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The Responsibilities Of Minority Shareholders When A Company Goes Bankrupt

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ABSTRACT

This study is motivated by the need to clarify the liability of minority shareholders when a limited liability company experiences bankruptcy, within the framework of the limited liability principle and the doctrine of asset separation between the company and the personal assets of its shareholders. The bankruptcy of a company often places minority shareholders in the most vulnerable position, because they bear investment losses without having sufficient control over decisions that lead to insolvency. The purpose of this research is to analyze the legal status and scope of liability of minority shareholders, to identify the problems arising from the application of the limited liability principle and the doctrine of piercing the corporate veil in bankruptcy, and to formulate legal remedies and protection measures that can be implemented based on the Company Law and the Bankruptcy Law. The research method used is a normative juridical approach with statutory and conceptual perspectives, relying on primary and secondary legal materials that are analyzed qualitatively. The findings indicate that, normatively, the liability of minority shareholders remains limited to the value of the shares they have paid up; however, effective protection requires the utilization of minority rights under the Company Law, the strengthening of litigation and supervisory mechanisms in bankruptcy proceedings, and the selective application of the piercing the corporate veil doctrine only to parties that genuinely abuse the corporate form.

1. Introduction

Limited liability companies constitute one of the most widely used forms of business entities in Indonesia because of their status as legal persons with assets separate from the personal assets of their shareholders. This separation of assets gives rise to the limited liability principle, under which shareholders are only liable up to the amount of capital they have paid into the company, as stipulated in Article 3 paragraph (1) of Law No. 40 of 2007 on Limited Liability Companies (Company Law). This principle is a major attraction for investors, since it limits the risks they bear and ensures that they do not have to jeopardize their personal assets beyond the value of the shares they own.[1]

However, the limited liability principle is not absolute and without exception. In practice, when a limited liability company becomes insolvent and is declared bankrupt, the issue of shareholder liability becomes significantly more complex, particularly for minority shareholders who structurally occupy a weaker position in the company's decision-making process. Bankruptcy itself is specifically regulated by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, which establishes legal mechanisms for the settlement of a debtor's obligations to its creditors through court proceedings involving a receiver (curator) and supervising judge. Once the company is declared bankrupt, all of its assets become part of the bankruptcy estate to be distributed to creditors, and in certain circumstances the separation between the company's liability and that of its shareholders may be set aside through the doctrine of piercing the corporate veil.

The piercing the corporate veil doctrine allows courts to disregard the limited liability principle and impose personal liability on shareholders when there is bad faith, commingling of personal and corporate assets, or unlawful acts committed by shareholders by exploiting the corporate form for personal gain. Conceptually, this doctrine is aimed primarily at shareholders who have control or significant influence over the company's operations. Minority shareholders, by contrast, generally lack the access and power to determine the company's strategic policies. This imbalance raises fundamental questions of justice regarding the application of liability principles in the context of bankruptcy, especially when minority shareholders suffer economic and legal consequences of decisions that lie entirely beyond their control.

[1] Ratu Alawiyyah Rifani, Fauziah Fauziah, and Muhammad Fahruddin, 'Efektifitas Pelaksanaan Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Mencegah Kepailitan (Studi Pengadilan Niaga Pada Pengadilan Negeri Jakarta Pusat)', *Jurnal Hukum Jurisdictie*, 3.2 (2021), 145–60 <https://doi.org/10.34005/jhj.v3i2.57>.

The complexity of this issue is further heightened by the fact that, during bankruptcy proceedings, minority shareholders often lack adequate legal instruments to protect their interests, whether in the general meeting of shareholders, in monitoring the receiver's actions, or in seeking redress for losses incurred as a result of the company's insolvency. This situation makes the analysis of liability and legal protection for minority shareholders in the bankruptcy of limited liability companies a highly relevant and urgent topic for further study within the framework of Indonesian corporate and bankruptcy law.

Existing research reveals important gaps. The first relevant study, conducted by Ramadhani (2025) under the title "Tanggung Jawab Pemegang Saham Mayoritas dalam Hal Terjadi Kepailitan pada Perseroan Terbatas yang Tidak Memiliki Alat Kelengkapan Perseroan Terbatas Sesuai dengan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Studi Putusan Nomor 31/Pdt.Sus-Pailit/2023/Pn.Niaga.Jkt.Pst)," focuses on the liability of majority shareholders, particularly in the context of holding companies that own a majority stake in subsidiaries declared bankrupt. Using Otto von Gierke's organ theory, the study concludes that the parent company cannot be held liable for the bankruptcy of its subsidiary as long as each entity stands independently as a separate legal person. The research gap that emerges from this study is the absence of a specific and in-depth discussion on the position and legal protection of minority shareholders, who by definition lack control over corporate policies, so that the analysis of shareholder liability remains centered on majority shareholders and parent companies.[2]

The second study, by Kristiyanti (2021) entitled "Pertanggungjawaban Pemegang Saham Perseroan Terbatas Melalui Indikator Alter Ego dalam Penerapan Doktrin Piercing the Corporate Veil di Indonesia," examines the effectiveness of applying the piercing the corporate veil doctrine through alter ego indicators as a basis for imposing personal liability on shareholders who abuse the corporate form. The study concludes that the application of this doctrine in Indonesia remains partial and relatively ineffective. The research gap lies in the fact that the discussion focuses on abuses committed by controlling shareholders in general, without clearly distinguishing how the doctrine should be applied proportionally to minority shareholders, who are in a

[2] Y. A. Adhyasta, G., Budiharto, B., & Prasetyo, 'TANGGUNG JAWAB PEMEGANG SAHAM MAYORITAS DALAM HAL TERJADI KEPAILITAN PADA PERSEROAN TERBATAS YANG TIDAK MEMILIKI ALAT KELENGKAPAN PERSEROAN TERBATAS SESUAI Dengan UNDANG-UNDANG NOMOR 40 TAHUN 2007 TENTANG PERSEROAN TERBATAS (STUDI PUTUSAN NOMOR 31/PDT.SUS', 2025.

non-controlling position when the company becomes insolvent. Consequently, the study does not provide a specific framework for resolving the legal problems faced by minority shareholders in such situations.[3]

Taken together, these previous studies show that academic discourse on shareholder liability in the bankruptcy of limited liability companies has primarily focused on majority or controlling shareholders, while detailed analysis of the limits of liability and mechanisms of legal protection for minority shareholders remains limited. This gap underlies the urgency of the present research, which seeks to fill the academic void by comprehensively examining the legal position, problems, and legal remedies available to minority shareholders in the context of corporate bankruptcy under Indonesian law.

Based on this background, the present study formulates three main research questions. First, how is the legal position and scope of liability of minority shareholders in a limited liability company defined under the limited liability principle in Indonesian corporate law? Second, what legal problems arise concerning the liability of minority shareholders when the company is declared bankrupt, particularly in relation to the piercing the corporate veil doctrine and creditor protection? Third, what legal remedies and protection mechanisms can be implemented for minority shareholders in bankruptcy proceedings based on Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations and Law No. 40 of 2007 on Limited Liability Companies?

In line with these research questions, the study has three main objectives. The first objective is to analyze and describe the legal position and limits of liability of minority shareholders in limited liability companies under the applicable limited liability principle in Indonesian corporate law. The second objective is to identify and analyze the legal problems arising from the liability of minority shareholders when the company becomes bankrupt, including the potential application of the piercing the corporate veil doctrine to minority shareholders. The third objective is to formulate and propose effective legal remedies and protection mechanisms for minority shareholders in bankruptcy proceedings based on existing legislation, so that the findings may contribute both academically and practically to the development of corporate and bankruptcy law in Indonesia.[4]

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[3] Gideon Paskha Wardhana, 'PERTANGGUNGJAWABAN PEMEGANG SAHAM PERSEROAN TERBATAS MELALUI INDIKATOR ALTER EGO DALAM PENERAPAN DOKTRIN PCV DI INDONESIA', *Refleksi Hukum: Jurnal Ilmu Hukum*, 6.1 (2021), 19–36 <https://doi.org/10.24246/jrh.2021.v6.i1.p19-36>.

[4] Divia Avril Yuniar and others, 'Analisis Hukum Terhadap Perlindungan Hak Pemegang Saham Minoritas Berdasarkan Undang- Terbatas', *Kampus Akademik Publising*, 2.6 (2024), 183–92.

2. Result and Discussion

A. Legal Position and Scope of Liability of Minority Shareholders in Limited Liability Companies under the Limited Liability Principle

Shareholders are one of the key organs in the structure of a limited liability company because they are the parties who contribute capital and have a direct interest in the company's continuity. Within the framework of Indonesian corporate law, a limited liability company is recognized as a legal entity that possesses its own legal personality, so that the company's assets are separate from the personal assets of its shareholders. This separation gives rise to the limited liability principle, namely that shareholders are only liable up to the amount of capital they have paid into the company and cannot be held personally liable for the company's debts beyond that amount. This principle is affirmed in Article 3 paragraph (1) of Law No. 40 of 2007 on Limited Liability Companies, which states that shareholders are not personally liable for legal relations entered into on behalf of the company and are not liable for the company's losses in excess of their share ownership.[5]

Within the structure of share ownership, a distinction is commonly made between majority and minority shareholders. Minority shareholders are those who hold a smaller percentage of shares, and therefore do not have dominant power to control the company's policy direction, especially in the General Meeting of Shareholders (GMS). Theoretically, the rights of minority shareholders include the right to receive dividends, the right to vote in the GMS, the right to obtain accurate and fair information, and the right to a proportional share of the remaining assets upon liquidation of the company in accordance with their shareholding. In practice, however, minority shareholders occupy a more vulnerable position because their votes can easily be outnumbered by majority shareholders, so that their influence over strategic decision-making is limited. This vulnerability directly affects how the limited liability principle provides effective protection for minority shareholders, particularly when the company faces financial distress that ultimately leads to bankruptcy.

The limited liability principle is fundamentally designed to encourage investment by limiting the risks borne by shareholders. Through this principle, each shareholder, including minority shareholders, bears risk only up to the amount of capital they have contributed, so that the company's losses cannot be charged against their personal assets

[5] Wahyudi Wahyudi and others, 'Perlindungan Hukum Bagi Pemegang Saham Minoritas Dalam Kasus Sengketa Perusahan', *Al-Battar: Jurnal Pamungkas Hukum*, 2.2 (2025), 122–31 <https://doi.org/10.63142/al-battar.v2i2.233>.

outside the shares they own. In modern legal-person theory, limited liability is viewed as a consequence of the separation of legal personality between the company and its shareholders, where the company acts as an independent legal subject that can hold rights, obligations, and assets in its own name. Accordingly, the company's creditors may in principle seek satisfaction of their claims only from the company's assets, not from the personal assets of shareholders, except in certain circumstances specifically provided for by law.[6]

The legal position of minority shareholders within the limited liability framework is, in principle, the same as that of majority shareholders: their liability is limited to the value of the shares they hold and have paid up. However, the key difference lies in the aspect of control and influence over corporate decisions. Majority or controlling shareholders typically have the ability to determine the company's policy direction, appoint and dismiss directors and commissioners, and decide on strategic actions that may affect the company's financial position. By contrast, minority shareholders often can only express their views and objections without being able to change the outcome of decisions if they are not supported by sufficient voting power. In this context, the limited control possessed by minority shareholders must be taken into account when assessing when and to what extent they can be held liable for the company's acts.

The Company Law provides a number of protective instruments for minority shareholders, including the right to sue the company if they suffer losses as a result of actions that they consider detrimental, and the right to request the company to buy back their shares if certain decisions are deemed harmful. In addition, the law regulates protection against conduct that violates fairness toward minority shareholders, such as concealment of information, manipulation of financial statements, or transactions that disproportionately benefit majority shareholders. Nonetheless, the implementation of these protections in practice is not always effective, particularly when the company enters a phase of financial distress culminating in bankruptcy, where the primary focus shifts from internal shareholder protection to the settlement of the company's obligations to creditors.

In the context of bankruptcy, minority shareholders remain, in principle, not liable for the company's debts, other than through the loss of their investment value in the form of shares and their right to any

[6] Loso Judijanto, Andri Triyantoro, and Anton Susilo, 'Civil Law Analysis of the Misuse of Legal Entities for Personal Interests (Piercing the Corporate Veil) in Indonesia', *The Easta Journal Law and Human Rights*, 3.02 (2025), 63–71 <https://doi.org/10.58812/eslhr.v3i02.477>.

residual assets after creditors have been paid. When the company is declared bankrupt, all of its assets become part of the bankruptcy estate to be managed by the receiver and distributed to creditors in accordance with the Bankruptcy Law. Under normal circumstances, shareholders whether majority or minority are not debtors in the legal relationship with creditors and thus are not directly liable for the company's obligations. Consequently, the scope of liability of minority shareholders remains within the limited liability framework, unless specific conditions are met that warrant setting aside this principle.[7]

Such special conditions relate to the application of the doctrine of piercing the corporate veil, which allows courts to disregard the corporate personality and impose personal liability on shareholders or directors where the corporate form has been misused for unlawful purposes or to evade obligations. Research on this doctrine indicates that alter ego indicators where the company is used as an extension of a controlling shareholder's personal interests may justify its application. In theory, the doctrine is more appropriately directed at those with substantial control over the company, since they are the ones who can actually influence corporate actions and potentially misuse the corporate form. In the case of minority shareholders, because they do not possess significant control, the application of piercing the corporate veil to them must be exercised with great care and proportionality to avoid violating principles of fairness and protection for small investors.

Systematically, the scope of liability of minority shareholders can be formulated as follows. First, minority shareholders are liable only up to the value of the shares they hold and have paid into the company, so that the loss they bear consists of the loss of part or all of their investment value when the company suffers losses or becomes bankrupt. Second, they cannot be held liable for the company's debts to creditors unless it can be proven that the minority shareholder in question actively participated in unlawful acts, commingling of personal and corporate assets, or misuse of the corporate form that harms creditors. Third, where there is evidence of active involvement by minority shareholders in unlawful schemes together with majority shareholders or directors, the limited liability shield may be pierced through the application of the doctrine of piercing the corporate veil, with due regard to the degree of involvement and contribution of each party.

Beyond liability, the legal position of

[7] Feny Ulfina, 'Konsekuensi Kebangkrutan Perusahaan Terhadap Tanggung Jawab Hukum Terhadap Pemegang Saham Minoritas', *Das Sollen: Jurnal Studi Hukum Dan Masyarakat Kontemporer*, 2 (02).2023 (2024), 1–19 <https://doi.org/10.11111/dassollen.xxxxxxx>.

minority shareholders must also be viewed through the lens of balanced legal protection. This principle emphasizes that, on the one hand, minority shareholders must be protected from arbitrary actions by majority shareholders and corporate organs that could harm them, while on the other hand they must still bear reasonable investment risk proportionate to the shares they hold. In practice, implementing this principle requires a clear legal mechanism to distinguish between ordinary business risks and losses arising from abuse of authority or unlawful conduct by controlling shareholders or directors. Thus, the position of minority shareholders is determined not only by limited liability, but also by their entitlement to adequate legal protection.[8]

Several studies in Indonesian corporate law show that minority shareholders frequently occupy a disadvantaged position in situations of conflict of interest within the company, because decision-making in the GMS tends to be determined by majority votes. This affects their ability to prevent high-risk or harmful decisions, which may ultimately contribute to the deterioration of the company's financial condition and, in extreme cases, lead to bankruptcy. Nevertheless, as long as minority shareholders do not actively participate in unlawful decision-making, the limited liability principle continues to serve as the main shield preventing creditors from reaching their personal assets. Therefore, strengthening legal protection for minority shareholders must be accompanied by a clear delineation of their liability so that there is no expansion of responsibility beyond the basic tenets of limited liability.

In light of the foregoing, the legal position of minority shareholders in Indonesian limited liability companies is supported by two main pillars: the limited liability principle and the principle of legal protection for minority investors. Limited liability ensures that their responsibility for the company's obligations is confined to the value of the shares they have paid up, while the protection principle aims to shield them from arbitrary actions by majority shareholders and corporate organs. In the bankruptcy context, these two principles must be carefully integrated so that, on the one hand, creditors' rights remain safeguarded, and on the other hand, minority shareholders are not unjustly treated as parties liable for insolvency arising from decisions beyond their control. This conceptual analysis forms the basis for the subsequent discussion of the second and third research questions, which examine concrete legal problems and remedies related to the liability of minority

8 Alusianto Hamonangan and others, 'Jurnal Pengabdian Kepada Masyarakat MAJU UDA Universitas Darma Agung MEDAN PERANAN KURATOR TERHADAP KEPAILITAN PERSEROAN TERBATAS', 2021, 20–34.

shareholders when the company becomes bankrupt.

B. Legal Problems Concerning the Liability of Minority Shareholders When the Company Is Declared Bankrupt

The central legal problem regarding the liability of minority shareholders when a company becomes bankrupt arises from the tension between, on the one hand, the limited liability principle, and on the other, the need to safeguard creditors' interests and the integrity of the bankruptcy system. Normatively, minority shareholders occupy the position of investors who contribute capital without having dominant authority to control corporate policy, yet when the company is declared bankrupt they bear the consequences of losses in the form of diminished or lost investment value. This situation raises the question of whether, and to what extent, minority shareholders may be made liable beyond merely losing their shares, particularly where there are allegations of unlawful acts or misuse of the corporate form contributing to the company's insolvency.[9]

One fundamental problem is the lack of explicit differentiation in positive law between the liability of majority and minority shareholders in the context of corporate bankruptcy. The Company Law and the Bankruptcy Law generally state that shareholders, without distinguishing majority from minority, are liable only up to the amount of capital they have paid. At the same time, the doctrine of piercing the corporate veil which allows courts to penetrate the corporate personality and impose personal liability on shareholders or directors in certain circumstances does not provide detailed parameters specific to minority shareholders. As a result, there is potential uncertainty in judicial practice regarding when minority shareholders may or may not be treated as directly liable parties for the company's obligations in bankruptcy.[10]

Studies on the protection of minority shareholders in listed companies show that minority shareholders often lack sufficiently strong instruments to influence key decisions that may expose the company to the risk of insolvency. In public companies, the one share one vote principle gives minority shareholders a relatively small voting power compared to majority shareholders, so their votes are easily overridden in the general meeting. This leads to justice concerns when the company is later declared bankrupt and minority shareholders suffer substantial losses, even though they did not have meaningful influence over the decisions that led to insolvency. The imbalance

[9] Marcelino Dennis Lesmana, Gunardi Lie, and Moody Rizqy Syailendra, 'Problematika Praktik Kepailitan Di Indonesia', *Notarius*, 14.1 (2021), 162–77.

[10] Faizul Idris and others, 'KEPAILITAN SEBAGAI INSTRUMEN PENGEMBALIAN KEKAYAAN : STUDI LITERATUR', 2026, 103–19.

between the economic liability they bear and their limited control over corporate decisions is one of the core problems in the bankruptcy context.

Another significant problem is the limited effectiveness of legal protection mechanisms available to minority shareholders during bankruptcy proceedings, particularly in relation to the actions of the receiver and supervising judge. Normatively, minority shareholders have rights to object to the receiver's actions that they consider unlawful or detrimental and may file suit if they suffer losses due to the receiver's conduct. In practice, however, minority shareholders rarely exercise these rights, whether due to insufficient understanding of their legal entitlements, restricted access to information, or the costs and procedural complexities of litigation. As a result, minority shareholders tend to remain passive and simply accept the consequences of bankruptcy without actively engaging in the protection of their rights, so that the normative protections become ineffective at the implementation level.

Furthermore, there is a problem related to the potential abuse of power by majority or controlling shareholders that may harm minority shareholders and push the company toward insolvency. Recent research indicates that minority shareholders' rights are often neglected in situations of conflict of interest, such as in related-party transactions, dividend policy, or high-risk investment decisions that disproportionately benefit majority shareholders. In such circumstances, minority shareholders bear the risk of bankruptcy without having equal opportunity to prevent or correct harmful policies. When the company is eventually declared bankrupt, their losses consist not only of the loss of share value but also the loss of reasonable expectations of returns, while majority shareholders may already have benefited earlier from the policies they controlled.

Problems concerning minority shareholder liability also arise in the application of the piercing the corporate veil doctrine, particularly when there are indications that the corporate form is being used as an instrument to evade legal obligations or commit unlawful acts. This doctrine is intended to prevent abuse of the corporate personality by allowing courts to disregard the limited liability shield and impose personal liability on those responsible for the misuse. However, research shows that its application in Indonesia remains partial and lacks consistent criteria, leading to legal uncertainty. In relation to minority shareholders, the problem is the risk that they may inadvertently be swept into the scope of the doctrine if courts do not carefully distinguish their level of control and involvement from that of majority shareholders or directors who actually commit the abuse.[11]

Another dimension of the problem concerns minority shareholders' access to information about the company's financial and operational condition prior to bankruptcy. Ideally, the transparency principle in good corporate governance should ensure that all shareholders, including minority shareholders, receive adequate and timely information to assess the risks of their investment. In practice, information asymmetry frequently occurs: majority or controlling shareholders have more complete and faster access to information, while minority shareholders receive only limited disclosures through formal meetings or periodic reports. This imbalance makes it difficult for minority shareholders to anticipate or respond to early signs of financial distress that may lead to bankruptcy, placing them in a structurally more vulnerable position.[12]

Problems also arise from the underutilization of legal mechanisms provided by the Company Law for minority shareholders to protect their interests before and after bankruptcy. The law grants rights such as the right to sue the company or its directors in cases of abuse of authority or harmful actions, as well as the right to request share buyback in certain situations. Nonetheless, minority shareholders often do not exercise these rights due to limited legal knowledge, high litigation costs, and fear of prolonged conflict with majority shareholders or management. Consequently, potential violations or mismanagement that could drive the company toward insolvency are not promptly corrected through legal channels, and the losses suffered by minority shareholders become greater once bankruptcy occurs.[13]

Within the bankruptcy law framework, there is also a problem concerning the legal standing of minority shareholders as parties with interests in the proceedings. The Bankruptcy Law prioritizes creditor protection, while shareholders, including minority shareholders, are positioned as residual claimants who receive whatever assets remain after all creditors have been paid. In many cases, the residual value is minimal or non-existent, so minority shareholders lose the entirety of their investment. They are not considered creditors unless they also have a separate creditor relationship with the company, such as through loans, and therefore their rights in bankruptcy proceedings are limited mainly to monitoring and objecting to the receiver's actions. This situation raises issues of substantive justice, since minority shareholders as investors

[11] Serlika Aprita and Sarah Qosim, 'Kurator Berbuat Nakal', *Jurnal Ius Constituendum*, 7.2 (2022), 192.

[12] Amirullah Sinaga and others, 'Analisis Hukum Perlindungan Kurator Dalam', *Jurnal Hukum & Hukum Islam*, 11.1 (2024), 475.

[13] Rulman Ignatius Rongkonusa, Yuhelson Yuhelson, and Cicilia Julyani Tondy, 'Diskresi Penentuan Pembuktian Sederhana Dalam Persidangan Permohonan Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Pkpu)', *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum*, 2.2 (2023), 137–45 <https://doi.org/10.55681/seikat.v2i2.466>.

contributing capital to the company have weak bargaining power in the distribution of the bankruptcy estate.[14]

These various problems demonstrate that the liability of minority shareholders when a company is declared bankrupt cannot be viewed solely through the formal lens of limited liability, but must be assessed more broadly within a framework of risk allocation and balanced legal protection. On the one hand, minority shareholders must accept the risk of losing investment value as a logical consequence of business activity; on the other hand, they should not be made to bear losses arising from abuse of authority, information asymmetry, or ineffective protection mechanisms that should have prevented such outcomes. The tension between creditor protection through bankruptcy mechanisms and minority shareholder protection as investors necessitates a regulatory and enforcement model that can fairly balance both sets of interests.

In summary, the legal problems concerning minority shareholder liability in corporate bankruptcy encompass several core aspects: the absence of clear normative differentiation between majority and minority liability, the limited effectiveness of existing protection mechanisms, the potential for abusive conduct by controlling shareholders, the risk of disproportionate application of the piercing the corporate veil doctrine, persistent information asymmetry, and the structurally weak position of minority shareholders as residual claimants in the bankruptcy estate. These problems form the basis for the third research question, which examines how to design and implement legal remedies and protection mechanisms that effectively safeguard minority shareholders in the bankruptcy of limited liability companies in Indonesia.

C. Legal Remedies and Protection Mechanisms for Minority Shareholders in Bankruptcy Proceedings

Legal remedies and protection mechanisms for minority shareholders in bankruptcy proceedings of limited liability companies rest on two main frameworks: the protective instruments provided by the Company Law and the mechanisms available under the Bankruptcy Law. The Company Law grants specific rights and legal tools designed to shield minority shareholders from arbitrary actions by majority shareholders or corporate organs, while the Bankruptcy Law regulates the process of debt settlement and distribution of the bankruptcy estate, which indirectly determines the fate of minority shareholders' economic rights. Integrating these two frameworks is crucial to

[14] Adelia Pramadanty Darmansyah, Mulya Sahrina Auliyanti, and Wafiq Zulviana Nur Azizah, 'Mengungkap Penyebab Kepailitan PT. Sri Rejeki Isman Tbk (Sritex) : Faktor Internal, Eksternal, Manajemen Keuangan Dan Proses Hukum', *Jurnal Riset Akuntansi*, 3.1 (2025), 330–40 <https://doi.org/10.54066/jura-itb.v3i1.2980>.

designing fair and proportional remedies for minority shareholders once the company is declared bankrupt.[15]

Studies on minority shareholder protection based on the Company Law show that the statute grants several key rights enabling minority shareholders to intervene in and correct corporate policies that may harm them. These rights include: the right of shareholders representing at least one-tenth of the total shares with voting rights to request the convening of a general meeting of shareholders (Article 79 paragraph (2)); the right to petition the court to examine the company (Article 138 paragraph (3)); the right to propose the dissolution of the company at the general meeting (Article 144 paragraph (1)); the right to sue the board of directors (Article 97 paragraph (6)); and the right to sue the board of commissioners (Article 114 paragraph (6)). Additionally, every shareholder, including minority shareholders, has the right to sue the company (Article 61 paragraph (1)) and to request that their shares be bought at a fair price if they do not agree with certain corporate actions (Article 62 paragraph (1)). These rights constitute important instruments that minority shareholders can use to prevent or mitigate policies that might push the company toward insolvency.

In the context of bankruptcy, these rights function both as preventive and curative remedies. Preventively, minority shareholders can request the convening of a general meeting or a judicial examination of the company when they detect indications of non-transparent policies, abuse of power, or actions that threaten corporate sustainability. By petitioning for examination or suing directors and commissioners alleged to have committed unlawful acts, minority shareholders can seek to halt or correct harmful decisions before the company's financial condition deteriorates to the point of bankruptcy. Curatively, if decisions of the general meeting or actions of corporate organs have already caused losses and the company is subsequently declared bankrupt, minority shareholders can still rely on these rights to claim personal liability from directors, commissioners, or majority shareholders who are proven to have abused their powers.[16]

Normative research indicates, however, that although the Company Law provides a relatively comprehensive framework for minority protection, its implementation in practice remains limited. Minority shareholders often fail to exercise their rights due to lack of legal awareness, high litigation costs, and concerns over prolonged conflict with

[15] Arvi Erawan Palindria and others, 'Batasan Penerapan Prinsip Tanggung Jawab Terbatas Pemegang Saham Dan Organ Perusahaan Dalam Kepailitan Emiten', *Padjadjaran Law Review*, Vol. 13.2 (2025), 56–66.

[16] Devi Andani, 'KEPAILITAN', 6 (2021).

majority shareholders or management. This reality calls for strengthening substantive protection not only through statutory regulation but also through improved access to information and legal assistance for minority investors. Such an approach aligns with the principle of distributive justice underpinning minority protection, whereby rights are granted in proportion to share contributions, even though formal equality with majority shareholders is not absolute.

Within the bankruptcy framework, legal remedies and protection mechanisms for minority shareholders are more closely tied to their status as parties with interests in the proceedings, though not as primary creditors. Once the company is declared bankrupt, minority shareholders essentially become residual claimants awaiting any remaining assets after all creditor claims have been satisfied. While their economic position is subordinate, minority shareholders retain the right to monitor the receiver's actions and to object to acts deemed unlawful or detrimental to their interests. These objections may be raised before the supervising judge, or minority shareholders may bring suit against the receiver where evidence shows that management of the bankruptcy estate has been conducted in a non-transparent or unlawful manner. In this way, minority shareholders can participate, albeit indirectly, in safeguarding the integrity of the bankruptcy process.

More specific remedial avenues for minority shareholders after a bankruptcy judgment are discussed in doctrinal analyses of post-bankruptcy remedies. Such analyses highlight that minority shareholders may seek civil liability from those responsible for their losses, including directors, commissioners, and majority shareholders, by relying on Company Law provisions governing the responsibility of corporate organs. Minority shareholders can file direct and derivative actions to recover losses arising from unlawful conduct or breaches of fiduciary duties. In addition, mechanisms similar to appraisal rights where shareholders may exit the company by demanding that their shares be purchased at a fair price retain conceptual importance as protective instruments, even though their practical implementation becomes more complex once the company is insolvent and assets are constrained.[17]

The principle of balanced legal protection for minority shareholders advocates that legal policy should ensure minority investors are not placed in an inherently weak position vis-à-vis majority shareholders and corporate organs. This principle underscores that losses suffered by minority shareholders due to corporate

[17] Fernando Chandra and Mariske Myeke Tampi, 'Perlindungan Hukum Terhadap Investor Pemegang Saham Pada Emiten Ditinjau Dari Hukum Kepailitan Dan Hukum Perseroan Terbatas (Studi Kasus NO.4/PDT.SUS.PEMBATALAN PERDAMAIAN/2019/PN.NIAGA.JKT.PST JUNCTO NO.1/PK/PDT.SUS-PAILIT/2020)', *Jurnal Hukum Adigama*, 4.4 (2021), 400–424.

decisions leading to bankruptcy should not be viewed solely as business risk; it must also be assessed whether such losses stem from unlawful conduct or abuse of power. Where evidence of abuse exists, legal remedies should aim at restoring minority shareholders' rights through civil claims and, where appropriate, criminal prosecution against those responsible. Hence, the principle of balanced protection serves as a normative foundation for designing remedial mechanisms that are not only formally adequate but also substantively just.

In relation to the piercing the corporate veil doctrine, effective minority protection requires selective and proportionate application. The doctrine is necessary to deter abuse of the corporate form, yet its enforcement should focus on parties who have actual control and direct involvement in unlawful acts, namely majority shareholders or directors who use the company as their alter ego. For minority shareholders, who do not possess significant control, the doctrine should only be applied where there is clear evidence of active participation in unlawful conduct or asset commingling that harms creditors. This approach ensures that attempts to remove the corporate veil do not unjustly extend liability to minority shareholders in a manner disproportionate to their role and influence.[18]

Another critical preventive mechanism is the strengthening of good corporate governance (GCG) practices as a means of protecting minority shareholders from high-risk and non-transparent policies. Implementing the principles of transparency, accountability, responsibility, independence, and fairness in corporate decision-making helps reduce the likelihood of conflicts of interest and abuse of power by majority shareholders or management. Under a robust GCG framework, minority shareholders gain better access to information and more meaningful opportunities to express their views and objections before key decisions are adopted. Consistent application of GCG principles can therefore lessen the risk of bankruptcy caused by mismanagement or opaque practices, indirectly safeguarding minority shareholders' interests.[19]

Beyond formal legal mechanisms, enhancing the capacity of minority shareholders to understand and exercise their rights is an integral part of effective protection. Minority investors need education on their rights under the Company Law and Bankruptcy Law, as well as practical guidance on how to use

[18] Fahmi Afham Fuady, 'Pertanggungjawaban Pemegang Saham Pengendali Berdasarkan Doktrin Piercing The Corporate Veil Dalam Tindak Pidana Korupsi', 2023, 76 <Universitas Hasanuddin>.

[19] Arya Radhitya, 'KEPENTINGAN PEMEGANG SAHAM PUBLIK PT PERUSAHAAN GAS NEGARA Tbk TERKAIT PENGALIHAN SAHAM MILIK NEGARA DI PT PERUSAHAAN GAS NEGARA Tbk KE PT PERTAMINA (PERSERO)', *Jurnal Darma Agung*, 30.3 (2022), 748 <https://doi.org/10.46930/ojsuda.v30i3.2309>.

these rights such as procedures for filing suits, petitioning for judicial examination, or objecting to the receiver's actions. This legal literacy can be improved through educational programs organized by market regulators, shareholder associations, or legal aid institutions. With strengthened legal awareness, minority shareholders can act more proactively to protect their interests both before and after the occurrence of bankruptcy.

Taken as a whole, legal remedies and protection mechanisms for minority shareholders in the bankruptcy of limited liability companies involve a combination of preventive and curative measures, integrating Company Law, Bankruptcy Law, doctrinal corporate principles, and good corporate governance standards. Preventive measures include exercising minority rights to influence or challenge corporate policies before insolvency occurs, while curative measures involve the use of litigation and supervisory mechanisms to restore rights and impose proportional liability on those at fault. From the perspective of distributive justice, minority shareholder protection does not aim to eliminate business risk entirely, but rather to ensure that the losses they bear do not originate from unlawful conduct or abuses that the legal and governance systems should have prevented.[20]

3. Conclusion

This study concludes that, from a normative perspective, the legal position of minority shareholders in Indonesian limited liability companies is grounded in the limited liability principle and the separation of assets between the company and its shareholders, so that they are, in principle, only exposed to risk up to the value of the shares they have paid and are not directly liable for the company's debts except in exceptional circumstances where they are proven to have actively participated in unlawful acts or abuse of the corporate form. The normative juridical analysis of the Company Law and Bankruptcy Law shows that the main problems faced by minority shareholders in bankruptcy proceedings include their weak bargaining position, persistent information asymmetry, abuse of power by majority shareholders, and the limited practical use of the protective instruments formally available to them, which often makes minority shareholders the most economically affected parties without having adequate control over the decisions leading to insolvency. Legal remedies and protection mechanisms that can be implemented encompass the exercise of minority rights under the Company Law

[20] Shelby Grossman and Alisha C. Holland, 'The Collusion Trap: Theory with Evidence from Informal Markets in Lagos, Nigeria', *World Development*, 167.2 (2023), 324–32 <https://doi.org/10.1016/j.worlddev.2023.106209>.

(such as suits against directors and commissioners, petitions for company examination, and proposals for general meetings and dissolution), supervisory and objection procedures in bankruptcy proceedings, carefully targeted application of the piercing the corporate veil doctrine only against parties who truly misuse the corporate form, as well as the strengthening of good corporate governance and minority shareholders' legal literacy. Accordingly, effective protection of minority shareholders in corporate bankruptcy requires the integration of corporate law, bankruptcy law, and distributive justice principles to ensure fair and proportionate allocation of risk and responsibility.

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