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Juridical Analysis of Blocking Sabh Access In The RI Ministry of Minority Shareholders As a Form of Legal Protection of Minority Shareholders

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Abstract: Legal subject on a protection for minority shareholders is less attendance whether in the formulation of legal theories, or law making process in Indonesia. Prevailing laws and regulations are deemed unable to provide effective protection to legal interests of the shareholder minority. Apart from the right to file derivative action in accordance with Article 61 of Indonesian Company Law, there is a provision under Ministry of Law and Human Rights Decision No. 29/2022 that stipulating the protection to minority shareholder under dispute to file for blocking company's access to the Legal Entity Administration System on the Directorate General of General Legal Administration of the Ministry of Law and Human Rights of the Republic of Indonesia (SABH). The research shows that there is an impact when such a company's access to SABH is blocked, then such a company is denied to process business license; as a consequence of such integration between SABH and Indonesia' business licensing system that is centralized under the Online Single Submission system (OSS). When such company's access to SABH is blocked, access to OSS will also be blocked due to failures on verification process during login to OSS, and there will be notifications on OSS "Login Failed, Please Call SABH". Thus, such companies are denied to process any business license within the OSS. Furthermore, the research shows there is a case that a minority shareholder who filed for SABH blocking, was charged for committing an unlawful act. For the sake of legal certainty, justification must be carried out for the implementation of protection to minority shareholder rights based on the provisions of the applicable laws and regulations, in this case as specified under PermenkumHAM 29/2022; in furtherance as impact from denied access to process any business license caused by such company's SABH blocked

Keyword: Minority Shareholders, Protection, Block, Company's Access, Unlawful Act, SABH, OSS.

INTRODUCTION

Legal theories and regulations regarding the principle of protecting minority shareholders are matters that tend to receive less attention in the body of Company law in Indonesia, so that in reality they have not been able to provide effective legal protection for

minority shareholders in a limited liability company; even though there are several legal arrangements in Law Number 40 of 2007 concerning Limited Liability Companies (" **PT Law** ") and in statutory regulations that also provide protection for minority shareholders, for example Minister of Law and Human Rights Regulation Number 24 of 2022 (PermenkumHAM 29/ 202. It is very unfortunate because legal protection for minority shareholders has a very important role considering the legal position of minority shareholders who are of course almost certain to be inferior to majority shareholders in taking opinions based on the *one share one vote principle* ; so it is very likely that the interests of minority shareholders will be affected. marred by the decisions of the General Meeting of Shareholders ("GMS") which are almost certainly dominated by the votes of the majority shareholders.

According to Munir Fuady in his book *Modern Capital Markets* (2001) ¹, the lack of ideas and legal studies regarding the principle of protecting minority shareholders in Indonesian legislation is, among other things, due to:

1. The general principle that applies is that those who actually represent the Company are the Directors, not the shareholders.
2. The opinion that majority shareholders obtain power through a democratic process (voting at the GMS).
3. The reluctance of courts to interfere in a company's business disputes.

We can generally find provisions for legal protection for shareholders in the provisions of the PT Law in the form of the following rights:

1. Article 61 of the PT Law ², in the form of the right to file a lawsuit against the Company if it is harmed by the company's actions, which is known as a derivative lawsuit.
2. Article 62 of the PT Law, in the form of the right to request that the shares be purchased at a reasonable price if the person concerned does not approve of the Company's actions which are detrimental to the Shareholders or the Company.
3. Article 79 paragraph (2) of the PT Law, in the form of the right to request a General Meeting of Shareholders be held (although this right is very limited in its implementation because minority shareholders only propose to hold a General Meeting of Shareholders without being accompanied by the authority to force a General Meeting of Shareholders).
4. Article 97 paragraph (6) of the PT Law, in the form of the right to file a lawsuit against Directors whose errors or negligence cause losses to the Company.

According to J. Satrio in his book *Limited Liability Companies* (2021), he believes that the provisions of Article 61 paragraph (1) of the PT Law regarding Company actions arising from GMS decisions, the right to file a derivative lawsuit is intended to protect minority shareholders, because the GMS decision is almost certain. determined by the vote of the majority shareholder, so that even if a GMS decision will be detrimental to the majority shareholder, then with that power to determine, the majority shareholder can reject the GMS decision which will be detrimental; while minority shareholders are almost certainly powerless over GMS decisions.

In addition to the provisions in the PT Law which provide rights for minority shareholders, legal protection for minority shareholders can be found in the provisions regarding the granting of legal rights for shareholders to block access rights to the Legal

¹ Munir Fuady, 2001. *Modern Capital Markets* (Legal Review) Bandung: PT Citra Aditya Bakti, p. 5.

² Article 61 paragraph of the PT Law reads: " (1) Every shareholder has the right to file a lawsuit against the Company in the district court if they suffer loss due to the Company's actions which are considered unfair and without reasonable reasons as a result of decisions of the GMS, Directors and/or Board of Commissioners. (2) The lawsuit as intended in paragraph (1) is submitted to the district court whose jurisdiction includes the Company's domicile .

Entity Administration System (" **SABH** "),³namely the service system. Electronic company administration is carried out by the Directorate General of General Legal Administration at the Ministry of Law and Human Rights (" **KemenkumHAM** "). PermenkumHAM 29/2022 determines blocking of SABH access rights as a form of legal protection provided by the Republic of Indonesia to shareholders who are in dispute with a limited liability company. The phrase "dispute" shows that the legal protection in PermenkumHAM 29/2022 is a derivative of the shareholder's lawsuit rights in accordance with Article 61 paragraph (1) of the PT Law.

Based on research into the dispute between PT 2021 to 2022; where the main point of the lawsuit is that PT Then, after PT Based on PT B's confession at the trial, blocking PT B's SABH access rights had the effect of not being able to use the *Online Single Submission*⁴(hereinafter referred to as " **OSS** ") access rights⁵, so that PT B was unable to process business permits through the OSS system. During the trial⁶, PT

In the case of PT The intended impact is clearly not the impact desired by PT trying through OSS.

The OSS system that was in effect at that time was the *OSS Risk Based Approach* (RBA) as mandated by the Government of the Republic of Indonesia Regulation Number 5 of 2021⁷ concerning the Implementation of Risk-Based Business Licensing (hereinafter referred to as " **PP 5/2021** "); which has emerged as a center for business licensing, accommodating almost all permits in the form of basic permits⁸, business permits⁹and advanced permits¹⁰. The types of business permits issued by the OSS institution include industrial business permits, radio transmitter permits, pharmaceutical industry production certificates, and various other permits.

On the one hand, the unexpected impact of the legal protection for minority shareholders provided by PermenkumHAM 29/2022, in the form of not being able to use OSS access rights, has indeed increased the bargaining power of PT the law regarding the impact of not being able to use OSS access rights, then anyone who submits a request to block SABH access rights which results in the OSS access rights not being able to be used, is threatened with an Unlawful Action lawsuit.

³SABH is an electronic company administration service system organized by the Directorate General of General Legal Administration at the Ministry of Law and Human Rights.

⁴ The OSS system was born based on the mandate of PP 24 of 2018 concerning Electronically Integrated Business Licensing Services.

⁵OSS as an Electronically Integrated Business Licensing system or *Online Single Submission* (OSS) is a Business Licensing issued by the OSS Institution for and on behalf of the Minister, head of institution, Governor, or Regent/Mayor to business actors through an integrated electronic system; <https://legalitas.org/tulisan/histori-oss-online-single-submission>, accessed 14 June 2023.

⁶N AG argued that the potential loss due to blocking PT B's SABH access rights was no less than € 7,300,000.00 (seven million three hundred thousand Euros) starting from August 2021 to February 21 2022, extracted from Defendant I's answer in the trial.

⁷ Republic of Indonesia Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing was stipulated and promulgated on February 2 2021, LN No.2021/No.15, TLN No.6617

⁸ The basic permits in question are Business Identification Number, Approval of Conformity for Space Utilization Activities/PKKRP, a type of Domicile Certificate.

⁹ The Business License issued is a Business License based on the risk classification of a business activity. For businesses with low risk, the business permit is NIB, for businesses with medium risk the business permit is a Standard Certificate, while for businesses with high risk the business permit is Izin.

¹⁰ The type of advanced permit is a technical permit whose fulfillment/verification is carried out by the relevant Ministry/Institution, for example a Radio Transmitter Permit, Nuclear/X-Ray Scanning Equipment Permit. These permits are submitted through the OSS RBA but then you need to go to the relevant Ministry of Institutions for verification, only then after passing the verification the permit will be issued at the OSS.

RESULTS AND DISCUSSION

Formulation of The Problem

Based on the above background, a normative juridical study was carried out regarding the protection of minority shareholders, with the problem formulation:

- 1 What are the Provisions for Protection of Minority Shareholders in Indonesia?
- 2 How is blocking access to SABH implemented at the Ministry of Law and Human Rights as a form of protection for minority shareholders?
- 3 How should the protection of minority shareholders be implemented through blocking SABH access at the Ministry of Law and Human Rights which results in the OSS business licensing system being inaccessible?

To answer the problem formulation above, doctrinal research methods are used¹¹, in order to obtain legal studies¹². The analysis was carried out descriptively analytically by looking at the alignment of conditions in the problem by matching the legal principles in the legal system and statutory regulations in the Republic of Indonesia, to data sources in the form of primary legal materials in the PT Law, PermenkumHAM 29/2022; secondary legal materials in the form of materials that provide explanations of primary legal materials; as well as tertiary legal materials in the form of materials that provide instructions and explanations for primary and secondary legal materials; collected using the literature study method, all in order to analyze using a deductive analysis method, regarding the provisions for blocking SABH access to the Ministry of Law and Human Rights as a right of disputing minority shareholders, supported by empirical data from the PT B case against PT X at the South Jakarta District Court.

Legal Protection of Minority Shareholders In Indonesia

According to the grammatical meaning of the word "minority"¹³, minority shareholders can be interpreted as a group of shareholders who have a smaller share of shares than other groups in the company, and thus do not have the power to control the management of the company (do not have a decisive position at the GMS) . Meanwhile, majority shareholders are defined as shareholders who own or control more than half of the shares of a company.¹⁴

The concept of legal protection for shareholders is based on the legal principle " *Majority Rules, Minority Right* "¹⁵ which is known in countries adhering to the *common law school* . Indonesia, as a follower of the continental school of thought, does not recognize such legal provisions; However, in terms of company law, like it or not, Indonesia is also guided by the provisions of *common law law* , due to the impact of globalization which has brought about a reform phenomenon with quite a large influence on the economic sector which must be followed by adjustments, changes and legal updates¹⁶. From the definition of minority and majority shareholders, it can be understood that the majority shareholder has sufficient power to control the direction and actions of the company, through the implementation of the GMS. Meanwhile, other shareholders, who are minorities, do not have any power because they tend

¹¹The doctrinal research method is carried out by examining library materials which include legislation in the field of employment and the field of social security as primary material in preparing a conceptual framework

¹²Soekanto Soerjono, et al, 2009, *Normative Legal Research A Brief Review* , Cet. 11, PT Raja Grafindo Persada, Jakarta,

¹³ The KBBI defines a minority as " *a social group whose number of citizens is much smaller compared to other groups in a society and is therefore discriminated against by those other groups* "; <https://kbbi.web.id/minoritas> accessed 18 June 2023

¹⁴ <https://thelawdictionary.org/?s=majority+shareholders> , accessed June 18, 2023

¹⁵Frickey, Phillips P., *Majority Rule, Minority Rights, and the Right to vote: Reflections upon a Reading of Minority Vote Dilution* , Minnesota Journal of Law & Inequality Vol.3, Issue 1, 1985, p. 209 - 243

¹⁶Harjono, Dhaniswara K., *The Influence of the Common Law System on Investment and Financing Law in Indonesia* , Lex Jurnalica (volume 6, no.3, August 2009)

to lose if they have to disagree with the majority shareholders when calculating votes at the GMS. In such circumstances, the legal principle " *Majority Rules Minority Right* " plays a role, as a form of distributional justice towards weak parties, *in the case of* minority shareholders; through provisions in statutory regulations that provide rights for minority shareholders, including the right to claim derivatives and the right to request share buybacks. This role of ¹⁷providing distributive justice is in accordance with the nature of public law which provides protection for weaker groups, as a form of state intervention in public law. The characteristic of state intervention in public law is through providing compensation to weak parties, in accordance with the theory of unbalanced compensation expressed by M. Groot, namely that the government provides protection in the form of rights, restrictions, requirements to fulfill the validity of something that is considered to protect the party. which is weaker. The dominance of the majority shareholder in the relationship of power imbalance between majority and minority shareholders, at a certain point this dominance provides legitimacy to the majority shareholder through the principle of *majority rule* , which is based, among other things, on *the one share one vote doctrine* . Harmonization between shareholders plays an important role in creating harmonious relationships in the development of the company's business activities, so that regarding the fulfillment of the requirements for a limited liability company consisting of a minimum of 2 (two) shareholders, the minority shareholder does not only function as a complement in the journey. a limited liability company.

As a form of implementing distributive justice for weak parties, namely minority shareholders, through the implementation of derivative lawsuit provisions in positive law in Indonesia ¹⁸which are regulated in Article 61 paragraph (1) of the PT Law ¹⁹. According to J. Satrio in his book *Limited Liability Company (2021)* ²⁰, the shareholders in question, insofar as the company's actions are based on the GMS Resolution, are a form of protection for minority shareholders ²¹considering their position and position of "losing the vote" of the majority shareholders. J. Satrio further stated that it is clear that protection is not intended for majority shareholders, because with the "voting" power they have, majority shareholders can reject decisions that are considered detrimental. Meanwhile, Taqiyudin Kadir stated that the provisions of Article 61 paragraph (1) of the PT Law can be interpreted as applying derivative lawsuit provisions for minority shareholders, ²²and direct lawsuit provisions for other shareholders. The definition of a direct lawsuit is an action by a shareholder based on direct losses suffered by him, not representing the interests of the company, which can be in the form of losses resulting from the failure to exercise legal rights or related contractual rights of the shareholder, or related to share ownership or other matters relating to position as shareholder. In addition, both derivative lawsuits and direct lawsuits can provide the right to request that the company stop detrimental actions or to carry out certain steps either to

¹⁷Poerwanto, Helena, N. Roring, *Labor Law in the Sector of Occupational Health and Safety* , Depok: Publishing Agency, Faculty of Law, University of Indonesia, 2005, p. 28

¹⁸ Derivative lawsuits were first identified in Law Number 1 of 1995 concerning Limited Liability Companies, and were later included again in the PT Law, see: Kadir, Taqiyuddin, *Derivative Lawsuits: Legal Protection of Minority Shareholders* , Jakarta: Sinar Graphic, p.21

¹⁹ Article 61 of the PT Law reads: " (1) Every shareholder has the right to file a lawsuit against the Company in the district court if they suffer loss due to the Company's actions which are considered unfair and without reasonable reasons as a result of decisions of the GMS, Directors and/or Board of Commissioners. (2) The lawsuit as intended in paragraph (1) is submitted to the district court whose jurisdiction includes the Company's domicile .

²⁰Satrio J., *Limited Liability Company (closed)*, Depok: Rajawali Pers, 2021, p. 45 - 47

²¹J. Satrio stated that only minority shareholders are disadvantaged by a GMS decision, because the majority shareholder at the GMS has the power to object/reject a GMS decision that will be detrimental to him. Meanwhile, minority shareholders do not have this power.

²² Kadir, Taqiyuddin, *ibid*, p. 31

overcome the consequences that have arisen or to prevent losses due to similar events in the future.²³

Furthermore, Article 62 paragraph (1) of the PT Law²⁴ regulates and determines the rights of shareholders to have their shares purchased at a reasonable price, if they do not agree with the company's actions which are detrimental to the shareholders or the company²⁵. As in the interpretation of Article 61 paragraph (1) of the PT Law, J. Satrio also stated that the shareholders who suffered losses in the events in Article 62 paragraph (1) of the PT Law were minority shareholders²⁶, with J. Satrio's conceptual interpretation being that the buyback request was must pay attention to the provisions of Article 37 paragraph (1) letter b of the PT Law which limits that in carrying out share buybacks, the company's net assets cannot be smaller than the amount of issued capital plus the mandatory reserves that have been set aside; and not exceeding 10% of the issued capital. Then J. Satrio also stated that the basis for the company's actions which are considered detrimental to shareholders or the company, are the company's actions which may have been approved by the majority shareholder. So, according to J. Satrio, the protection of Article 62 paragraph (1) of the PT Law is intended more for legal holders and minorities.²⁷ This opinion is correct because majority shareholders certainly do not need similar protection, considering their power to determine the outcome of GMS decisions either by making a decision or by rejecting the implementation of a decision.

Furthermore, as a derivative of the shareholder's right to file a derivative lawsuit or direct lawsuit, is the right to request blocking of SABH's access rights. These rights were initially regulated and determined in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia (hereinafter referred to as "**PermenkumHAM** ") Number 24 of 2012 concerning Procedures for Blocking and Unblocking Access to the Administrative System of Limited Liability Company Legal Entities which was later amended by the Regulation of the Minister of Law and Human Rights number 19 of 2017 concerning Amendments to Procedures for Blocking and Unblocking Access to the Limited Liability Company Legal Entity Administration System²⁸ (hereinafter referred to as "**PermenkumHAM 19/2017** "). PermenkumHAM 19/2017 was then revoked and replaced with Minister of Law and Human Rights Regulation Number 29 of 2022 concerning Blocking and Unblocking Limited Liability Company Access to the Legal Entity Administration System (hereinafter referred to as "**PermenkumHAM 29/2022** "). PermenkumHAM 29/2022 gives shareholders who have a dispute with a limited liability company the right to submit a request to block the limited liability company's SABH access rights; which is mandated by PermenkumHAM 29/2022 as a form of legal protection for the parties to the dispute. From this it can be clearly seen that the existence of PermenkumHAM 29/2022 is a form of legal protection for minority shareholders. The presence of PermenkumHAM 29/2022 is also based on the phenomenon where PermenkumHAM 24/2012 and PermenkumHAM 19/2017 have not fully accommodated developments in the event of limited

²³See Explanation of Article 61 paragraph (1) of the PT Law

²⁴ Article 62 paragraph (1) of the PT Law reads: "*(1) every shareholder has the right to ask the Company to purchase its shares at a reasonable price if the person concerned does not approve of the Company's actions which are detrimental to the shareholder or the Company, in the form of: a. Changes to the articles of association; transfer or guarantee of the Company's assets which have a value of more than 50% (fifty percent) of the Company's net assets; or c. merger, consolidation, takeover or separation.*"

²⁵Company actions that are detrimental to shareholders or the company are limited to changes in the articles of association, transfer/pledge of the Company's assets of more than 50% of the Company's net assets, merger, consolidation, takeover or separation of the Company.

²⁶Satrio J., Ibid, p. 51-52

²⁷Satrio J., Ibid, p. 62

²⁸ PermenkumHAM 19/2017 was stipulated in Jakarta on 11 October 2017 and promulgated on 3 November 2017 in BN No.1539/2017.

liability company disputes ²⁹.

Overview of Sabh As A Limited Company Administration System

SABH is a public service system organized by the Directorate General of General Legal Administration of the Ministry of Law and Human Rights via the internet system/via electronic information technology. ³⁰The implementation of legal entity administration, including the process of ratifying the establishment and maintaining company data through this online system, is expected to create a form of public service that is fast and timely, accountable and transparent. In this era of globalization which requires everything to run quickly and on time, the process of establishing a limited liability company as a legal entity whose existence is important in supporting economic growth, is deemed to have to be carried out quickly and on time in order to anticipate very fast business developments and competitive in this era of globalization.³¹ In practice, the establishment of a PT through SABH has been legally recognized in statutory regulations. SABH came into effect in January 2001 ³²which was inaugurated by the President of the Republic of Indonesia Megawati Soekarnoputri, at that time it was called Sisminbakum (with the same terminology as SABH).³³ The administration procedure by SABH is carried out via the internet system/via electronic information technology, through a notary who has access to the SABH system. In SABH there is also a process of ratifying the establishment and receiving notification of changes to the articles of association, as well as the process of organizing company data which contains information about a company starting from its deed of establishment, the notary who made the deed, when the approval of the establishment was obtained, the last articles of association contained in the deed which notary, then regarding the status of the company, whether it is open or closed, data on shareholders and the composition of the shares they own, the official address/domicile of the company, as well as other related data. The company data is then used as a determinant in the OSS system verification process.

Review of The Oss System As a Business Licensing System

Licensing is one source of government policy in enforcing certain legal conditions, which also applies as validation for carrying out an activity, in terms of the legality of starting/carrying out business activities.³⁴ As an instrument of control, licensing requires a legal basis that regulates the authority to apply and is stated in certain regulations for its legality. Without validity and clear policy design, licensing will lose its meaning as an instrument of validation for the implementation of an activity.³⁵ Meanwhile, according to Ateng Syafrudin, a permit aims to remove prohibitions, from something that was previously prohibited from being held, with a permit it becomes permissible. ³⁶From the definitions

²⁹ See the section considering point b of PermenkumHAM 19/2017.

³⁰Helena, Lelly, Legal entity administration system (SABH) as a public service for fast, accountable and transparent limited liability company establishment towards Indonesian e-Government, Faculty of Law, University of Indonesia, 2012

³¹ <https://elib.unikom.ac.id/gdl.php?mod=browse&op=read&id=jbptunikompp-gdl-wahyusamsu-33918> accessed 18 June 2021

³²Hariyani, Iswi, *Practical Guide to SABH*, Yogyakarta: Pustaka Yustisia, 2011, p. 3

³³ See Article 2 of the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number M-01.HT.01.01 of 2000 concerning Implementation of the Legal Entity Administration System of the Directorate General of General Laws of the Ministry of Justice and Human Rights of the Republic of Indonesia

³⁴According to the definition in Article 1 point 1 of PP 5/2021 which reads "Business licensing is the legality given to business actors to start and run their business and/or activities."

³⁵ Sutedi, Adrian, *Licensing Law: In the Public Service Sector*, Jakarta: Sinar Graphics, p. v

³⁶Sutedi, Adrian, *Dynamics of Licensing and Good Governance*, Medan: Madju Bersama, p. 152

above, a conclusion can be drawn that permits/permits are executive instruments ³⁷based on juridical norms and sourced from statutory regulations, consisting of procedures and certain requirements determined by the government in order to achieve a concrete goal.

As an electronic system organized to administer business licensing, OSS, which was first mandated by Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services, ³⁸which was then re-regulated in PP 5/2021, becomes an integrated electronic system where all statutory regulations those whose hierarchy is lower than the ³⁹*regulation* must follow and adapt to the provisions of the *regulation*. In practice, in implementing OSS, each ministry, institution, regional head makes a regulation that follows the working procedures of OSS so that almost every permit is attempted to be carried out through OSS in accordance with the mandate of PP 5/2021 which forms an integration between the central government and regional governments ⁴⁰. Previously, licensing was attempted to be carried out through One Stop Integrated Licensing (PT SP) in ministries, institutions and regional regulations which caused diversity in the requirements and licensing process itself. Thus, it is hoped that the birth of OSS will simplify and create uniformity in licensing processing. Apart from that, the birth of PP 24/2018 was based on the desire to attract more investors by making it easier to process business permits, then the spirit continued with the birth of PP 5/2021 which is a derivative regulation from Law Number 11 of 2020 concerning Job Creation ⁴¹, resulting in the birth of the system. It is hoped that this OSS can reduce the business licensing process.

To be able to use OSS access rights, a business entity, or specifically within the scope of this discussion, a limited liability company, must first take care of adjusting the company data in the SABH system by entering business sector category data and determining which Indonesian Business Field Standard Classification (KBLI) will be submitted for licensing. try it. After the company data has been adjusted to business activities as usually stated in Article 3 of a company's articles of association, it is then necessary to ensure that each main column in the SABH has been filled in with company data, including the company's identity, as well as the company's aims and objectives in the mandatory *fields / columns which will later be* will be a reference for OSS verification. Next, after ensuring that the company data is complete according to the mandatory *fields/ columns* in the SABH in question, the next step is to create an OSS user ID, and complete the limited company data in the OSS system. In the OSS system, you will also find mandatory *fields/ columns* whose data entries are the same as the mandatory *fields/ columns* in SABH. After completing the data, the computerized OSS system will check and verify the NPWP system of the Director General of Taxes, and SABH; provided that after the data is assessed as suitable and verified, the OSS system will provide a username and password to log in to the OSS system. Furthermore, every time you log in, especially after entering the password, the OSS system will carry out computerized verification of OSS access rights, by pulling the SABH data and then comparing the mandatory *field/ field* data in the SABH with the mandatory *field/ field* data in the OSS system. In the event that the data *fields / mandatory fields* in the SABH match the data *fields/ mandatory fields* in the OSS system, then the OSS system considers the login process to be valid and the limited liability company account that logs in is given OSS access rights. In

³⁷Izhandri, Shandi, OSS and its Development in Indonesia, <https://mkn.usu.ac.id/images/11.pdf> accessed 18 June 2023

³⁸PP 24/2018 was stipulated and promulgated on 21 June 2018, LN.2018/NO.90, TLN NO.6215

³⁹Regulations that are lower than Government Regulations, according to the hierarchy of applicable laws and regulations are Presidential Regulations, Ministerial Regulations, Institutional Regulations, Regional Regulations, Regional Head Regulations (Pergub, Perwali, Perbup).

⁴⁰See Article 561 PP 5/2021

⁴¹Law Number 11 of 2020 concerning Job Creation was stipulated and promulgated on 2 November 2020, LN.2020/No.245, TLN No.6573

such cases, on a limited liability company OSS account where access rights are deemed valid, the OSS main page and all available menus will be displayed. Meanwhile, in the event that the login process is declared invalid, among other things because the data *fields*/ mandatory fields in the SABH do not match the data *fields*/ mandatory fields in the OSS system, then the OSS access rights are not displayed so that the OSS account of the limited liability company that logs in, Cannot display the OSS main page along with all available menus.

Review of The Implementation of Sabh Blocking By Minority Shareholders

The implementation of SABH blocking by minority shareholders is divided into blocking access completely or blocking changes in shareholders, the process and procedures for implementing which are regulated in the provisions of Articles 2 to 7 of PermenkumHAM 29/2022. In general, the implementation is as follows:

1. The SABH Blocking Applicant submitted a letter of application addressed to the Minister of Law and Human Rights through the Director General of AHU attaching the reasons for the blocking and prerequisite documents ⁴²(see Article 5 PermenkumHAM 29/2022).
2. Blocking requests will be considered for approval or rejection.
3. Approval or refusal to block access rights to the SABH system will be notified in writing to the blocking applicant and the company whose data is blocked (see Article 10 PermenkumHAM 29/2022).

In the case of a lawsuit against the law by PT after PT PT __ PT __ ⁴³
Then on December 1 2021, PT B sent a letter to ⁴⁴PT This letter was also stated in PT B's answer to ⁴⁵PT hundred thousand Euros).⁴⁶

In fact, PT company data at SABH for data verification purposes, and this data will be used as basic data for a company in OSS. The basic data in question consists of data on the establishment of the company, the articles of association including the deeds of establishment and deeds of amendment including the approval of the Minister of Law and Human Rights and receipt of the notification, as well as KBLI data based on data from Article 3 of the articles of association of a company ⁴⁷, as well as the management and person in charge. a body.

The procedure for processing access rights to the OSS system is that after the user inputs the OSS account name/user ID along with the password on the OSS.go.id website, then after the login process is successful, the OSS system will automatically pull data from SABH for data verification purposes based on company data in SABH, then the verification results will be matched with the data algorithm in OSS. If the basic data in OSS ⁴⁸has been filled in with "draw/reference" data from SABH, then the OSS system will display the OSS main menu, as a sign that OSS access rights have been granted. On the other hand, if the basic data in OSS is not filled in completely, the notification "Failed to Login, Please Contact SABH"

⁴²According to Article 5 paragraph (2) of PermenkumHAM 29/2022, the documents required for a complete blocking are “ ...a. a lawsuit letter that has been registered and obtained a register number from the court clerk's office in civil cases regarding share disputes or state administration disputes; or b. proof of registration of out-of-court dispute resolution, which is related to recording the Company's legal entity data at SABH.”

⁴³Based on the search, the application for blocking has attached a registered lawsuit.

⁴⁴Based on the investigation, the letter in question explains that after PT B traced it to the Director General of AHU, Ministry of Law and Human Rights, there was a blocking of SABH which PT X had requested.

⁴⁵Based on a search of the answers and answers files in the trial files for the case of PT PT B.

⁴⁶In the sense that PT B cannot access the OSS system at all, so it cannot register the factory location in Bogor in the NIB, and cannot even process business permits such as Industrial Business Permits, and so on.

⁴⁷The Article 3 data referred to is in accordance with Article 3 of the company's articles of association which contains the company's business activities.

⁴⁸The basic data referred to is company data, data on the person in charge, data on business activities on the OSS profile page.

will appear ⁴⁹; Likewise, when a limited liability company's SABH occurs which is blocked which results in the OSS system failing to retrieve limited liability company data, the notification "Login Failed" will appear. Furthermore, as previously explained regarding the procedures for processing OSS system access rights and the relationship between the OSS system and the SABH system, after the blocking of PT B's SABH access rights takes effect, PT B's OSS account will automatically experience login failure and OSS access rights will not be granted.

As mandated by PermenkumHAM 19/2017 at that time, a blocked SABH account resulted in the blocked company being unable to make changes to its articles of association, or report the composition of the Board of Directors and Board of Commissioners at the GMS; where these provisions are still the same as regulated in PermenkumHAM 29/2022. In the case of the case between PT resulting in PT B being unable to update, add or change business data. Finally, PT B's business activities were also limited due to PT B not being able to access business permits. The further impact is that PT B's business license cannot be updated and is not in accordance with what business activities are actually carried out in the field.⁵⁰

, failed login/inaccessibility of PT B's OSS system was not actually intended/expected by PT ⁵¹but rather an unexpected impact from the implementation of blocking PT X's SABH. In the case between PT over the PT B factory in Bogor. ⁵²In fact, the condition of blocking PT B's OSS system access rights has indeed had a positive impact on PT one point of the peace proposal requested that PT⁵³

The case between PT , becomes a double-edged sword for blocking applicants, because the impact of implementing the blocking of the SABH system results in the blocking of access to the OSS system for limited companies whose SABH access rights are blocked so that the limited company cannot process business permits using the OSS system ⁵⁴; so that minority shareholders who exercise their right to block SABH are even threatened with a lawsuit against the law.

Therefore, it is necessary to carry out studies both within the Ministry of Law and Human Rights, especially the Director General of AHU as the organizer of the SABH system and together with the Coordinating Ministry for the Economy as the organizer of the OSS system, ⁵⁵including regarding the implementation of legal protection for minority shareholders through PermenkumHAM 19/2017 as replaced by PermenkumHAM 29/2022 which is the sword. double-edged for blocking applicants; as well as a study regarding the justification for implementing an OSS login system that bases company data on SABH. This study includes determining whether the procedures for withdrawing SABH data for verification purposes when logging in to the OSS will be implemented as currently, or must be changed to accommodate the conditions of SABH blocking in accordance with PermenkumHAM 19/2017, or whether it is necessary to amend PermenkumHAM 19/2017 to adjust to the impacts that arise. (blocking of the OSS system), as well as making regulations that provide justification for the inability to use the OSS system due to blocking of SABH

⁴⁹ A *pop-up* appears saying "Login Failed, Please Contact SABH" with the OSS main menu in the background, but the main menu cannot be accessed.

⁵⁰ <https://prolegal.id/beneficial-owner-tidak-dil-aporkan-akses-usaha-diblock/> accessed 18 June 2023

⁵¹ This unexpected impact is because PermenkumHAM 19/2017 does not indicate or specify that blocking the SABH system will result in blocking the OSS system.

⁵² Based on the investigation, PT B intends to establish a cosmetics industry.

⁵³ Based on the investigation, PT

⁵⁴ This is a problem due to the excesses of the SABH blocking action which resulted in the OSS system not being able to be used, and it does not have a legal umbrella as a basis for its validity.

⁵⁵ The results of this joint study can be the basis for the issuance of a Joint Decree between the Ministry of Law and Human Rights and the Coordinating Ministry for the Economy to provide a legal umbrella for excesses from SABH blocking actions which result in the OSS system not being able to be used.

access, so that there is a separate legal umbrella for applicants to block SABH.

Furthermore, in connection with the emergence of PermenkumHAM 29/2022 as a replacement for PermenkumHAM 19/2017, Article 21 of PermenkumHAM 29/2022 has accommodated the possibility of opening temporary access blocking in the context of business continuity, by means of the limited liability company concerned submitting an application for opening temporary access blocking by convey the reasons related to business continuity and attach a statement from the Notary that the changes to be made are only related to the said reasons. However, the existence of Article 21 of PermenkumHAM 29/2022 only provides a way out if a limited liability company whose SABH is blocked wants to carry out management that is affected by the SABH blocking; Meanwhile, the threat of unlawful acts for minority shareholders requesting blocking remains a threat and is not justified by the provisions of Article 21 of PermenkumHAM

CONCLUSION

1. Legal protection for shareholders, in the form of derivative lawsuits as regulated in Article 61 of the PT Law, and the right to request shares to be repurchased as regulated in Article 62 of the PT Law. Meanwhile, PermenkumHAM 19/2017 as replaced by PermenkumHAM 29/2022 regulates and determines legal protection when there is a dispute with a limited liability company, for the sake of legal certainty.
2. The implementation of blocking access to SABH at the Ministry of Law and Human Rights is through a procedure for submitting an application to the Minister of Law and Human Rights through the Director General of AHU, by attaching a legalized notarial deed for applicants who are majority shareholders or a lawsuit letter for minority shareholders. Then the Director General of AHU will review the application and answer the request letter, by determining/rejecting blocking of SABH access rights, within 30 (thirty) days from receipt of the blocking request. In its implementation, after blocking the SABH access rights, it turned out that the OSS system access rights were also blocked, because during the verification process when logging in to the OSS system, the limited company data was automatically withdrawn from the SABH system, so the OSS account of a limited company whose SABH system was blocked, OSS system verification will fail and OSS system access rights will not be granted.
3. With the impact of blocking SABH access rights, namely the blocking of access rights to the OSS system, so that limited liability companies whose SABH access rights are blocked due to the exercise of minority shareholder rights, are unable to use their access rights to the OSS system. On the one hand, this impact is an advantage that is a *blessing in disguise* for minority shareholders because it can increase their bargaining power in the midst of disputes. However, on the other hand, because this impact is hidden in the sense that it is not an impact regulated in PermenkumHAM 19/2017 as replaced by PermenkumHAM 29/2022, it will put minority shareholders who request the blocking of SABH at risk as parties who have committed unlawful acts. Article 21 of PermenkumHAM 29/2022 has indeed accommodated the possibility of opening temporary access blocking in the context of business continuity, by means of the limited liability company concerned submitting an application for opening temporary access blocking by providing reasons related to business continuity and attaching a statement from the Notary that the changes that will be made are only related to the reasons in question. However, the existence of Article 21 of PermenkumHAM 29/2022 only provides a way out if a limited liability company whose SABH is blocked wants to carry out management that is affected by the SABH blocking; while the threat of unlawful action for minority shareholders who request blocking remains and is unjustified. Thus, justification should be needed that the impact of blocking

OSS system access rights due to SABH blocking, is a lawful act so that it cannot be categorized as an unlawful act.

REFERENCE

- Bevan, Christopher, *Nutshell: Corporations Law*, New South Welsh: Thomson Reuters, 2011.
- Fuady, Munir, *Doktrin-Doktrin Modern dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia*, Bandung: PT Citra Aditya Bakti, 2014
- Fuady, Munir, *Perlindungan Pemegang Saham Minoritas*, Jakarta: CV Utomo, 2005.
- Harahap, M. Yahya, *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika, 2019.
- Impey, David, *Running a Limited Company*, Dicot: Bocardo Press, 1991.
- J. Satrio, *Perseroan Terbatas (yang tertutup) berdasarkan UU No. 40 tahun 2007 Bagian Kesatu dan Kedua*, Depok: Rajawali Pers, 2021
- Kadir, Taqiyuddin, *Gugatan Derivatif: Perlindungan Hukum Pemegang Saham Minoritas*, Jakarta: Sinar Grafika, 2021
- Kansil, C.S.T, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, 2003
- Kraakman, Reinier, cs., *The Anatomy of Corporate Law, Third Edition*, Leicester: Oxford University Press, 2017.
- Mertokusumo Sudikno, *Mengenal Hukum (Suatu Pengantar)*, Yogyakarta: Maha Karya Pustaka, 2019.
- Pettet, Ben, *Company Law*, Edinburgh: Pearson Longman Limited, 2001
- Soekanto Soerjono, dkk, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cet. Jakarta: 11, PT Raja Grafindo Persada, 2009
- Chander, Anupam, “Minorities, Shareholder and Otherwise”, *The Yale Law Journal*, Volume 113, No.1, (2003), hal. 119 – 178.
- Dari, Sukhvinder Singh, “Majority Rule and Minority Protection under Companies Act 1956 with special reference to Foss vs Harbottle”, *International Journal of Research*, Volume 1, No.9 (2014), hal 1.399 – 1411.
- Frickey, Phillips P., “Majority Rule, Minority Rights, and the Right to vote: Reflections upon a Reading of Minority Vote Dillution”, *Minnesota Journall of Law & Inequality* Volume 3, No.1 (1985), hal. 209 – 243.
- Gardezi, Syeda Eimaan, “Legal Analysis of Minority Shareholder Protection in Pakistan”, *Journal of Insurance and Financeial Management*, Volume 7, No.2 (2022), hal. 64 – 79.
- Hardman, Joseph, “The Plight of the UK Private Company Minority Shareholder”, *European Business Law Review*, Volume 33, No.1 (2022), hal. 87 – 124.
- Ishak, Suraiya, “Minority Shareholders in Malaysia: Is Their Right Protected”, *Jurnal Manajemen & Bisnis*, Volume 9, No.2, (2010), hal. 227 – 236.
- John D. cs., *Common Law and the Origin of Shareholder Protection*, Queen’s University Centre for Economic History (QUCHE) Working Paper Series, (No.2016-04) hal. 1 – 49
- Joffe, Victor, “Minority Shareholders: Law, Practice and Produce”, *Journal of Business Law* (2012) hal 720 – 722.
- Kaya, Meltem Karatepe, “Notion of Protection of Minority Shareholders; Theoretical Framework”, *Universitesi Hukuk Fakultesi, Ticaret Hukuku Ogretim Goverlisi* (ORCID: 0000-0003-3428-0293) hal. 195 – 220.
- Khasanah, Yunita Nur, “Analisis Yuridis Tindakan Administrasi Pemerintah Terhadap Pemblokiran Akses SABH”, *Jurnal Hukum dan HAM Wara Sains*, Volume 1, No.02 (2022), hal. 58 – 63.

- Lee, Joseph, "Intra-Corporate Dispute Arbitration and Minority Shareholder Protection: A Corporate Governance Perspective", *Chartered Institute of Arbitration*, Volume 83, No.1 (2017), hal. 85 – 101.
- Mustaqim, Mustaqim, "Perlindungan Hukum Pemegang Saham Minoritas Perseroan Terbatas Tertutup dan Keadilan Berdasar Pancasila", *Jurnal SASI*, Volume 25, No.2 (2019), hal. 199 – 210.
- Nde, Che Evans, "Questioning the Recognition of Equitable Treatment of Minority Shareholders under OHADA Law: an application or violation under Cameroon Corporate Law", *International Journal of Civil Law and Legal Research*, Volume 1 (2021), hal. 35 – 43.
- O'Neal F. Hodge, "Oppression of Minority Shareholders: Protecting Minority Rights", *Cleveland State Law Review*, Volume 121 (1987), hal. 1 – 26.
- Rusli, Tami, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas dalam Proses Akuisisi Perusahaan", *Jurnal Pranata Hukum*, Volume 13, No.1 (2018), hal. 1 – 12
- Sealy, L.S., "Company Law – Protection of Minority Shareholders", *Cambridge Law Journal*, Volume 35, No.2 (2009), hal 121 – 176.
- Subagiyo, Dwi Tatak, "Perlindungan Hukum Pemegang Saham Minoritas akibat Perbuatan Melawan Hukum Direksi Menurut Undang-Undang Perseroan Terbatas", *Jurnal Perspektif*, Volume XX No.1 (2015), hal. 49 – 58.
- 2015) Situmorang, Riri Lastiar, "Perlindungan Hukum Pemegang Saham Minoritas pada Perseroan Terbatas Terbuka", *Jurnal Ilmu Hukum Fakultas Hukum Universitas Riau*, Volume 12, No.1 (2023), hal. 113 – 130.
- Sridana, I Kadek, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas pada Perseroan Terbatas yang Melakukan Merger", *Jurnal Analogi Hukum*, Volume 2 No.1 (2020), hal. 59 – 62).
- Wardhana, Syailendra Wisnu, "Upaya Perlindungan Pemegang Saham Minoritas Dalam Perusahaan Holding", *Jurnal Dharmasiswa*, Volume 1, No.37 (2022), hal. 2159 – 2172
- Qi, Cheng Wei, "Protection of Minority Shareholders After the New Company Law: 26 case studies", *International Journal of Law and Management*, Volume 52, No. 4, (2022), hal. 191 – 214.
- Situmorang, Riri Lastiar, dkk., "Perlindungan Hukum Pemegang Saham Minoritas pada Perusahaan Terbuka", *Jurnal Ilmu Hukum Fakultas Hukum Universitas Riau*, Volume 12, No.1 (2023), hal. 113 – 130.
- Ariesta, Wiwin, "Prinsip Perlindungan Hukum Seimbang Bagi Pemegang Saham Minoritas Dalam Tata Hukum Perseroan", *Yurijaya Jurnal Ilmiah Hukum*, Volume 2, No.1 (2019), hal. 1 – 22.
- Rokan, Mustopa Khamal, "Perlindungan Hukum Terhadap Pemegang Saham Minoritas di Perseroan Terbatas (PT)", *Jurnal Islamic Business Law Review*, Volume III, No. 3 (2015), hal. 75 – 85.
- Yusanti, Erlinda Vivi, dkk. "Keabsahan Rapat Umum Pemegang Saham yang Tidak Sesuai Anggaran Dasar", *Locus Journal of Academic Literature Review*, Volume 1, No.3 (2022), hal.153 – 160.
- Kohar, Fiona Priscilla, "Abuse of Rights by Majority Shareholders in Indonesian Family Owned Company: Is it Likely?", *Sriwijaya Law Review*, Volume 5, No.1 (2021), hal. 29 – 41.
- Haposan, Delano S., "Perlindungan Hukum Terhadap Hak-Hak Pemegang Saham Minoritas Yang Berupa Derivative Action Pada Perseroan Terbatas Dalam Kaitannya Dengan Implementasi Good Corporate Governance – Suatu Kajian Dari Sudut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas", Tesis Fakultas Hukum Universitas Indonesia, Jakarta, 2010.

- Purnomo, Layung, “Perlindungan Hukum Terhadap Pemegang Saham Minoritas Dalam Pembubaran Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007”, Tesis Fakultas Hukum Universitas Islam Indonesia, Yogyakarta, 2016.
- Febrianti, Gia, “Pelaksanaan Hak Derivative Pemegang Saham Minoritas Dalam Perseroan Terbatas (Studi Kasus Putusan Nomor 7/Pdt.G/2017/PN.MJL. Jo. 477/PDT/2017/PT.BDG.)”, Skripsi Fakultas Syariah dan Hukum Universitas Islam Negeri Syaraf Hidayatullah, Jakarta, 2020.
- Kitab Undang-Undang Hukum Perdata
Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, LNRI nomor 106 tahun 2017.
- Peraturan Menteri Hukum dan HAM nomor 19 tahun 2017 tentang Perubahan atas Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 24 Tahun 2012 Tentang Tata Cara Pemblokiran dan Pembukaan Pemblokiran Akses Sistem Administrasi Badan Hukum Perseroan Terbatas, BN 1539 tahun 2017.