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Doctrine of Non Expropriation as Legal Protection Solutions for Minority Shareholders in Merger Limited Liability Company

Satria A. Putra[1], Sudarsono[2], Abd. Rachmad Budiono[3], Bambang Winarno[4]
[1]Doctorate Candidate at Law Faculty of Brawijaya University, Malang
[2]Professor of Constitutional Law, Faculty of Law, Brawijaya University, Malang
[3]Professor of Constitutional Law, Faculty of Law, Brawijaya University, Malang
[4]Associate Professor of Constitutional Law, Faculty of Law, Brawijaya University, Malang
[*]Email of the corresponding author: satriaamiputra@yahoo.com

Abstract**—***One way in which the company and has been the trend lately, both domestic and abroad to strengthen the company financially is the merger (amalgamation). Merger activity can affect unprotected minority shareholders should adjust the Limited Liability Company Law and Goverment Regulation Act provides legal protection for minority shareholders in the merger. The results of this study indicate that the implementation of the merger under the purchase method often harm the rights of minority shareholders. Legal merger, in this case the Goverment Regulation No.27 of 1998 on Merger, Consolidation and Acquisition Company Limited has determined that Article 4 (4) stipulated that the exercise will not stop the implementation of the merger. The law became less protection, while the law is the main entrance creates legal protection. Like wise matter of legal protection for minority shareholders in the merger.*

The principle of majority rule as one of the pillars of the Company Law, which, if the principle of majority rule is applied can fundamentally potential occurrence of abuse of power that led to the minority shareholders are not powerless in the face of the authority of the majority shareholder. The legal protection of minority shareholders in this case is done by introducing a special vote principle, namely the principle of the silent majority and super majority.

Keywords**—** *Legal Protection of Minority Shareholders, Merger*.

I. INTRODUCTION

Today almost every country is experiencing a decline in economic growth. The companies in various countries are warm take measures to strengthen the foundation of the company. One way in which the companies and has become the trend of late both domestically and abroad is a merger (amalgamation). The final goal of the merger is to form part of the business and corporate strategy of the acquirer or the surviving company. So both acquisitions and mergers are ideally be said the goal is to create value for the shareholders of the acquirer or the surviving company, and increase the market value (market value) of the merged company.

The views of shareholders for this merger is to provide added value for shareholders, or minimum stay. Merger is a step in business strategy, so we need a calculation and based on the regulations that apply in Indonesia. Merger is basically an agreement, but the laws governing the procedures for the merger, so we need a separate strategy to reach the desired destination by the shareholders of the company, among others, to gain an advantage. The rule of law is intended to protect parties affected by the negative impact of the merger.

Legal actions merger must be approved by the General Meeting of Shareholders (GMS) on each side Limited Liability Company (PT) involved in the merger. The GMS applied the principle of one share, one vote, so that the majority shareholder has considerable opportunities to get votes compared to the minority shareholders. This resulted minority shareholders can not accommodate his will in the General Meeting of Shareholders. Linked with the principle of fairness, therefore it must be balanced with the rights of minority shareholders (minority rights), but it also should not be detrimental to the majority shareholders who have greater capital in the company. The majority shareholder has a fiduciary duty to the minority shareholders, because they have the power to control the company through the vote in the GMS.

Minority shareholders have a unique position in an engagement to establish a limited liability company, and the law is fair when the state intervened to provide protection to its citizens. State is the maker of legislation and have the right to apply sanctions, both criminal sanctions and administrative sanctions. Therefore, it should be allowed, the minority shareholders until certain limits should be protected by law.

The majority shareholders generally have sizeable interests of the Limited Liability Company (PT), because it has sufficient shares a lot with the consequences of substantial losses as well, so it is not always the majority shareholder of bad faith. But in fact in a Limited Liability Company (PT) can be a conflict of interest between minority shareholders and majority shareholders and minority shareholders are often disadvantaged by the majority shareholders are generally not acting in good faith and his alter ego, so that the majority shareholder is likely to "monopolize" the implementation of the course Limited Liability Company (PT).

The legal protection for minority shareholders in the merger is an important thing in a limited liability company, because the more people who buy shares in Limited Liability Company (PT) in an amount not too much resulting in a Limited Liability Company (PT) shareholder will be many. This resulted in legal protection for shareholders including minority shareholders become more important in the new world that is both global economy.

The majority shareholder must always act in good faith. There should be rules what is meant by the minority shareholders.

Therefore, in order to fulfill the elements of justice, we need a balance so that the minority shareholders will still be able to enjoy their rights as the majority, including regulating the company. On the other hand, the shareholders minoritaspun Noteworthy interests and cannot simply be ignored rights. To safeguard the interests of both sides, in the science of company law known as the principle of "Mayority Rule Minority Protection", which is the rule (the ruler) in the company remain the majority, but the rule of the majority that must be undertaken by always protecting (to protect) the parties minority. It if does not get the attention of the government feared would disrupt the climate of mergers and minority shareholders.

The principle of the protection of minorities have searched for a good cause is ekuilibirium which is summed up in the principle of majority rule and minority rights. However, when other factors, such as procedural problems, hardware and software as well as the human factor is not ready, will in fact tirany minority.

Legal protection still less to accommodate the needs of the minority shareholders in the merger, because the rules in the Limited Liability Company Law does not elaborate on what the definition of a reasonable price, the extent to which the majority shareholder to approve fundamental changes in the companies before the merger was implemented, and how far the handle stock disagreed with the merger may request the purchase of shares at a fair price, whether the rights of which are owned by minority shareholders are regulated in Indonesia.

In connection with these problems, then this dissertation research identifies legal issues as follows:

- What are the legal implications of the legal protection arrangements obscurity minority shareholders in mergers?
- How will the legal protection of minority shareholders in a merger in the future?

II. RESEARCH METHOD

This research is a normative study, which is the study of the principles of law, the legal norms of the rule of law and the legal system. This research uses several approaches, such as: Approach legislation and conceptual approaches.

III. THEORETICAL FRAMEWORK

Theory of Legal Protection

Beginning of the rise of the theory of legal protection is derived from the theory of natural law or natural law school. This stream was pioneered by Plato, Aristotle and Zeno. According to them the law comes from God is universal and timeless, as well as between law and morality should not be separated. And is a reflection and rules internally and externally of human life which is realized through legal and moral. There is a difference view of the philosophy of natural law acknowlege are still many disputed and rejected by the majority of the philosophy of law against the law of nature, because they still consider the search for an absolute law of nature only an act Yag futile and not helpful. But in reality it is the writings of these specialists use a lot of natural law schools they do not realize. In our country control the use of government authority has been there even is long existence, whether it's internal controls (the built-in control), or control external, preventive control (A-priori control) or the repressive control (A-posteriori control), juridical control, political control, social control, and other controls.

The legal protection is to give shelter to the human rights that harmed others and the protection is given to the people so they can enjoy all the rights granted by law or in other words the legal protection is a wide range of legal remedies that must be provided by law enforcement officials to provide a sense of security, both in mind and physical harassment and threats from any party. Is the pride and dignity, as well as the recognition of human rights which are owned by the legal subject under the provisions of the law of tyranny or as a collection of laws or rules that can protect a thing from another. Legal protection has a narrowing sense of protection, in this case the only protection by the law alone. The protection afforded by the law, is also related to their rights and obligations, in this case that of humans as subjects of law in its interaction with fellow human beings and the environment. As the subject of human law has the right and obligation to make a legal action. Indicators of legal certainty in a country itself is the existence of clear legislation and legislation is implemented well by the judges and other legal officials.

Its majority shareholders and minority shareholders have differences in legal protection. The legal protection against the majority shareholder is reasonably assured, especially through the GMS mechanism which can otherwise take decisions by consensus, it will be taken by a decision adopted by a majority, while the legal protection for minority shareholders, namely the noble cause to maintain fairness in the Company limited (Co.ltd), so that the minority must be protected though not necessarily to be the governing party of the company. Minority shareholders will feel safe and protected and secured interests in limited liability companies (Co.ltd) is being merged.

Theory of Agreement

Agreement pursuant to Article 1313 of the Civil Code is an act that occurs between a person with another person or more who joins himself to another person or more. In general, the agreement is not tied to a specific form, and can be made orally and in writing. The act that occurs in accordance with the formalities of existing laws will depend on the rapprochement of two or more. Normative character of legal science shows that normative characteristics.

The agreement is an event where a promise to another person or two people it promised each other to do something. These events will give rise to a relationship between two people of the named alliance. In the agreement, there must be the subject of an agreement or the parties to be bound by a treaty. Civil Code distinguishes three groups related to an

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agreement, that the parties to the treaty itself, their heirs and those who get the rights of a third party.

Under Article 1338 (1) of the Civil Code regarding freedom of contract then the person or the parties are free to make a deal. "All the agreements made legally valid as law for those who create it."

It is certainly freedom of contract in connection with the legal conditions necessary approvals four conditions set forth in Article 1320 of the Civil Code, namely: they agreed to bind themselves, capable to make an alliance, a particular case, a lawful reason.

The conditions of validity of the agreement can be described as follows: an agreement on a treaty will be started from any element of the bid (offer) by either party, followed by the acceptance of the offer (acceptance) from others, each person is competent to make a deal. Speak in a legal sense is called bekwaam or have legal capacity. This means that a person can do the act or legal action when the person is an adult and not be under guardianship or trusteeship. It is used as the principal agreement, is an item or object that is at least the specified type. An agreement without cause, or that have been made because of a false or illegal reasons, do not have the strength. One reason is forbidden when prohibited by law, are contrary to morality and public order.

Terms prowess and agreement on the terms of an agreement subjectively. If not met, then the agreement is "irrevocable". Terms specific object and the cause or causes of kosher is objective requirements, so that if not met will result in an agreement "null and void".

All agreements are made in good faith and is legally valid as law for those who make it. These treaties cannot be revoked other than by agreement of the parties or for reasons specified by law. Agreement binding not only for things that are expressly stated therein, but also for everything that, by the nature of the agreement required by propriety, customs and laws.

Based on the terms of the validity of the agreement can be distinguished, namely the core, this subsection referred esensialia and parts which are not core called Naturalia and aksidentalia. Esensialia is part of a nature that should exist in the agreement, which determines the nature or cause of the agreement is created. Naturalia is an innate part of the agreement, so secretly attached to such agreement ensures there are no defects on the items for sale. Average Aksidentalia which is part of this is inherent in the treaty expressly agreed by the parties. In addition to the source of legislation, the engagement can be born out of the agreement. This can be seen in the provisions of Article 1233 (1) of the Civil Code which states that: each engagement is born, either because of an agreement, as well as legislation.

Merger is basically an agreement, but the laws governing the procedures for the merger, so we need a separate strategy to reach the desired destination by the shareholders of the company, among others, for the benefit of the merger agreement made.

Theory of Fiduciary Duties

Fiduciary Duties is a theory and a new concept in the Limited Liability Company Law, the adoption of the common law system by the framers of the Act. This theory requires loyalty to the Board of Directors of the company, which has been trusted to take care of the company's shareholders. Fiduciary Duty starts from the realization that there is no absence of the company's directors and no company without the directors and applicable to directors in carrying out their duties properly in its function as well as representatives of the management company. The term fiduciary duty is derived from two words, namely:

(1) Fiduciary, and
(2) Duty.

"Duty" itself much used anywhere, which means "duty", while the term "fiduciary" is derived from the Latin "Fiduciarus" with the beginning of the word "fiduciary" means "trust (trust)" or the verb "fidere" which means "to believe (to trust)". So with the term "fiduciary" is defined as "holds something in trust" or someone who holds something in trust for the benefit of others referred to by the term "trustee" while those who held to the interests referred to by the term "beneficiary". The person holding such a belief is called a person who holds the "mandate" in terms of Indonesian.

The duties of a fiduciary (fiduciary duty) where he has a fiduciary capacity. Someone who has a fiduciary capacity if the business being operated or ditransaksikannya money or property that was handled was not hers or not for their own interests. It belonged to another and for the benefit of the other person, where that other person has the confidence that great (great trust) to him. On the other hand, he must have a good faith higher (high degree of good faith) in carrying out its duties. The term "fiduciary" is used both for treaty trustee in the sense of "technical trust 'as well as to office or legal relationship with the lawyer (and its clients), guardianship (Guardian), executor, brokers, curators, public officials, or a director of a company (between the director with his company). Between parties who have a fiduciary capacity (fiduciary capacity) with the fosterage or whose property was taken care of, there is a special relationship called a fiduciary relationship (fiduciary relation). While the definition of a fiduciary relation is a relationship arising from a fiduciary relationship technically as well as from informal relationships that arise where a trust (trust) or dependent (rely) to others. In this case, a trust others, where other people are acting in good faith (good faith) and with respect for good (due regard) and fair to the interests of others.

Some of the "basic guidelines" for directors in carrying out fiduciary duty to the company he leads. The basic guidelines are as follows:

1) Fiduciary duty is a mandatory element (mandatory element) in company law
2) In performing its duties, the board of directors not only must meet the elements of good faith, but also must meet the elements of "a worthy goal" (proper purpose).
3) In principle, the director saddled the principle of fiduciary duty to the company and not to shareholders. Therefore, only perusahaanlah to impose a fiduciary duty of directors to implement them.
4) However, in its function as director, general director must also consider the interests of stakeholders, such as the company's shareholders and workers.

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5) Even though bears duties as a director, the director remains free in giving a voice and opinion in accordance with the beliefs and interests in each meeting attended.
6) The Board of Directors remains free in making decisions appropriate business considerations and "sense of business " has. In fact, the court should not intervene considering the sense of business of the board of directors.

If there is a conflict of interest, the directors are prohibited or at least monitored and restricted in carrying out their duties on the principle of information disclosure to every transaction that any conflict of interest.

Someone who has a fiduciary capacity if the business being operated or ditransaksikannya money or property that was handled was not hers or not for their own interests. It belonged to another and for the benefit of the other person, where that other person has the confidence that great (great trust) to him. On the other hand, he must have a good faith higher (high degree of good faith) in carrying out its duties. The term "fiduciary" is used both for treaty trustee in the sense of "technical trust 'as well as to office or legal relationship with the lawyer (and its clients), guardianship (Guardian), executor, brokers, curators, public officials, or a director of a company (between the director with his company). Between parties who have a fiduciary capacity (fiduciary capacity) with the fosterage or whose property was taken care of, there is a special relationship called a fiduciary relationship (fiduciary relation). While the definition of a fiduciary relation is a relationship arising from a fiduciary relationship technically as well as from informal relationships that arise where a trust (trust) or dependent (rely) to others. A trusting of others, where other people are acting in good faith (good faith) and with respect for good (due regard) and fair to the interests of others. The task of someone Fiduciary duty called "trusted" beginning of a legal relationship between trusted with another party, called the beneficiary, where the beneficiary has a high trust to the trustee, and instead the trustee also has the obligation which is high for implementing duties as well as possible in good faith high, fair and responsible manner, in carrying out their duties and for the benefit of the beneficiary, the good that rises from the legal relationship or position as trustee (technically), or from other positions such as lawyers (and their clients), custodian (guardian), executor, brokers, curators, public officials or directors of a company. Legal liability has three kinds of responsibility that is the legal responsibility in the sense of accountability, responsibility and liability. Responsibility in the sense of accountability is the legal responsibility in relation to finance, for example, the accountant must take responsibility for the accounting, while responsibility is the responsibility in the sense that should bear the burden. Responsibility in terms of liability is to bear the liability for damages. Responsibility in the sense of responsibility is also interpreted as a moral attitude to carry out its obligations, while responsibility in the sense of liability is the attitude of law to account for violation of obligations or violation of the rights of others.

The obligation to be faithful, is an obligation which requires the director, with the approval and honestly, to protect the interests of the company and its shareholders, and to stop acts that could hurt the company or revoke the company an advantage or a benefit which may be brought into the company in the process. To meet the obligation for the faithful, a director must act in a way that he honestly believe is the most important interest of the company and its shareholders. Compulsory care, is an obligation which requires the director to carry out responsibilities with care which a prudent reasons would use under similar circumstances, when acting in a different way. To meet this obligation to be careful, a director should continue with a critical view in assessing the information given to him, and with a curious nature in making sure that he has been given all the material information.

Derivative Action is different from individual lawsuit filed by one or more shareholders to its own interests as a shareholder in the company. Derivative action can be performed by any shareholder regardless of whether an act of the accused, committed by members of the Board of Directors who violate fiduciary duty, had been done before he became a shareholder in the company, during and throughout the challenged measures are indeed detrimental to the interests of the company.

The ownership composition different at the company led to the emergence of groups of shareholders in the company. The group's majority shareholder has a very dominant position in running the company for a large number of its shares so that the group's majority shareholder can influence even arrange directors, while the group of shareholders who shares a very small amount can certainly not be involved further.

Directors generally follow the will of the majority shareholder, so that the companies merged, directors often use their authority at the request of the majority shareholder.

The existence of such a relationship of interdependence, the shareholders and the Board of Directors may deviate from the relationships that occur fiduciary duty or trust (fiduciary relationship), which then becomes the responsibility of directors for their actions.

Legal sector returned requested his role to maintain the trust that has been given to the directors and the law in order to give protection to minority shareholders in the framework of the merger.

Agency Theory

The relationship between the shareholders as a principal and as agent management. Management is a party contracted by the shareholders to work in the interests of shareholders. Because they are selected, then the parties should be accountable for the management of all his work to the shareholders. The structure of ownership in a company will have different motivations in terms of supervising or monitoring the company and the management and board of directors. The ownership structure is a mechanism to reduce conflicts between management and shareholders. Factors that may affect the company is a majority shareholding. Their ownership of a majority shareholder in a company is likely to encourage excessive oversight of management performance, because the majority shareholding represent a source of power that can be used to support or otherwise on the performance or value of the company. The greater ownership of the majority shareholder, the greater the power of sound and encouragement of the majority shareholder to monitor the company and consequently will give greater impetus to optimize shareholder value so that the majority will ignore minority shareholders. The influence of the majority shareholder to the company management can be crucial and can be used to align the interests of company shareholders mayoritas.Dalam a corporate entity, the board is an agent of the owners of capital who have a primary duty to increase their value (maximizing shareholders value). Any action of a board of directors is to increase shareholder value. Agency theory suggests that the company may be seen as a contractual relationship (loosely defined) between shareholders by directors or management. An agency relationship arises when one or more individuals, called shareholders, employ one or more other individuals, called agents, to perform certain services and then delegate decision-making authority to the agent. The primary agency relationships in business are those (between shareholders and the board of directors or management). This relationship is not always harmonious, indeed, agency theory agency related to the conflict, or conflict of interest between agents and shareholders, especially the majority shareholder. There are ways to use the direct shareholder to monitor the company's management to help solve the agency conflict. First, shareholders have the right to influence the way the company is run by voting in a general meeting of shareholders, shareholders' voting rights is an important part of their financial assets. Second, the shareholder resolution in which a group of shareholders collectively lobbying against the manager (representing the company) with respect to issues that did not satisfy them. Shareholders also have the option of divestment (selling their stock), divestment merepresta sikan a failure of the company to maintain investor, where divestment caused by dissatisfaction of shareholders on the activities of managers.

IV. RESULTS AND DISCUSSION

Merger is a merger of two or more companies, which one company or several companies merged will dissolve itself (without the liquidation), and only 1 (one) the company will stand or exist.

Merger of Companies is an effective alternative to a business group that wants to develop rapidly in a short time. Some of the reasons a company wishes to take over or merge with other companies, among others :

1. Accelerating the growth of the company
   Common reasons that the acquisition is to accelerate the process of growth and expand business with the transactions executed by the process specified by the regulations.
2. Vertical Integration
   That is to get companies which resulted in the company mastered the production of upstream to downstream. This is done so that companies who bought or surviving have certainty in the supply of raw materials, stability in the marketing, facilitate control in terms of marketing, and provide greater profits for eliminating intermediate agents.
3. Acquisition of something that is intangible and employees
   Purchase of a company in general to get a particular asset including intangible assets that are not owned by the company that would take over. For example, the seller has the technology, network marketing, contracts, licenses are not transferable to other companies, and other things that is hard to duplicate or implemented by the company that will take or who will receive a merger. For companies that have weaknesses in the field of human resources can be aided by other companies better human resources, and business development leads to the use of advanced technological means necessary human resource capacity are adequate. Small firms will be difficult to follow this development due to it required a fairly high cost, except by raising ourselves, among others by mergers and acquisitions.
4. Investment Portfolio
   The Company intends to invest the excess cash the company to earn a higher income than the deposit or other investments. By conducting unrelated business diversification, which aims to minimize the risk if the current income from various businesses in the portfolio are not related positively. In a framework of efficient capital markets, it can be questioned how keep the ability to portfolio investment strategy is to create value for shareholders.
5. Changes in the industry
   The company wants to enter in an industrial business that is completely new, or another, usually acquired entity have a relationship with the "core business" of his companies. The corporate takeover is a fastest way to expand than to build a new company.
6. Marketability of Stock
   If the company that will take over or will receive a merger is a public company, and will take over a company that is a business that is new or different, it will affect the company's stock price will take.

Every merger, mergers and acquisitions, based on Law Number 40 of 2007 regarding Limited Liability Company (Company Law), subject to the approval of the General Meeting of Shareholders (GMS). It is regulated in Article 6 of Regulation 27 of 1998 which states as follows:

(1) Merger, Consolidation, and Acquisition can only be done with the approval of the General Meeting of Shareholders.
(2) Merger, Consolidation and Acquisition made by decision of the General Meeting of Shareholders attended by shareholders representing at least ¾ (three quarters) of the total shares with voting rights are legitimate and approved by at least ¾ (three-quarters) part of such votes.
(3) For Public Companies, in terms of the conditions referred to in paragraph two (2) is not reached, the requisite attendance and decision making are determined in accordance with the laws and regulations in the capital market "

Company Limited has characteristics which are: has a wealth of its own, there are shareholders who act as suppliers of capital, his responsibilities do not exceed the paid-up capital, there should be a committee organized to represent the company in carrying out its activities.

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Shareholder Primacy is a doctrine which says that the only purpose of the company is to seek as much wealth for shareholders (maximizing return to shareholders). The presumption that the duty of directors is to maximize profits for shareholders. It would be unacceptable to consider the interests of other stakeholders that will potentially increase the cost or reduce profits. Companies only exist to make profits for shareholders sebesarnya. Strength of directors or management in work and act in the interests of shareholders. Law firms are effectively structured to maximize shareholder value. Directors or management ignored measures to maximize other stakeholders (stakeholders).

According to Boatright in its analysis that the appointment by the shareholders of these contractual nature, because it creates rights and obligations of directors to shareholders.

The provisions concerning transactions with certain conflict of interest shows that the legislation in the field of company law to uphold the rights and protection of minority shareholders of a company based on the principle of equality. Each shareholder declared legally entitled to participate in determining policy related to the company's decision-making in the GMS of paramount importance and impact the interests of shareholders. In principle, this regulation aims:

1) Protecting the interests of minority shareholders are generally a minority shareholder of the actions that go beyond the authority of directors and commissioners as well as the majority shareholder in the transaction certain collisions.
2) Reduce the possibility of abuse of power by the directors of the influence of the majority shareholder to conduct transactions with certain conflict of interest.
3) Implement the principles of openness and respect for the rights of the shareholders based on the principles of equality, minority shareholder approval is mandatory to conduct transactions with certain conflict of interest.

Merger ideally be said the goal is to create value for the shareholders of the acquirer or the surviving company, and increase the market value of the firm merged. The views of shareholders for this merger is to provide added value for shareholders, or minimum stay.

Voting at the GMS by the Company Law uses the principle of one share one vote or 1 (one) share of 1 (one) vote means that each shareholder having 1 (one) share is entitled to issue 1 (one) vote at the GMS merger.

This principle is closely related to the principle of majority rule as one of the pillars of the Company Law, which, if the principle of majority rule is applied can fundamentally potential occurrence of abuse of power that led to the minority shareholders are not powerless in the face of the authority of the majority shareholder. However, the system is considered the most democratic, because the more a person shares in Co, the greater the risk of loss to be borne.

Enforcement of this system without adequate protection for minority shareholders to make the position of majority shareholders and minority shareholders become unbalanced.

This merger event is usually accompanied by asymmetry of information between the majority shareholder with minority shareholders. Therefore the majority shareholder has more complete information on

the target company (because it comes from the same group) and shareholders also holds majority control over two companies that transact such transactions, it can be suspected based on the interests of shareholders majority, which can cause harm to the minority shareholders.

Increasingly concentrated control of the company will result in the majority shareholder position in the company to become stronger and so happened they were for personal benefit which will reduce the value of the company and detrimental to minority shareholders.

In the practice of the merger, the majority shareholder in control so that minority shareholders can not do anything except follow the will of the majority shareholder, it is in this context that the most disadvantaged are minority shareholders, given in relation to the enforceability of shareholder primacy doctrine in the law firm, the most concerned with profits earned by the company are the shareholders, especially the majority shareholder.

To improve the protection of minority shareholders posed by transactions which contain conflict of interest as above, the need for regulation of merger transactions that conflict of interest. The essence of this rule is that any merger transaction conflict of interest must be approved by minority shareholders. The consequence of this rule is that even though the shareholders have agreed to a transaction representing a conflict of interest, but if minority shareholders do not approve the transaction cannot be executed.

The shift of the conflict between the shareholders with management becomes a conflict between the majority shareholder with minority shareholders give rise to a new agency problem. Minority shareholders as the parties have shares in limited amounts or slightly so it is not uncommon to only be used as a complement in a company. The pattern of decision-making is based on the percentage of shares held so that the decision-making mechanisms in the company can be assured of minority shareholders will always be less than the majority shareholder. This resulted in the majority shareholders have absolute control over minority shareholders, thus providing the opportunity for the majority shareholder to perform actions that benefit themselves and disadvantage minority shareholders.

Their concentration in the ownership structure may lead to the risk of expropriation of the minority shareholders. Majority or controlling shareholder who is the majority shareholder of a company can also control either directly or indirectly through other companies. The ability of the controlling shareholders to expropriate increases when the controlling shareholders are also involved in the management so that the ability of the controlling shareholder will be greater in influencing company policy.

Minority shareholders should also be more vigilant against acts of arbitrary of companies whose shares are owned by a single majority shareholder.

Weak legal protection against small investors which led investors to feel less exposed will be trying to protect themselves by becoming a majority shareholder or controlling.

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Majority or controlling shareholder who has full control will tend to take advantage of the company to generate personal benefits to be gained by minority shareholders.

A majority or controlling shareholder can perform actions such as abuse of power through control right that is protected. When the private benefits of control exerted over the large, majority or controlling shareholder will seek to allocate the company's resources to generate the private benefits. If a majority or controlling shareholder to control the company effectively, then their policies tend to lead to the expropriation of the minority shareholders.

Implementation of a merger does not always go smoothly, sometimes causing problems, one of which is the problem of the protection of the interests of minority shareholders. This problem can arise, both before and after the occurrence of this legal act.

Usually minority shareholders objected to this plan. Objection minority shareholders This can create a dilemma situation, on one hand, would be detrimental to minority shareholders and on the other hand if the plan is canceled it will be detrimental to the majority shareholder who has approved this plan.

Corporate law applied that law No. 40, 2007 have not been fully provide legal protection to minority shareholders, but with six rights set forth in the Company Law added the principle of one share one vote listed in Article 99 paragraph (1) provide less legal protection for minority shareholders / independent investment the company is domiciled in the jurisdiction of Indonesia. It is certainly unfair, because minority shareholders will lose out in the decision making in a company because of losing the dominance of the majority shareholder, in line with those of minority shareholders should accept the consequences of that, because the consequences of the risks when shareholders suffer losses in order higher merger and will be borne by the minority shareholders.

At the time of the merger the majority shareholder may act arbitrarily against minority shareholders because the minority shareholders do not have the same position. Where the role of legislation, especially the Company Law to accommodate the minority shareholders of the arbitrariness of the majority shareholder (the tyranny of the majority), because it is well known that the nature of the decision by the majority in decision-making merger of a company is not always fair for minority shareholders, although the method of taking the majority decision is considered to be the most democratic. Therefore, the system of majority decision, can only one who has put money into the company up to 24% with the stock holding of 24% in relation to the control and decision-making within the company, they have accrued are exactly the same in voting by shareholders 1% , and will be very different to the shareholders 51%. It becomes unfair. Therefore, to maintain that there should be justice for the shareholders, whether he is the majority shareholder and minority shareholders, then came the concept of so-called "majority rule with minority protection" (majority rule minority protection). With the enactment of the Company Law No. 40 In 2007, the position of shareholders of both majority and minority is considered equivalent, with no difference in the number of votes cast in policy making within the company.

Secondly we discuss the role in the protection of minority shareholders in the case of merger transactions which contain conflict of interest (conflict of interest) and the necessity of the principle of openness and respect for the rights of the shareholders based on the principle of equality among shareholders of both minority and majority.

In the opinion of William Friedman, a sociologist of law, said that the rule of law depends upon, among other things, a legal substance in the form of legislation and judicial decisions, as well as the legal culture of society. Legal certainty is a prerequisite of economic development success. So with the regulation of the legal protection for minority shareholders in the legislation in Indonesia is expected to run well by all stakeholders of a company so as to further enhance the development of the national economy and provide a solid foundation for the business world in the face of world economic development and progress of science knowledge and technology in the era of globalization to ensure the implementation of a conducive business climate.

Merger is the majority shareholder in control so that minority shareholders cannot do anything except follow the will of the majority shareholder, it is in this context that the most disadvantaged are minority shareholders, given in relation to the most concerned with the gains by shareholders is the majority shareholder. The concept and legal regulation of the principle of the protection of minority shareholders in the merger is a new thing and lack a sufficient portion legislation in company law.

The case of the merger of the purchase method can be categorized as a transaction with conflict of interest, since in providing the necessary legal protection to minority shareholders.

Merger purchase method associated with the conflict of interest that may understate the value of stocks and shares composition so it does not protect the interests of minority shareholders of deeds majority shareholder who did the merger transaction of the purchase method with the authority of the board of directors and the GMS, where directors could be governed in the interests of the majority shareholder , The company policy with regard to decision-making at the GMS of paramount importance and impact the interests of shareholders. It is therefore necessary protection principles below are aimed at decision-making authority of the Board of Directors and General Meeting of Shareholders:

1. *Principles and Super Silent Mayority*

Protection of minority shareholders in this case is done by introducing the principle of special votes, the minimum operasionalisasinya done in two ways as follows:

a) *Principles silent majority*

This principle required majority shareholder abstained from voting. One of the systems on the principle of the silent majority of the electoral system layered. This multi-tiered election principle operationalized by way of implementing voting twice. At first only voting shareholders do not collide with the interests of minority shareholders are allowed to vote, while the conflicting interests of shareholders / minority shareholders accept the proposal in question, namely the proposal to conduct transactions that conflict of interest.

b) *Principles of super majority*

In this case the voting is done at the GMS requires more than a simple majority (51%) to be able to win the vote. The decision of the meeting can not be taken if noise agree less than the percentage amount. In practice, the articles of association of the Company Limited standards in general on the principle of super majority in certain things that may be crucial to all shareholders, including minority. UUPT on the principle of super majority, both the things that are determined in the articles of association of the company, or to activities which are determined by law, for example if the company did change the articles of association, merger, acquisition, consolidation, bankruptcy, liquidation or purchase back shares.

One of the ways used to protect the interests of minority shareholders is to enforce the principle of the silent majority. Enforcement of this principle, especially when it comes to the company where in the merger deal is no element of conflict of interest. On the implementation of the merger transaction is a conflict of interest must first be approved by the General Meeting of Shareholders. The GMS for this case, the procedure is different from the GMS in terms of other activities in general.

In this case the execution of the transaction, which must approve the merger method of purchase that a conflict of interest in the GMS is a minority shareholder, which is usually a group or party which affects the minority shareholders.

The system of principles are the silent majority electoral system layered. This multi-tiered election principle operationalized through two (2) times the voting. The first voting is done by only shareholders who are not a conflict of interest is a minority shareholder is allowed to vote while the majority shareholders who accept the proposed conflict of interest is concerned, that the proposal to implement the merger transaction is a conflict of interest.

The position of majority shareholder abstained. The majority shareholder abstain from voting in this vote. Which must approve the implementation of the General Meeting of Shareholders is independent shareholders, which usually is a minority shareholder. It is indeed very distinctive compared to the General Meeting of Shareholders to kepentinga other interests. If the merger transaction conflicting interests of these must be approved by the General Meeting of Shareholders, then when the approval of independent shareholders is not secured even though the quorum had been met, then plan the merger transaction cannot be filed again within twelve (12) months from the date denial.

The importance of the protection of minority shares as long as there has been an imbalance between the interests of the majority shareholder with minority shareholders. Enacted the principle of "One Share One Vote" that apply to a limited liability company has created an asymmetrical relationship between the shareholders.

Under this provision, then how to put the interests of their respective shareholders in its portion, in order to avoid the tyranny of the majority shareholder.

In order to achieve the aims and objectives of the company, then the "minority right" should be consistent and consistently carried out either by companies or by 1embaga authorities, because if it is not handled properly, can harm the interests of shareholders, especially minority shareholders. Consequently the application of One Share One Vote could lead the company to be growing and many disputes or disputes, which are not directly interfere with the development of the Indonesian economy.

The Company consists of several parties who have rights in the company, namely the form of shares. So that in running a company, the parties concerned should have a tangle of balance, namely in the form of majority rule and minority protection. This means that the ruling remains the majority shareholder but where possible also must consider the interests of minority shareholders.

Company Law provides protection to minority shareholders in the event of company mergers provided for in Article 126 Company Law which states:

1. Legal actions should be obliged to consider the merger of the company:
   a. The Company, minority shareholders and employees of the company.
   b. Creditors and other business partners of the company.
   c. Community and fair competition in doing business.
2. Shareholders who do not agree with the decision of the GMS regarding the Merger, Consolidation, Acquisition of or separation as referred to in paragraph (1) may only use rights as referred to in Article 62.

His provision confirms that the merged company may not be possible if prejudicial to the interests of certain parties. If the rights of minority shareholders to sell their shares at a fair price this cannot be done, the minority shareholders may not approve the plan of merger, consolidation and acquisition of the proposed Board of Directors and exercise their rights as stated in Article 62 of Law Limited Liability Company (PT) which shareholders can ask the company to be shares purchased at a reasonable price.

The minority shareholders have the right to sell its shares in accordance with a reasonable price. Practice, determine a reasonable price is likely to create some difficulties, the share price cannot be agreed upon. In general, a reasonable price is the price corresponding to the market price or the price determined by an expert appraiser. Rate this reasonable stock price of each expert using some assumptions and risks of use of each expert assumptions vary by itself, produce a different outcome.

The Board of Directors will determine whether or not a Limited Liability Company (PT) healthy, because the key is in the balance of the fair treatment or treatment of shareholders, including the issue of providing information. The lack of this information (lack of information) can be detrimental to minority shareholders because it relates to a decision to be taken by the shareholders at the GMS merger.

Limited Liability Company Law No. 40 Year 2007 regarding in its regulation are ambiguities concerning the protection of minority shareholders in the merger for in article 126 paragraph (1) is only set a legal act of merger or amalgamation shall take into account the interests of minority shareholders. Then, in article 126 paragraph (2) shall shareholders did not approve the merger of the Company is entitled to request that their shares be purchased in accordance with a reasonable price. According to Government Regulation No. 27 of 1998 on the merger, consolidation and acquisition Company Limited in Article 4 paragraph (3) that the shareholders did not agree with the decision of the General Meeting of Shareholders regarding the merger can only exercise his right to be a share holding was bought at a reasonable price, and article 4 paragraph (4) stipulated that the implementation of the rights referred to in paragraph (3) will not stop the implementation of the merger.

2. Independent Directors

The presence of independent directors not independent of the presence of the director (in general). Director is an organ of the company who runs the company's operations and develop the company. In Indonesia, the director of an organ that is activated to carry out its oversight functions effectively against the company. Or conversely, the role of shareholders, especially the majority shareholder in a company that is too strong, so often intervened on policy directors. This phenomenon becomes a problem in ordinary limited company. This attitude or stance intervene every policy of the board of directors will ultimately be detrimental to the interests of minority shareholders.

This phenomenon occurs because the ownership structure of companies in Indonesia is still very concentrated, that is dominated by the majority shareholders. Directorships given to someone based on competence and professionalism so that loyalty is aimed at giving positions so as to have the effect to improve the bargaining position of shareholders, especially the majority shareholder (bargaining power) among shareholders.

The term independent director is actually the same as the term of independent directors on the countries that embrace Anglo-Saxon legal system. The difference is due to the second term legal systems of different companies. Anglo-Saxon legal system adheres One Tier System that only the board of directors. In this system of anonymous independent directors as a party to oversee the performance of the board of directors. While the Continental European legal system adheres Two Tiers System. There are two separate bodies in a management (board of directors). Both organs must be independent of each other. Director should be able to conduct independent oversight function of the board of directors, on the contrary directors should be able to manage the company from day to day independently without excessive pressure from the director.

The existence of independent directors is intended to create a climate that is more objective and independent, and also to maintain fairness and to provide a balance between the interests of majority shareholders and protection of minority shareholder interests and the interests of other stakeholders.

Basically, all directors are independent, meaning that they were expected to perform his duties independently, solely in the interest of the company. Various attempts have been made to create an environment that is conducive to strengthen the independence of directors, among others by transferring the functions of the Director and by introducing the functions and role of independent directors. With the presence of independent directors is also affecting an increasing capability of the board of directors as a whole so that their effectiveness may be more optimal.

One important role of independent directors who can add value to the overall director is his skill in leadership both in the sense of giving influence positively and in leading committees of the board of directors other.

In order to increase active participation in a company, an independent director must always improve and develop the professionalism of them by having the determination to:

1. Run the company by upholding the independence.
2. Provide a meaningful contribution to increase the company's value.
3. Developing a career in a positive way for the betterment of the company's personal and reciprocal basis.
4. Sharpen capability and expand the existing experience for the benefit and progress of the company.

Position Independent Director owned by the company, is concerned with oversight responsibility on the board of directors. The existence of independent directors is intended to create a climate that is independent, and also to maintain fairness and to provide a balance to the interests of the majority shareholder at the time of the merger. It can be said the selection of company directors in Indonesia did not consider the integrity and competence of the person. The independence of the board of directors of the Indonesia against directors or majority shareholders is questionable at the time of the merger. Therefore, researchers wanted their idea of the existence of independent directors.

The basic idea itself independent directors raised by the fact that many directors only as a "puppet" of the majority shareholder. Independent director is required to present the interests of minority shareholders, which saw the situation in Indonesia has become a matter of urgency. The existence of the institution of independent directors in the company's practices in Indonesia is one of the events that prove legal doctrine which asserts that the development of (the needs of) the public more rapidly, and generally cannot be anticipated by the law.

It merger purchase method is certainly not beneficial for the minority shareholders, in the sense that the interests of minority shareholders neglected because of the merger transaction which is still controlled by the majority shareholders it would tend to benefit the majority shareholder. It certainly does not create an independent climate.

3. Non Expropriation

As a legal entity separate from its shareholders, the company in its legal functions not act as authorization from its shareholders, but act on the company. "The shareholder is not a party to the agreement made by the company with other parties. Therefore, the shareholders may not be able to act alone in determining its intention to seek a merger with the stock value price determined in accordance majority shareholder, for which it would require directors who will carry out the merger in accordance with the intent and purpose of the majority shareholder.

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Expropriation is the use of process control in order to maximize their own welfare with the distribution of wealth from others.

According to the agency theory stated by Jensen and Meckling, demand will do anything to defend shareholders' decision is influenced by the structure of the shareholding in the company. Within the theory explained that greater ownership will increase the desire more to company performance. The interests of the majority shareholder will create two conflicts, namely:

1. The expropriation by majority shareholders to minority shareholders. What is meant by expropriation is process control usage to maximize their own welfare with the distribution of wealth from others.
2. Raise the cost of the agency, which is a cost to the shareholder as a result of the delegation of authority to the management. These costs may include losses suffered by the company as a result of abuse of authority (wrong doing).

The Company is a collection of contracts between the Directors of the company and shareholders. Owner company handed over the management of the company to the Board of Directors or management. Directors or management as the authorized parties on the company's activities and shall provide information and profits for shareholders, especially the majority shareholder. This often happens is the Board of Directors or management will tend to report something and make a major contribution by maximizing his utility for the majority shareholder.

The Board of Directors or the management company might be doing something that does not correspond to the actual conditions of the merger the company so that it spurred agency conflict. In such a condition is known as asymmetric information or asymmetry of information.

In a law firm known for some transactions that due to its nature could pose a conflict of interest, which if broken can consist of four (4) groups of transactions, that is:

1. transactions controlling stockholder;
2. transactions self dealing;
3. transactions corporate opportunity;
4. transactions executive compensation.

Board members often happens merger transaction the company where he worked at a price much lower than the market price or the fair price of shares due to the merger scenario set by the majority shareholder so that minority shareholders be neglected.

Transactions made by the company made with the parties who have a conflict of interest in the company but the other side also have a vested interest in the course of such transactions.

Based on agency theory which assumes that man is always self-interest, the relationship between the shareholders, especially the majority shareholder with an agent or the Directors may lead to the case to defend the interests of shareholders, especially the majority shareholder.

Agency conflicts occur with separation of ownership and control. At the time of the concentration of ownership, the majority shareholders can influence corporate policy. Centralized control in the hands of the majority shareholder, no longer Directors or management. Even directors or management of part of the majority shareholder of itself. With the majority shareholder, the agency problem between management and the board of directors or minority shareholders was reduced, but it appears another agency problem between majority shareholders and minority shareholders.

The majority shareholding in the company to make such ownership is concentrated, this will only encourage the majority shareholder as a controlling company to expropriate the minority shareholders. Expropriation can be done because the ownership is more concentrated the majority shareholders could seemed to make all the decisions a company merger.

There are various things that require the need for protection for minority shareholders from expropriation action. First, complete and adequate disclosure of the merger on the ownership of shares allows it increasingly difficult for the majority shareholder to expropriate minority shareholders. With the disclosure of the merger transaction is adequate, the minority shareholders have been able to anticipate the magnitude of the risk of expropriation that may occur. Second, the required statutory provisions that law enforcement is more conducive to minority shareholders. The right to elect directors, cumulative mechanism in the election of directors, the majority shareholder representation on the board, and the right to ask to evaluate the company's important decisions are examples of conditions that are expected to reduce the risk of expropriation of the minority shareholders. Third, there needs to be provision of information about the reputation and behavior of the majority shareholder. The provision of such information allows the risks of expropriation reduced because of public pressure.

Empirical evidence indicates that the majority shareholder in the share ownership of the pyramid is the controlling shareholder that dominates the actions of management, profits were taken majority shareholders of the company can be divided into two types, namely pecuniary (tunneling) and non-pecuniary. Definition of tunneling as a transfer of assets out of the company and thus benefit investors who have control over the company. Meanwhile non-pecuniary associated with transferability, namely the transfer of resources out of the company to shareholders other (competitors).

Tunneling can be done by selling assets/products to a company that has an affiliate relationship with a shareholder at a price lower than the fair price, or sell assets to companies that have a relationship with the shareholders (a related party).

The study also want to explain that the majority owner involved in the practice of expropriation or tunneling committed against minority shareholders, particularly the markets of developing countries. Furthermore, tunneling in particular can be realized in mergers / acquisitions with affiliated parties.

The aim of the merger and acquisition activity is to generate synergies, obtain tax breaks, buying assets below replacement cost, diversification, incentives for managers and breakup value. Action shareholder stressed from all the above reasons, which became the dominant motivation is the reason synergies. Although the acquisition / merger would provide synergies but is believed to acquisitions / mergers internal (acquisitions made within one business group) is usually not followed by a positive market reaction compared to external acquisition. This is because their motive is not the internal merger synergies because of the synergies in the companies in one group usually implemented easily without the merger. Internal merger event is usually accompanied by the information asymmetry between the majority shareholder with minority shareholders. Therefore, the majority shareholder has more complete information on the target company (because it comes from the same group) and its controlling shareholder holding control over two companies that transact it can be presumed that transaction is based on the interests of the majority shareholder, which can cause harm (expropriation) for minority shareholders.

To improve the practice of expropriation by controlling shareholders effect stronghold (entrenchment effect). Entrenchment is an action taken by the controlling shareholders are protected by control right to expropriate.

Characteristics of the concentrated ownership of the company, find that there is a conflict of interest between majority and minority shareholders, and that the majority shareholders can expropriate the wealth of minority shareholders.

Increasingly concentrated control of the company's majority shareholder will result in the company's position became stronger and enable them to take personal advantage which would decrease the value of companies and detrimental to minority shareholders. It is revealing that in a very long period of time, conduct business in Indonesia has been contaminated with a variety of actions, activities and unfair business mode as a result of the pattern and business ownership is concentrated in a few groups. Therefore any conflict of interest transaction must be approved by independent shareholders. The consequence of this rule is that even though the shareholders have agreed to a transaction representing a conflict of interest, but if the independent shareholders do not agree then the transaction can not be implemented. The lack of law enforcement to provide flexibility for the majority shareholder to expropriate the assets of the company by using a complicated ownership structure at the expense of minority shareholders.

Majority shareholder effort to not expropriate (Non Expropriation) is a positive indication for minority shareholders about the protection of the interests of minority shareholders in the company. If the rights of minority shareholders feel protected from the possibility of expropriation by majority shareholders, then they are no conflicts and may not be a dispute in court.

The problem of expropriation of the minority shareholders is an important issue and the law plays an important role in limiting the expropriation. Therefore, what has been presented, the researchers recommend the enforcement of the legal system and regulations provide adequate protection for minority shareholders, by the way: for the legal system of the company, need pioneered the application of the Doctrine of Non Exproriation (not expropriate), especially the theory of corporate law pertaining to legal merger,

Investors or people who believe that there is no expropriation (Doctrine of Non expropriation) in the company will assess that the company is more reliable, including the majority shareholder. Doctrine of Non Expropriation is an act of a majority shareholder that is consistent with the interests of minority shareholders.

Lack of application of the theory or concept of company law, especially in the legal merger provides flexibility for the majority shareholder to expropriate the company's assets by using majority ownership structures at the expense of minority shareholders.

Merger cases can be categorized as a transaction with conflict of interest, because in giving protection to minority shareholders is precisely by opening the possibility of the implementation of the quota system in the voting of the general meeting of shareholders on the principle of one share one vote. Minority shareholders not infrequently only be used as a complement to the corporate transactions that have merged. The mechanism of decision-making in the company in order merger of minority shareholders can be assured it will always be less than the majority shareholder, for a decision tree based on the magnitude of the percentage of shares held. Such a situation will get worse, if it turns out the majority shareholder to use the opportunities this merger to control the company based on their interests and ignore the interests of minority shareholders.

V. Conclusion

1. Interactions between shareholders with Co, that majority shareholders often use the power of voting rights based on majority rule and the principle of one share one vote to defeat the minority shareholders. The vagueness setting legal protection of minority shareholders in mergers bring the legal implications of minority shareholders actual structure of juridical positions of the weak, in terms of decision making stock prices through voting, for example through the principle of one share one vote and consequently the position of minority shareholders when the merger becomes neglected. Merger or amalgamation is also a legal act that has legal consequences fundametal the company's stock structure and change the position of the shareholders as there are minority shareholders who accept and do not accept the merger. Their unclear legal implications of the legal protection of minority shareholders when the merger ultimately detrimental impact of minority shareholders and will cause a lot of disputes. Given this legal uncertainty then make small investors are reluctant to invest in companies in Indonesia. If so, then the development will be retarded and the growth of the economy will slump.
2. To anticipate the growing number of issues on the legal protection of minority shareholders when the merger related to the existing arrangements in the legislation limited liability company, in the future there needs to be more substance improvement leads to legal certainty by performing rearrangement setting legal protection of

minority shareholders when merger by adding several provisions as follows:

- Principles and Super Silent mayority mayority
- Independent Director
- Principle of Non Eksproriasi

VI. SUGGESTION

1. The government should immediately revise and clarify the intent of the provisions contained in Article 126 paragraph 1 and 2 of Law No. 40 Year 2007 regarding Limited Liability Company, Article 4 paragraph 3 of Government Regulation No. 27 of 1998 on the merger, consolidation and acquisition Company Limited so as not to cause multiple interpretations which may result in legal uncertainty and conduct a review of the rules on conflicts of interest for the future merger transaction will no longer occur ekpropriasi against minority shareholders.
2. The government should immediately issue a new government regulation for Government Regulation 27, 1998 did not follow the rules of the Limited Liability Company Act of 2007, and really make a clear legal device that is about the rules governing the legal protection for minority shareholders, especially regarding the implementation of the merger in order to protect minority shareholders from the arbitrariness of the majority shareholder.

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