzed the theme of legal protection for Minority Shareholders, particularly through the prism of Derivative Action, it is worth noting that none of these studies have undertaken a dedicated examination and analysis of legal reforms concerning derivative actions within the Indonesian context. In this research, the author not only delves into this uncharted territory but also conducts a comparative assessment between the regulatory framework for Derivative Action in Indonesia's Company Law and the analogous provisions in Australia's Corporations Act (Cth) 2001. This comparative analysis serves as a novel contribution, aiming to offer valuable insights and recommendations for

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6 Monica Caecilia Darmawan, "Perlindungan Hukum Bagi Pemegang Saham Minoritas Yang Dirugikan Akibat Direksi Melakukan Kesalahan Atau Kelalaian". *Jurist-Diction* 2, No. 3 (2019): 985-1010.

7 Riri-Lastiar Situmorang, and Rasji Rasji. "Perlindungan Hukum Pemegang Saham Minoritas pada Perseroan Terbatas Terbuka." *Jurnal Ilmu Hukum* 12, No. 1 (2023): 113-130.

enhancing Indonesia's legal framework governing Derivative Action. Thus, this research, along with prior scholarly investigations, introduces a fresh perspective and novel dimensions to the discourse on this subject matter.

Method

This study employs a normative legal research methodology, incorporating both statutory and comparative approaches. The statutory approach is employed to scrutinize the legal provisions governing Derivative Action as a safeguard for minority shareholders within Indonesia's positive legal framework. In contrast, the comparative approach is leveraged to assess how Derivative Action is regulated within the positive legal framework of Australia. The intention is to derive insights and innovative ideas for enhancing Indonesia's positive legal framework. To gather information and legal insights, this research relies on primary, secondary, and tertiary legal materials. Primary legal materials encompass authoritative legal documents, while secondary legal materials encompass all legal-related publications not classified as official documents. Tertiary legal materials encompass non-legal resources that serve to bolster the analytical and identification aspects of the study. The data collection technique employed in this study is a literature review, which is particularly well-suited for normative legal research.[8]

Derivative Action Arrangements for Protection of Minority Shareholders in Indonesia

The establishment of a PT basically has the aim of making a profit (profit oriented). In order to achieve this goal, the directors who have been determined and mutually agreed upon by the shareholders in the Articles of Association have the right to lead a PT and have full authority to lead and carry out management functions in the PT.[9] Shareholders in a company basically do not have the authority to carry out company management duties,

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[8] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2014), pp. 133-135. *See also* Christopher McCrudden, "Legal Research and the Social Sciences." *Legal Theory and the Social Sciences.* (London: Routledge, 2017), pp. 149-167.

[9] Lestari Victoria Sinaga, and Citra Indah Lestari. "Analisis Yuridis Pertanggungjawaban Direksi Terhadap Pailitnya Suatu Perseroan Terbatas." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 3, No. 1 (2021): 25-34.

shareholders trust the Directors to carry out company management duties in the interests of the parties in the company.

In connection with the granting of considerable authority to the directors, the directors are required to maintain loyalty and maintain good faith in carrying out management functions in accordance with the principles of fiduciary duty to prevent conflicts of interest. Loyalty and good faith must be possessed by a director, otherwise there will be potential losses that can befall the PT itself.[10] The Board of Directors, in carrying out their duties, can sometimes make mistakes or omissions, either intentionally or unintentionally, which in the end results in losses for shareholders, especially minority shareholders. As for the forms of potential losses that can arise, such as the use of PT assets or profits for personal directors, abuse of authority or not using the position of directors as they should, and so on.

In order to deal with these conditions, minority shareholders as parties who are harmed by the actions of the directors are given the authority by the Company Law to be able to take certain legal remedies, namely by filing a lawsuit as stipulated in Article 61 paragraph (1) of the Limited Liability Company Law (Direct Claim) and Article 97 Paragraph (6) PT Law (Derivative Lawsuits). As for the prerequisites for being able to file a lawsuit as contained in Article 97 paragraph (6) of the Company Law, minority shareholders need to meet the minimum number of shareholdings, namely 1/10 of the total voting rights so that the lawsuit can be implemented. However, this does not mean that minority shareholders with an amount of less than 1/10 of the total voting rights do not receive legal protection. UUPT gives every shareholder the right to take certain actions regardless of the number of shares they own. These rights are as follows:[11]

1. Individual Rights (Personal Rights)

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[10] Ukilah Supriyatin, and Nina Herlina. "Tanggung Jawab Perdata Perseroan Terbatas (PT) Sebagai Badan Hukum." *Jurnal Ilmiah Galuh Justisi* 8, No. 1 (2020): 127-144.

[11] Herman Susetyo, "Perkembangan Pengaturan Hak-Hak pemegang Saham dalam Perseroan Terbatas di Indonesia". *Thesis* (Semarang: Universitas Diponegoro, 2000); Yunazar Nila Siti, Perlindungan Terhadap Hak-Hak Pemegang Saham Minoritas Perseroan Terbatas dalam Perkembangannya di Indonesia". *Thesis* (Semarang: Universitas Diponegoro, 2012). In Article 52 paragraph 1 of the Company Law, it is explained that the rights of ordinary shareholders are the ability to vote and attend GMS, receive dividends and the rest of the company's proceeds as well as other rights in accordance with the provisions of the law. Of course, these rights will apply to shareholders who have been registered as shareholders in a company. *See also* Robert W. McGee, "Shareholder Rights Issues." *Corporate Governance in Developing Economies: Country Studies of Africa, Asia and Latin America.* (Boston, MA: Springer US, 2009), pp. 23-30.

A business decision that has been detrimental to the Company will of course also be detrimental to shareholders as parties who invest capital in the Company. In facing such conditions, minority shareholders can use the individual rights granted to them to defend and demand the implementation of their rights. Individual rights are regulated by Article 61 paragraph (1) of the UUPT, which in essence states that minority shareholders personally have the right to file a lawsuit or sue the directors or commissioners in this case if their actions make mistakes or negligence which could harm the minority shareholders.

2. Appraisal Right
   Appraisal rights are rights owned by minority shareholders to defend their interests in terms of valuation of share prices. Minority shareholders can exercise appraisal rights when the Company purchases their shares, with the aim that their shares can be valued and purchased at a fair price. This arrangement regarding the right of appraisal can be found in Article 62 paragraph (1) of the Company Law. The purpose of granting appraisal rights is as protection for minority shareholders when losses occur due to changes in the PT's articles of association, the PT carries out sales, guarantees, or the PT intends to carry out a merger, consolidations and acquisitions as well as other actions related to the position of shares in the company.
3. Priority Rights (Preemptive Rights).
   Pre-emptive rights are rights given to minority shareholders so that they can have priority in purchasing shares offered by the Company. Priority rights can be found in Article 43 paragraph (1) UUPT. The form of implementation of this pre-emptive right is a rights issue or pre-emptive rights. Every existing shareholder in a limited liability company, where every shareholder is registered in the register of shareholders, is entitled to the right to purchase every new or issued share in the company's portfolio.[12]
4. Right of Inquiry
   The right of inquiry is the right to conduct an examination of the Company. Based on the PT Law, minority shareholders are given the right to submit a request to the Court for an examination of the Company, if there are allegations of fraud or things being hidden by the Directors, Commissioners or majority shareholders. Arrangements regarding the right of inquiry can be found in Articles 138 to 141 of the Company Law. On this basis, shareholders are given UUPT rights to

[12] Sugeng Sugeng, "Perlindungan Hukum Bagi Pemegang Saham Minoritas", *Selisik: Jurnal Hukum Bisnis* 2, No. 2 (2016): 82-102.

carry out an audit process or direct examination of the company with the aim of obtaining information in the event of allegations that the company, Directors and Board of Commissioners have committed unlawful acts that will harm shareholders and third parties.

In protecting the interests and justice of minority shareholders, it is necessary to have legal remedies that can be taken by minority shareholders. The UUPT states that there is no minority share interest may be ignored by anyone, including the majority shareholder. The problem that often occurs regarding legal protection for minority shareholders is the occurrence of inequality (so that their interests are often harmed by minority shareholders). So that these legal remedies come from derivative rights owned by minority shareholders so that they can take certain actions in maintaining their existence or broadly represent the company against actions that are detrimental. Owned derivative rights minority shareholders include:[13]

1. The right to request that a GMS be held, as regulated in Article 79 paragraph (2) of the Company Law
2. The right to request an examination of company documents in the event that there is an allegation of an unlawful act which is detrimental, as stipulated in Article 138 paragraph (3) UUPT.
3. The right to submit a request for dissolution of the company, as regulated in Article 144 paragraph (1) UUPT.
4. The right to represent the company to file a lawsuit against members of the board of directors for their mistakes or negligence which causes losses, as stipulated in Article 97 paragraph (6) of the Company Law.
5. The right to represent the company to file a lawsuit against members of the board of commissioners for their mistakes or negligence which caused losses, as stipulated in Article 114 paragraph (6) of the Company Law.
6. The right to file a lawsuit against the company if minority shareholders suffer losses due to the company's actions being unfair and without a reasonable reason, as regulated in Article 61 of the Company Law
7. The right to request that shares be sold at a reasonable price as a form of disapproval of the acquisition, as regulated in Article 62 paragraph (1) of the Company Law

For this reason, the basis relating to legal remedies that can be taken by minority shareholders to protect their rights if they feel aggrieved from share ownership can file a lawsuit as follows:[14]

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[13] Aripin Aripin, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas Perseroan Terbatas Terbuka dalam rangka Menciptakan Kepastian Hukum Sebagai Sarana Peningkatan Iklim Investasi di Indonesia", *Thesis* (Solo: Universitas Sebelas Maret, 2009).

[14] Wenny Ayu Haryono, "Perlindungan Hukum terhadap Pemegang Saham Minoritas dalam Peralihan Saham dengan Akta Pengakuan Utang." *Jurnal IUS Kajian Hukum dan*

1. The lawsuit was filed on behalf of the company
   The right to sue the company which is carried out by shareholders on behalf of the company against management who commits illegal acts (derivative action). The shareholder filed a lawsuit not in his personal name. So that in this case, the shareholders act on behalf of and on behalf of the company.[15]Referring to the provisions in Article 80 UUPT, through permission from the Chairperson of the District Court whose legal area covers the position of the company, shareholders can make their own summons for the GMS (both annual and general GMS). This derivative action is regulated in article 97 paragraph (6) UUPT which states "*On behalf of the Company, shareholders representing at least 1/10 (one tenth) of the total shares with voting rights may file a lawsuit through a district court against members of the Board of Directors who because his error or negligence caused losses to the Company.*" Based on the wording of the article, it can be understood that minority shareholders who reach 1/10 of all shares can take actions as representatives of the company to obtain their rights against actions that are detrimental as a result of members of the board of directors and commissioners for errors or negligence. With the rights and authority given to minority shareholders to sue the directors and commissioners (derivative rights), this is the basis for minority shareholders to defend the interests of the company through the courts.
2. Direct Lawsuit
   Basically, the following provisions aim to protect the interests and rights of minority shareholders, namely: Rights to Sue or Individual Rights. Which is strengthened by the redaction of article 61 paragraph (1) UUPT "*every shareholder has the right to file a lawsuit against the company to the district court if it is harmed because of the company's actions which are considered unfair and without unreasonable reasons as a result of the GMS, the Directors and/or the Board of Commissioners*". So that when the PT concentrates its share ownership and the minority shareholders feel disadvantaged, the minority shareholders can file a lawsuit on their behalf through the District Court whose jurisdiction covers the position of the company.[16]

Keadilan 4, No. 3 (2016): 396-406. https://doi.org/10.12345/ius.v4i1.302; Dwi Rahmawati, et al. "Perlindungan Hukum Terhadap Pemegang Saham Minoritas dalam Undang-Undang Perseroan Terbatas." *Iuris Studia: Jurnal Kajian Hukum* 2, No. 1 (2021): 34-48.

[15] Riska Fitriani, "Gugatan Derivatif oleh Pemegang Saham Minoritas Pada Perseroan Terbatas." *Jurnal Ilmu Hukum* 2, No. 1 (2011): 179-200.

[16] Agus Riyanto, "Pemegang Saham Menggugat, Mungkinkan Itu?", *Binus Online* (June, 2019). Retrieved from https://business-law.binus.ac.id/2019/06/30/pemegang-saham-

Shareholders as parties who can carry out or file a lawsuit, but limited to certain legal subjects which can be explained as follows:

a. In article 61 paragraph (1): Broadly speaking, shareholders (both majority shareholders and minority shareholders) can file a lawsuit aimed at protecting the rights and interests of shareholders. Shareholders can file lawsuits over policies or decisions from each company organ (GMS, Directors or Commissioners) which are deemed to have harmed shareholders due to decisions deemed unfair and without a reasonable reason.
b. Article 97 paragraph (6): It is the right of shareholders with shares owned of at least 1/10 of all shares (with voting rights) to be able to file a lawsuit on behalf of the Company (in the case of the company as the legal subject of the plaintiff) through the local District Court against the director of the office. whose negligence results in losses for the Company.
c. Article 114 paragraph (6): The legal basis is that the right is given to shareholders with shares owned of at least 1/10 of all shares (with voting rights) to file a lawsuit on behalf of the company (the Company is the legal subject of the Plaintiff) through the local District Court against the board of commissioners whose negligence resulted in losses for the Company.

From this it is known that those who have the absolute right to file a lawsuit are: (1) Shareholders (majority shareholders and minority shareholders) in accordance with the provisions of Article 61 of the Company Law. (2) Companies with prerequisites for lawsuits filed by Shareholders for and on behalf of the Company (Derivative Actions) which require a minimum share ownership of 1/10 of all shares with voting rights (Article 97 paragraph (6) in conjunction with Article 114 paragraph (6) UUPT).

Meanwhile, regarding the object of the lawsuit contained in Article 61 paragraph (1) of the Company Law which can be categorized as the object of the lawsuit is as follows:

a. Shareholders can file a lawsuit as a shareholder who feels aggrieved over a decision (the object of the lawsuit is a decision) which is felt to have harmed the shareholder which is deemed unfair and unfair, and not accompanied by clear reasons.
b. The object of the lawsuit in Article 97 paragraph (6) in conjunction with Article 114 paragraph (6) of the Company Law is different from Article

menggugat-mungkinkah-itu/. *See also* Soraya Syafrida, "Benturan Kepentingan oleh Pemegang Saham Mayoritas Yang Diangkat Sebagai Direktur Utama Perseroan Terbatas Tertutup (Analisa Akta Anggaran Dasar PT ARS)." *Indonesian Notary* 1, No. 1 (2019); Munir Fuady, *Hukum Bisnis dalam Teori Praktek Buku Ketiga.* (Jakarta: PT Citra Aditya Bakti, 2018).

61 paragraph (1). In Article 61 paragraph (1), the object of the lawsuit is a form of negligence that causes a loss for the plaintiffs (shareholders acting on behalf of the company) filed by at least 1/10 of all shareholders with voting rights.

Based on the wording of the article above, it can be seen that absolutely the object of a lawsuit based on the UUPT is:

(1) A decision issued by one of the company's organs (commissioners, directors, or GMS) in which the decision is decided unfairly and unfairly which harms the shareholders (loss here is one of the important elements).

(2) A form of negligence or error committed by the directors/ commissioners resulting in a loss for the plaintiffs. Given that the object of the lawsuit is regarding compensation for unlawful acts (PMH) because it originates from an error and/or negligence, it is necessary to implement or adopt the provisions of Articles 1365 and 1366 of the Criminal Code (Actions/negligence against the law and demands for compensation).

Of all the statements above, legally the Company Law provides protection for minority shareholders by being granted the right to sue, but in substance what has been regulated in the Company Law needs to be studied more deeply. As previously explained, several clauses such as "*harmed*", "*unfair*" and "*without reasonable reasons*" were found in the editorial of Article 61 UUPT. The confusion in this clause has an impact on there being no boundaries between loss and injustice, making it difficult for minority shareholders to find a justification for their lawsuit. The second word contains a subjective meaning, so to be able to qualify it is not easy. This is because the issue is unfair and without reasonable reasons it depends on who is judging it. Assessment of minority shareholders with the company, Directors and Commissioners are definitely different in terms of unfairness and without reasonable reasons. The lack of interpretation and lack of criteria makes it difficult for minority shareholders to justify their lawsuit, so it will not be easy to fight in the District Court later.

A similar thing is found in the editorial of article 97 paragraph (6) jo. 114 paragraph (6) which contains the clause "*error or negligence*" has caused "*loss*" with a very broad meaning and there is no clear description of the extent to which the directors or commissioners have caused losses to the company. This raises the question of how far the loss limit is, so it is very clear that it is difficult for minority shareholders to accept their lawsuit because of the ambiguity in the substance of the article. The next weakness is that the limitation of suing must be 1/10 (one tenth) of the shareholder making room and movement of other holders (less than the stipulated number) to be unable to sue the

Directors or Commissioners.[17] There should not be such provision, because every shareholder has the same rights as other shareholders. In accordance with Article 52 UUPT all shareholders, majority and minority, are treated equally (equal treatment).

Normatively, there is protection for minority shareholders in this law, but seeing from the fact that there are weaknesses in Article 61 UUPT and Article 97 paragraph 6 jo. Article 114 paragraph 6 of the Company Law makes it very difficult for minority shareholders to reach and win the lawsuit in the Court. The application of Derivative Action is only regulated in the Company Law and has not been clearly regulated in relation to further requirements regarding the submission of Derivative Action. As a result, in practice the implementation still leaves questions in its application.

In the UUPT there is no explicit explanation regarding the term Derivative Action, however there are provisions in the UUPT which have adopted the concept of Derivative Action which was proposed to the board of directors.[18] In the event that the directors have taken an action that is detrimental to the PT and the Derivative Action conception submitted to the board of commissioners. These two conceptions are basically Derivative Action which is a deviation from the provisions of the PT UUPT which has given the authority to act on behalf of the PT both outside and inside the court which is only given to the directors. This is contained in the provisions of Article 98 of the Company Law which states: "*The board of directors is fully responsible for managing the company for the interests and objectives of the PT as well as representing the PT both inside and outside the court.*" The existence of these provisions will give rise to problems that need to be answered both from a substantive (material) legal perspective and from a procedural (procedural) legal perspective.

For example, whether a party who has just become a shareholder after an action taken by a member of the board of directors which is detrimental to the

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[17] Taqiyuddin Kadir, *Gugatan Derivatif: Perlindungan Hukum Pemegang Saham Minoritas*. (Jakarta: Sinar Grafika, 2022). *See also* Imam Hakim Masyhuri, Wasiatun Wasiatun, and Sumriyah Sumriyah. "Efektifitas Perlindungan Hukum Pemegang Saham Dibawah 1/10 dalam Mekanisme Pelaksanaan Gugatan Derivative Action." *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, No. 3 (2023): 74-84; Adi Widjaja, "Legal Protection of Minority Shareholders Through Derivative Lawsuits." *Nurani Hukum* 5 (2022): 127-136.

[18] Article 97 paragraph 6 UUPT. Article 97, paragraph 6 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) in Indonesia regulates the eligibility criteria for individuals or entities to file a derivative lawsuit. According to this provision, the party initiating a derivative lawsuit must be a shareholder who owns at least 1/10 or 10% of the total shares in the respective Limited Liability Company. This stipulation sets a threshold for shareholders seeking to bring derivative actions against the company on behalf of all shareholders. It ensures that those filing such lawsuits have a substantial stake in the company's ownership.

PT can sue through Derivative Action. Next, are shareholders obliged to first urge the PT to sue the guilty directors before the shareholders submit Derivative Action? This is related to technical problems that can arise during the court proceedings. For example, in relation to whether the corporate lawyer/legal counsel of PT can act on behalf of the member of the board of directors who is being accused in the Derivative Action case and whether the corporate lawyer/legal counsel of PT is not related to conflict of interest issues if acting on behalf of the plaintiff, in this case the shareholder representing PT is suing. member of the board of directors in Derivative Action.

The regulation of Derivative Action in Indonesia is still said to be weak, especially in terms of its inadequate legal substance. In implementing a legal system that can provide protection for the interests of society, it must be related to the structure and substance of the law itself.[19] Discussing a form of Derivative Action in the study of protection for minority shareholders requires refinement of the broader substance both in terms of material law and in terms of procedural law.[20] As explained in the previous chapter, in order to be able to submit Derivative Actions in Indonesia, only the legal basis contained in the Company Law is required and the agenda material is only HIR. Other specific regulations have not yet been found which cover the method of implementation, consequences, or compensation for Derivative Actions against Derivative Action lawsuit decisions. In addition, the legal system in Indonesia causes judges to be unable to move actively or in another sense to make legal breakthroughs that can provide and uphold justice. These obstacles that become a factor in Derivative Action cases in Indonesia are very minimal and even if there are they certainly do not produce results or decisions that indirectly strengthen the function of Derivative Action as a means of protection for minority shareholders in PT.

In connection with this, it can be understood that the provisions regarding the Derivative Action mechanism in Indonesia require several fundamental changes in order to guarantee the rights and legal protection of parties who suffer losses due to losses caused by the Directors' mistakes. The most important of these efforts can be realized by making revisions or changes to the UUPT which regulates the implementation or mechanism of Derivative Action. Efforts to amend or revise the UUPT are directed not only to focus on implementing the minimum number of shareholders who are given the right to submit Derivative Action as intended in Article 97 paragraph 6 of the UUPT, but must also touch on more substantive matters. These changes can

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[19] Lawrence M. Friedman, *The Legal System: A Social Science Perspective.* (New York: Russell Sage Foundation, 1975).

[20] Lili Rasjidi, and I. B. Wysa Putra, *Hukum Sebagai Suatu Sistem.* (Bandung: Remaja Rosdakarya, 1993).

adopt the provisions of the derivative action system in other countries, in this case the authors examine the existing derivative action arrangements in Australia. As for the provisions related to the regulation of derivative actions that can be used as a consideration to make improvements to national law regarding the regulation of derivative actions in Australia.

Derivative Action Arrangements in the 2001 Australian Corporation Law

Based on the provisions contained in the Statutory Regulations originating from statutes or Written Laws contained in the Australian Corporation Act 2001 regarding Protection of Minority Shareholders which places more emphasis on offering or protection for shareholders or members of the company as a whole through a compensation mechanism that known as Remedies.[21]In addition to this application, there is a special mechanism through lawsuits or requests to the court for the implementation of civil investigation and trial processes (Civil Court) which have been regulated in Article 234 of the Australian Corporation Law 2001 as a measure of protection for shareholders as individuals.[22]This is known as the procedure for protecting minority shareholders against unfair, oppressive and arbitrary corporate actions or known as Oppressive or Unfair Conduct.

The Australian state provides protection and rights for shareholders to be able to carry out examinations, lawsuits in court, petitions to the court, as well as book audits and other things contained in the Australian Corporations Law 2001. Regarding shareholders who have been regulated in the Corporations Law, it is outlined underscore the importance of definitions regarding oppressive acts. This is because the point of emphasis is in resolving disputes between minority shareholders and the company (in this case including the directors and majority shareholders). Shareholders can take legal action,

Injustice or unfairness can be determined objectively, in Australian legal jurisprudence states that oppressive or unfair actions carried out by Directors are actions where other directors consider that the action is unreasonable.[23]In order to determine whether the company's actions are oppressive and unfair,

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21 Philip Lipton, et. al., *Understanding Company Law* (Pyrmont, NSW: Lawbook Co., 2010).

22 John V Gooley, Michael Zammit, Matthew Dicker SC, and David J. Russell SC. *Corporations and Associations Law Principles and Issues.* (New York: LexisNexis, 2020); Caitlin Tenkate, "Corporations and Associations Law Principles and Issues." *The Journal of New Business Ideas & Trends* 19, No. 2 (2021): 18-22.

23 Wishart David, *Company Law in Context* (Oxford: Oxford University Press, 1994), pp. 199-200.

the court is required to balance the conflicting interests between majority shareholders and minority shareholders. To do this, it is necessary to consider an analysis of the company's background and the expectations or goals of shareholders at the time the company was founded. After determining the definition of oppressive action and fair action, the submission of legal action through a lawsuit by minority shareholders can be carried out (either filing each individually or through derivative action and stating that the person who will sue is the shareholder on behalf of the company).[24]

Article 234 of the Australian Corporations Act 2001 states that those who can file a lawsuit in court are:[25]

1. Members of the Company in terms of their capacity as members of the company towards other members who act beyond their capacity as members of the company (Article 234 letter (a)).
2. Members of the Company in terms of their capacity to file lawsuits against other members acting in their capacity as members of the company.
3. A person who has been transferred from the membership register due to a selective reduction in shares (Article 234 letter (b))
4. Members in the past where the lawsuit is still related to the circumstances that caused the person concerned can no longer be a member of the company (Article 234 letter (c)
5. A person who owns shares but has transferred as a result of a will or the enforcement of a law (Article 234 letter (d))
6. A person who according to the Australian Security and Investment Commission (ASIC) has the right to file a lawsuit as part of an ongoing investigation, in the company's affairs or in matters relating to the company's affairs (Article 234 letter (e))

Apart from an identifiable subject or applicant which is regulated in Article 234 of the Corporation Law, there are also provisions regarding the possibility of lawsuits being filed by the company itself (Proceedings on Behalf of the Company) which are represented to shareholders outside of derivative actions, matters this is due to:

a. Directors or company leaders cannot represent the company in filing a lawsuit due to a conflict of interest that has occurred
b. The company is in bankruptcy or at least under investigation by ASIC as part of an external investigation.

Meanwhile, those who may file a lawsuit on behalf of the company are as follows:

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[24] Michael J. Duffy, "Shareholders Agreements and Shareholders' Remedies: Contract versus Statute?." *Bond Law Review* 20, No. 2 (2008): 1-27. https://doi.org/10.53300/001c.5517

[25] Corporations Act 2001 (Cth) Section 234.

a. Company members such as shareholders, former company members or those who are entitled to become members based on the company member register or those related to business entities
b. Current company directors or officers (or former company officers)

Regarding the objects of lawsuits that can be filed for the company's actions, including but not limited to:

a. Majority shareholders without considering the opinions or views of other shareholders directly appoint themselves or appoint other people as executives in the Company and provide unreasonably excessive remuneration and salaries.
b. The company, through the agreement of the majority shareholders, withholds and does not distribute dividends to the shareholders as a whole without any clear reason and can be held accountable.
c. Reducing the interest of minority shareholders by issuing new shares which causes the shares owned by minority shareholders to experience delusion shares.
d. Rule out the opportunity for minority shareholders to get a position as management in the company.
e. A board of directors meeting where the decisions and dynamics are regulated by the majority shareholder which results in restrictions on the rights and authority of other shareholders.
f. Carrying out business diversion carried out by the company through the decision of the majority shareholder without careful consideration and is detrimental to the company as a whole.
g. The company, through approval from the majority shareholder, carried out corporate actions, but these corporate actions were carried out carelessly and irresponsibly which resulted in losses to other shareholders, including in this case the company itself.

Based on the provisions contained in Article 232 of the Australian Corporation Act 2001, the Petitioner may also file a lawsuit against the company's actions as the object of the lawsuit. The actions referred to as the object of the lawsuit must be: contradictory to the interests of the members of the company as a whole, oppressive, unfair and discriminatory as the definition of oppressive as explained by the previous author. There are 4 (four) categories that can be the object of a lawsuit as contained in Article 232 of the Corporation Law:[26]

1. The actions/affairs of the company (company affairs) which include the policies of the board of directors, majority shareholders, substantial or

[26] Helen Anderson, "Liability trends in the USA and their relevance for Australian auditors." *Australian Journal of Corporate Law* 13, No. 1 (2001): 19-38.

special shareholders or the policies of the company itself. Legally written in the provisions of article 53 of the Corporation Law the actions or affairs of the company include but are not limited to:

a. Promotion, membership, formation, transactions, control of business, trade, property, profits and income, debts, income, expenses and losses
b. Management internal actions
c. Authority of directors and employees, control to implement, right to vote in accordance with share ownership

2. Company Actions or Action Proposals: One or all actions carried out by and/or on behalf of the company which are contrary to the interests of shareholders, the company's interests, unfair and discriminatory can be qualified as oppressive actions which can then be submitted for accountability through a lawsuit mechanism.
3. Proposal resolution or resolution: In the provisions contained in Article 232 (c) of the Corporation Law states that company actions that can be used as the object of a lawsuit include resolution proposals or resolutions that have been approved by the majority shareholder, then minority shareholders are given extensive rights to may be able to file a lawsuit (this is a reform where previously the rights held by minority shareholders were very limited which can be found in Northwest Transportation V Beatty (1887) 12 App Cas 589)
4. Negligence: As the provisions in Article 232 letter (b) of the Corporation Law stipulates if the directors commit negligence or intentionally not carry out their obligations in this case paying dividends or refuse to carry out the recording of the transfer of shares (transfer of shares) with reasons which is oppressive, unfair and discriminatory, then these actions can become the basis for filing a lawsuit.

Comparison of Derivative Actions Arrangements as Protection for Minority Shareholders in the Company Law and the Australian Corporation Law

Derivative Actions contained in the Company Law are efforts that can be submitted by shareholders, where these actions and efforts must be carried out for and/or on behalf of the Company. Derivative Actions themselves can be carried out by shareholders by delegating authority through legal action directed at the company. So that those who have legal standing related to filing

a lawsuit here, namely the Company are not shareholders.[27]There are provisions contained in the Company Law regarding sources that can be used as the basis for rights to carry out Derivative Actions, namely the application of the provisions contained in Article 97 paragraph (6) in conjunction with Article 114 paragraph (6) of the Company Law. This article is used as an element of the object of the lawsuit, namely a form of error or negligence committed by the directors or commissioners and for these errors and omissions can result in a loss for the plaintiffs. This type of lawsuit is categorized as Derivative Actions of shareholders, because from this article shareholders can file lawsuits for and on behalf of the company.

Meanwhile, in the Australian Corporation Law regarding Derivative Actions, actions are carried out by the company which is represented and carried out by the board of directors, the implementation of which does not always require approval from the company's members through the GMS or other methods, but in essence these actions can affect the interests of shareholders. The Australian Corporation Law also stipulates that Derivative Actions that can be brought by shareholders are all forms of legal action that are not limited by statute.[28]So, if a corporate action is deemed to have harmed shareholders and the company as a whole, then Derivative Actions can be carried out and implemented.

Based on the above, in order to clarify the comparison of Minority Shareholder Protection Arrangements in the Company Law and the Corporation Law, a comparison table is made as follows:

Table 1. Comparison of Shareholder Protection Arrangements in the Indonesian Company Law & Australian Corporation Law

No	Indonesian Company Law	Australian Corporations Act
1	The provisions contained in Article 62 paragraphs (1) and (2) constitute a form of protection for shareholders in relation to the offer and purchase of shares controlled and owned by minority shareholders which must be purchased at a fair price which is used as the main solution in the event of a differences of opinion	The Australian Corporation Law provides protection and rights for shareholders to be able to carry out inspections, lawsuits to courts, requests to courts, as well as audits and other forms of allegations or acts of Oppressive or Unfair Conduct. carried out by the company

[27] Pita Permatasari, "Perlindungan Hukum Pemegang Saham Minoritas Perusahaan Terbuka akibat Putusan Pailit." *SALAM: Jurnal Sosial dan Budaya Syar-i* 1, No. 2 (2014): 295-310.

[28] Melissa Hofmann, "The Statutory Derivative Action in Australia: An Empirical Review of its Use and Effectiveness in Australia in Comparison to the United States, Canada and Singapore." *Enterprise Governance eJournal* 1, No. 1 (2005): 1-23.

No	Indonesian Company Law	Australian Corporations Act
	regarding corporate actions that cannot be fully accepted by shareholders.	
2	What is meant by "*fair*" in article 62 paragraph (1) above is not explained in detail and extensively as contained in the explanation contained in the Company Law, so that in this Law nothing is found related to the mechanism for resolving disputes relating to the fair value of shares held. owned by minority shareholders	Starting from the Foss vs. Harbottle case which is used as quite well-known jurisprudence in which claims filed by minority shareholders demand that a company run by a majority shareholder is run not in the best interest of the company, but instead is used for the benefit of the majority shareholder, in this case the company. become a means of oppression is oppressive for minority shareholders.[29]
3	Article 126 paragraph (1) regulates legal actions or corporate actions consisting of consolidation, acquisition or separation that requires paying attention to the company, minority shareholders and company employees (Article 126 paragraph 1 letter (a))	The definition of oppressive and unjust was explained and regulated in the mid-1950s in England which essentially contained the conclusion of jurisprudence that what was meant by oppressive action was an act that was "burdensome, abusive and, wrong", as stated in (Burdensome , Harsh & Wrongful).[30]
4	There is no clear definition and parameters regarding what is meant by "paying attention to interests", in the elucidation of Article 126 paragraph 2- "Shareholders who disagree with the GMS decision regarding the consolidation, acquisition or separation as referred to in paragraph (1) only permitted to exercise their rights as intended in Article 62"	In the provisions of article 234 which states that there are several parties who have the right and can file a lawsuit to obtain compensation (remedy) for oppressive and unfair actions carried out by the company in accordance with the provisions contained in Article 232 of the Australian Corporation Law. The parties referred to here are

[29] L. S. Sealy, "Foss v. Harbottle—A Marathon Where Nobody Wins." The Cambridge Law Journal 40, No. 1 (1981): 29-33.

[30] Matthew Berkahn, "The Derivative Action in Australia and New Zealand: Will the Statutory Provisions Improve Shareholders' Enforcement Rights?." *Bond Law Review* 10, No. 1 (1998): 74-100.

No	Indonesian Company Law	Australian Corporations Act
		members of the company as intended in the provisions regarding company members in the 2001 Corporation Law.
5	UUPT has weaknesses in terms of protection for minority shareholders against corporate actions in the form of mergers, acquisitions and consolidations. Shareholders who do not agree with the decisions resulting from the GMS regarding consolidation, takeover or separation as intended in paragraph (1) are only permitted to exercise their rights as intended in Article 62.	Injustice or unfairness can be determined objectively, in Australian legal jurisprudence it states that oppressive or unfair acts committed by directors are actions in which directors or other directors think that these actions are unreasonable.
6	The right to sue as contained in Article 61 paragraph (1) which is made for shareholders who feel disadvantaged as a result of decisions taken by company organs also cannot be exercised, because the option cannot be exercised because the company organ decisions (GMS) related to consolidation, takeover, or separation where the solution is only limited to the solution contained in article 62 UUPT.	In determining whether the actions of a company are oppressive and unfair, the court here must balance the conflicting interests of the majority shareholders and minority shareholders. In doing so, the court must analyze the background of the company, and the expectations or goals of the shareholders in establishing the company.
7	Article 138-41 in these four articles provides an explanation regarding the regulation of provisions related to procedures for examining companies based on alleged unlawful acts which are detrimental to shareholders or third parties as contained in Article 138 paragraph 1 letter (a)). Meanwhile, Article 138 paragraph 1 letter (b) regulates audits of companies that can be carried out on the grounds that the board of directors or board of commissioners has carried out PMH which has harmed third parties or shareholders. In the provisions of Article 138 paragraph 1 letters (a) and (b) both	Based on the provisions contained in article 232 of the 2001 Corporation Law, the applicant in carrying out a lawsuit must be based on or against the actions (affairs) of the company as the object of the lawsuit. In addition to what is intended, the action referred to as the object of the lawsuit must be: contradictory to the interests of the company's members as a whole, oppressive, unfair and discriminatory.

No	Indonesian Company Law	Australian Corporations Act
	have the aim of obtaining information from the company.	

Regarding the efforts to regulate the protection of minority shareholders through the rights of action contained in the Company Law and the Australian Corporation Law, the authors can draw conclusions and analyzes related to comparisons and differences regarding the regulation of protection for minority shareholders which can be reviewed from the Company Law and the Australian Corporation Law as follows:

1. The protection arrangements for shareholders contained in the Company Law are weaker and there are restrictions compared to the shareholder protection arrangements under the Corporation Law. These weaknesses can be seen in the following aspects.
2. Regarding disputes between minority shareholders who oppose a corporate action decision issued as a result of a GMS decision, the Company Law directs that the resolution be carried out by buying back shares (which are owned by the minority shareholders by the company) at a reasonable price as stated in the provisions of the article. 126 paragraph (2) UUPT. However, the weakness here is related to the definition of reasonable in that it cannot be measured or described in detail. As for the resolution of the share buyback at a reasonable price, a common ground has not yet been found, so the corporate action process continues as stated in the provisions of Article 126 paragraph (3) of the Company Law. Even though the provisions contained in Article 61 paragraph (1) of the Company Law are the basis for the right to sue that can be filed by shareholders, the use of this article is difficult to implement. This is different from the Corporation Law, where if a corporate action is found which is considered detrimental to shareholders, the right to sue can be exercised as in the provisions of articles 232-234 of the Corporation Law which can be carried out provided that the corporate action meets the requirements as an oppressive, unfair, and discriminatory.
3. Related to the existence of a lawsuit based on a derivative action filed by a shareholder where in the UUPT the derivative lawsuit itself can only be directed at the board of directors and board of commissioners and not for other shareholders. Meanwhile, in the Corporation Law, derivative lawsuits are extended to other shareholders whose decisions can cause harm to the interests of the company as a whole. Apart from that, the provisions of the Australian Corporation Law relate to all forms of GMS decisions which are part of the company's organs which

can be filed against them, not limited to certain corporate actions as long as the decision fulfills oppressive, unfair and discriminatory actions then a derivative lawsuit can be filed. by shareholders.[31]

4. Regarding the plaintiff's subject matter, differences were found between the Company Law and the Corporation Law. The difference is towards the plaintiff, in this case the shareholder, which in the Company Law is only limited to the shareholder who has been harmed by a decision from the company's organs as explained in Article 61 paragraph (1) of the Company Law. Whereas in the Corporation Law, shareholders who can file a lawsuit are broader in scope, which include: Shareholders who legally no longer have rights to shares resulting from the actions of the company or a party appointed by ASIC because they have the right to be able to file a lawsuit as a shareholder share.
5. Regarding derivative lawsuits, the Company Law only limits that shareholders can only file a lawsuit against directors or commissioners if they have fulfilled the requirements that the shareholder controls at least 1/10 of the total shares with voting rights contained in Article 97 paragraph (6) jo Article 114 paragraph (6). Whereas in the Corporation Law there are no restrictions on being able to file derivative lawsuits for and on behalf of the company, and as previously explained, those who can be used as defendants in the case of derivative lawsuits are not only the directors and commissioners but also other shareholders.
6. UUPT implements a Derivative Action mechanism which only focuses on provisions on the minimum amount of share ownership (ownership requirement). In contrast to the arrangements in Australia which generally require a request from the Board of Directors (demand requirement) to take actions on behalf of the Company to sue or sue members of the Board of Directors who are suspected of having been guilty and harming the PT after a request has been made to resolve existing problems internally in within the company. Submission of Derivative Action itself can only be implemented after the Board of Directors or other members of the Board of Directors refuse to file a lawsuit or charge against the Board of Directors or other members of the Board of Directors who are deemed guilty or refuse to seek alternative solutions through the company's internal mechanism without applying the principle of majority rule and majority vote. Implementation of this mechanism for demand requirement can be a

[31] Lynne Taylor, "Ratification and the statutory derivative action in the Companies Act 1993." *Company and Securities Law Journal* 16, No. 3 (1998): 221-225. *See also* H. H. McPherson, "Duties of Directors and the Powers of Shareholders." *Australian Law Journal* 51, No. 7 (1977): 460-469.

good option if implemented in Indonesia, because it will avoid the possibility of conflicting concepts between derivative claims and the plaintiff's appropriate principles. In principle, the right plaintiff himself explains that no other party can act for and on behalf of the company, except for the Board of Directors.

Conclusion

Derivative action arrangements in the Company Law that are used in Indonesia are still said to be weak, especially in terms of inadequate legal substance, both from a material legal standpoint and from a procedural law perspective. These limitations can be found in several articles as the author explains, namely in Article 61 UUPT and Article 97 paragraph 6 jo. Article 114 paragraph 6 UUPT. These obstacles that become a factor in Derivative Action cases in Indonesia are very minimal and if there are any, they will definitely not produce results or decisions that indirectly strengthen the function of Derivative Action as a means of protection for minority shareholders in PT. The non-synergistic interaction between the legal system and legal substance makes it difficult for Derivative Action to develop in Indonesia.

In connection with this, the provisions regarding the Derivative Action mechanism in Indonesia require several fundamental changes through legal reform in order to guarantee the rights and legal protection of minority shareholders. These efforts can be carried out through revisions or changes to the UUPT which regulates the implementation or mechanism of Derivative Action which is expected to be able to create an ideal and applicable legal protection system. Efforts to amend or revise the Company Law are aimed at improving it so that it does not only focus on implementing the minimum number of shareholders who are given the right to submit Derivative Actions. Improvements as intended can be carried out by adopting the provisions of the Australian Derivative Action mechanism contained in the Australian Corporation Law where Derivative Actions that can be submitted by shareholders are all forms of legal action that are not limited by statute. So, if a corporate action is deemed to have harmed shareholders and the company as a whole, then Derivative Actions can be carried out and implemented.

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