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The Application of The Fairness Principle Legal Protection For Parties in Limited Liability Company

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ABSTRACT

A corporate merger is a process by which two or more legal entities are combined to form a single, larger entity. In Indonesia, the merger process is regulated under Law No. 40 of 2007 on Limited Liability Companies (Undang-Undang Perseroan Terbatas, UUPT). This article analyses the application of legal protection for the parties involved in the merger of a Limited Liability Company (Perseroan Terbatas, PT), particularly from the perspective of the fairness principle, which constitutes the principal foundation of any business transaction. Legal protection in a merger context is critical because such transactions may adversely affect certain parties, especially minority shareholders and creditors. The application of the fairness principle in PT mergers is therefore essential to the creation of a fair and transparent business climate. Using a descriptive-qualitative method with a normative juridical approach, the study examines the relevant Indonesian statutory framework alongside scholarly commentary on corporate fairness. The findings indicate that, although the UUPT and its implementing regulations have established a multi-layered framework of protection covering shareholders, creditors, and workers, gaps remain in the operationalisation of fairness, particularly in the areas of transparency of information, valuation, and the protection of minority shareholders. Strengthened due diligence, independent valuation, and effective dispute resolution channels are accordingly recommended to give substantive effect to the fairness principle in Indonesian merger practice.

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INTRODUCTION

Corporate mergers represent a strategic step frequently taken by companies in order to expand market reach, enhance competitiveness, or strengthen their financial position(Maruf, Kenotariatan, et al., 2025). In their implementation, however, mergers may give rise to legal problems, particularly in connection with the protection of the rights of the parties involved, such as shareholders, creditors, and employees (M. Bedier. 2018). One of the principles that must inform every corporate transaction is the principle of *fairness* or equity (Indriyati et al., 2024). This principle requires that every decision taken in the course of a merger should refrain from causing harm to any one party and should foster equality among those involved (Christian. Et all. 2025).

The merger of a Limited Liability Company (*Perseroan Terbatas*, hereinafter PT) is regulated under Law No. 40 of 2007 on Limited Liability Companies (hereinafter UUPT). The UUPT provides guidance on the rights and duties of the parties involved in a merger, as well as on how the merger process is to be conducted in a fair and transparent manner (Maruf, Septianita, et al., 2025). Within this framework, the present article seeks to analyse the application of legal protection for the parties involved in a PT merger, with particular reference to the fairness principle and its operational dimensions(Nor et al., 2025).

RESEARCH METHODS

This study employs a descriptive-qualitative method, examining the statutory regulations in force in Indonesia, in particular Law No. 40 of 2007 on Limited Liability Companies, together with the legal principles that underpin the corporate merger process. The analysis also addresses the application of the fairness principle within the context of Indonesian corporate law. The data used in this research are drawn from primary legal documents (statutes and regulations), academic literature, and other relevant regulatory instruments, and are analysed qualitatively using a normative juridical approach combining the statutory approach with the conceptual approach.

RESULTS AND DISCUSSION

The Merger Process in the Perspective of Indonesian Corporate Law

Within the framework of Indonesian corporate law, mergers are governed by Law No. 40 of 2007 on Limited Liability Companies(Maskanah, 2023). Pursuant to the relevant provisions of the UUPT, a merger must be conducted through several clearly defined stages, including the preparation of the merger plan, the approval of the General Meeting of Shareholders (*Rapat Umum Pemegang Saham*, hereinafter RUPS), and the registration of the merger with the Ministry of Law and Human Rights. Government Regulation No. 57 of 2010 on the Merger or Consolidation of Business Entities and the Acquisition of Company Shares provides further procedural detail (Indonesia, Government Regulation No. 57 of 2010). The RUPS is the institutional locus of decision-making in a merger and must engage all shareholders in order to ensure that the resulting decision reflects fairness and does not prejudice any particular party (Indonesia, UUPT).

At this stage, the fairness principle must be observed: every decision must be founded upon accurate and transparent information regarding the condition of the companies that are to be combined(T, 2019). The companies involved in the merger are likewise obliged to afford equal rights to minority shareholders by giving them an opportunity to express their views and to consent to, or reject, the proposed merger (Adhimastha. Et all. 2023).

Application of the Fairness Principle in the PT Merger Process

The fairness principle must be reflected at every stage of the merger process, from the preparation of the merger plan through to its implementation (Angelica and Azzahra.2021). Several elements of the fairness principle warrant particular attention in the merger of a PT.

a. Transparency of Information

The fairness principle requires that all relevant information concerning the merger be disclosed to the affected parties on an equal and equitable basis(K & Sumantry, 2021). Shareholders, particularly those holding minority stakes, must be afforded an equal opportunity to understand the impact of the merger on their ownership interests(Maskanah et al., 2025). The UUPT requires that decisions taken at the RUPS, whether strategic or operational in nature, rest on accurate and clear information. Disclosure standards in respect of publicly listed companies are further elaborated by Financial Services Authority Regulation No. 14/POJK.04/2019 on Mergers and Demergers of Public Companies. Material transactions and significant changes in principal business activity are subject to additional disclosure obligations under Financial Services Authority Regulation No. 30/POJK.04/2017.

b. Balance of Rights Among Shareholders

In the merger process, the fairness principle demands that minority shareholders be afforded adequate protection so that they are not disadvantaged by decisions taken by the majority (Indonesia, Financial Services Authority Regulation No. 14/POJK.04/2019). The UUPT extends specific protection to minority shareholders by granting them the right to object to a decision of the RUPS that is considered to be detrimental to their interests, including by exercising the appraisal right (*hak menjual saham*) to require the company to repurchase their shares at a fair price (Indonesia, UUPT). Studies of merger practice in the Indonesian banking sector have similarly highlighted the importance of effective minority-shareholder protection mechanisms in cross-shareholder transactions (Asmawati. 2014. Utomo P. 2014).

c. Recognition of the Interests of Creditors and Employees

Beyond shareholders, other parties with an interest in the merging companies include creditors and employees. Creditors are entitled to protection of their rights, including the right to file objections to a proposed merger within a specified statutory period (Indonesia, Government Regulation No. 28 of 1999). Employees, in turn, must be assured that their rights in relation to employment and social security continue to be respected following completion of the merger (Johan, Ramlani Lina, and Marni Emmy Mustofa, "Perlindungan Hukum Terhadap Hak Pekerja dalam Perusahaan Melakukan Corporate Action Merger dan Akuisisi," *Prosiding Seminar Nasional* (Johan et all 2023). The Regulation of the Minister of Manpower and Transmigration No. 5 of 2010 on the Protection of Workers in the Merger and Demerger of Businesses (Indonesia, Regulation of the Minister of Manpower and Transmigration No. 5 of 2010), together with Government Regulation No. 35 of 2021, provides the principal legal framework. In the context of mergers within the financial sector, customer protection is a further dimension of fairness that has been emphasised in recent scholarship on Islamic bank mergers (Paramida et all. 2023).

d. Due Diligence and Validation of Financial Statements

The application of the fairness principle further requires the conduct of adequate due diligence before the merger is implemented. The purpose of due diligence is to ensure that the financial statements of the merging companies accurately reflect their true financial condition and are free from manipulation or error that might prejudice other parties. Credible and independent auditors must therefore be engaged to verify the financial statements upon which the merger decision is to be based. Such verification underpins the substantive, as distinct from purely formal, dimension of fairness in the merger transaction(Fatimah & Rastuti, 2024).

3.3 Legal Protection for Parties Adversely Affected

Unfairness in the conduct of a merger may cause loss to one of the parties involved. Legal protection is therefore essential to ensure that adversely affected parties are able to obtain compensation or the appropriate measure of justice. In this regard, Law No. 40 of 2007 on Limited Liability Companies extends legal protection to minority shareholders, creditors, and employees.

a. Compensation for Adversely Affected Parties

Where a party considers itself to have been adversely affected by a merger decision, for example by reason of deficiencies in the due diligence process or an absence of adequate transparency of information, the affected party is entitled to claim compensation(Fatimah & Bahri, 2022). This is consistent with Article 1365 of the Indonesian Civil Code, which provides that a party who suffers loss as a result of an unlawful act (*onrechtmatige daad*) may bring an action for compensation (Indonesia Civil Code). Additionally, where a merger has anti-competitive consequences, the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*, KPPU) has jurisdiction to assess the transaction under Regulation of the KPPU No. 3 of 2019, and recent scholarship on the Gojek–Tokopedia merger illustrates the practical operation of this competition-law dimension (F. K. Ainurrafik et al).

b. Dispute Resolution Through Legal Channels

Where a dispute arises between the parties involved in the merger, formal mechanisms of legal redress are available. One available avenue is litigation before the Commercial Court (*Pengadilan Niaga*), supplemented by alternative dispute resolution mechanisms such as mediation or arbitration under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (Indonesia, Law No. 30 of 1999). The availability of multiple channels is itself an expression of social-justice-oriented competition law, which seeks not only formal equality of opportunity but also the substantive welfare of market participants. (I. Al Kautsar . 2024).

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CONCLUSION

Mergers of Limited Liability Companies in Indonesia must observe the fairness principle at every stage, from planning through to implementation. The principle of fairness requires the merging companies to provide accurate and transparent information, to involve minority shareholders in decision-making, and to extend protection to creditors and employees. In this connection, Law No. 40 of 2007 on Limited Liability Companies provides a robust legal foundation for protecting the interests of the parties involved in a merger.

The application of the fairness principle in the merger process aims to produce justice, balance, and transparency in every decision taken. It is therefore essential for the merging companies to undertake adequate due diligence, to engage independent auditors, and to ensure that legal protection is available to parties adversely affected, so that the merger proceeds smoothly and in conformity with the applicable regulations. Beyond formal compliance, what is needed is a substantive culture of fairness within Indonesian corporate practice, supported by effective regulatory enforcement, accessible judicial and arbitral mechanisms, and continuing academic engagement with comparative merger-law standards.

REFERENCES

Books

Bedier, M. "Chapter 1: Demystification of Mergers and Historical Overview." In *Cross-Border Mergers and Acquisitions: The Case of Merger Control*, 7–112. Cheltenham, UK: Edward Elgar Publishing, 2018. https://doi.org/10.4337/9781788110891.00010.

Journal with DOI:

Angelica, J., and Z. Azzahra. "Prinsip-Prinsip yang Mempengaruhi Stakeholders Perseroan Terbatas: Keadilan dan Transparansi (Kajian Pustaka Etika)." *Journal of Industrial and Manufacturing Technology* 2, no. 5 (2021): 577–580. https://doi.org/10.31933/jimt.v2i5.

Journals without DOI:

Adhimastha, B., B. Kagramanto, and E. Prasetyowati. "Hakekat Konsep Pengaturan Akuisisi Saham Perseroan Terbatas Berdasarkan Keadilan dan Kepastian Hukum." *Gema Wiralodra* 14, no. 1 (2023): 237–250.

Ainurrafik, F. K., L. D. Apriliana, R. M. Azzahra, A. Febrianti, and A. Wulandari. "Perspektif Undang-Undang No. 5 Tahun 1999 tentang Persaingan Usaha Terhadap Dampak Merger Perusahaan Gojek dan Tokopedia." *Adil: Jurnal Hukum* 15, no. 2 (2024): 255–271.

Al Kautsar, I. "Memaknai Persaingan Usaha Yang Berkeadilan dan Menyejahterakan dalam Perspektif Keadilan Sosial." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 1 (2024): 59–79.

Angga Christian, Ainun Nabilah, and Sulthoni Ajie. "Teori Keadilan Menurut John Rawls." *Jurnal Studi Hukum* 7, no. 1 (2025): 599.

Asmawati. "Perlindungan Hukum Pemegang Saham Minoritas Akibat Merger Bank." *Jurnal Ilmu Hukum* (2014): 24–37.

Fatimah, U. D., & Bahri, R. A. (2022). The The Impact of the Job Creation Law on Spatial Planning Policy: Challenges and Opportunities. *Journal Equity of Law and Governance*, *6*(2), 82–89.

Fatimah, U. D., & Rastuti, T. (2024). EFFORT TO FULFILL THE RIGHT TO WOMEN'S REPRODUCTIVE HEALTH IN INDONESIA'S STATE LAW SYSTEM. *Pasundan International of Community Services Journal (PICS-J)*, *5*(5), 3588–3602.

Indriyati, H., Maruf, I. R., & Nugraha, P. C. (2024). *The Development of the Principles of Agreement in Cross Border Contract Amid COVID-19 Outbreak* (Issue Intsob 2023, pp. 121–133). Atlantis Press SARL.

K, R. P. A. G., & Sumantry, D. (2021). Incomplete Land Redistribution and Compensation Rights : Legal Obstacles in Implementing Agrarian Reform for Absentee Land Exceeding Maximum Limits i-Latinnotary Journal : Internasional Journal of Latin Notary. *I-Latinnotary Journal: International Journal of Latin Notary*, *September 2015*, 25–39.

Maruf, I. R., Kenotariatan, M., Bin, M. K., & Othman, H. (2025). the Role of Law in National Economic Development: a Literature Study on the Relationship Between Regulation and Public Welfare. *International Journal of Economic Literature (INJOLE)*, *3*(6), 744–754.

Maruf, I. R., Septianita, H., Tedjabuwana, R., Noor, N. S., Anggraeni, I., Bekawira, Annisa, M., Azka, M., & Satriawan, A. (2025). Sosialisasi Legalitas Badan Usaha Sebagai Strategi Peningkatan Kapasitas Umkm Lansia di Kampung Inspirasi, Kabupaten Bandung. *Jurnal Abdimas Peradaban*, *6*(1), 58–72. https://doi.org/10.54783/xkzk4a52

Maskanah, U. (2023). EMPOWERING JUSTICE: THE SIGNIFICANCE OF NOTARY DEED AUTHENTICATION IN INDONESIA. *The American Journal of Social Science and Education Innovations*, *05*(06), 5–8. https://doi.org/https://theamericanjournals.com/index.php/tajssei/article/view/4135/3851

Maskanah, U., Augustine, D., Pasha, N. M., & Yuningsih, W. (2025). Tinjauan Yuridis Perbandingan Regulasi Lelang Di Indonesia dan Singapura. *Jurna Hukum Sasana*, *11*(2), 197–222. https://doi.org/https://doi.org/10.31599/sasana.v11i2.4596

Nor, M. Z., Noor, N. S., & Maruf, I. R. (2025). Regulatory Framework , Contractual Structures , and Legal Challenges of Conventional and Sharia Equity Crowdfunding (ECS) for MSME Financing in Indonesia : Comparative Analysis with Malaysia. *I-Latinnotary Journal: International Journal of Latin Notary*, *2020*, 50–61.

T, S. (2019). Agunan KUR Tanpa Agunan: Inkonsistensi Regulasi dan Jalan Menuju Penjaminan HybridUnsecured Loans: Regulatory Inconsistencies and The Path Towards Hybrid Guarantees. *Jurnal Penelitian Hukum*, *19*(3), 517–538.

Statutes and Regulations

Indonesia. *Kitab Undang-Undang Hukum Perdata* (Civil Code), Article 1365.

Indonesia. Law No. 7 of 1992 on Banking.

Indonesia. Law No. 1 of 1995 on Limited Liability Companies (former, on merger).

Indonesia. Law No. 8 of 1995 on the Capital Market.

Indonesia. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

Indonesia. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Indonesia. Law No. 40 of 2007 on Limited Liability Companies.

Indonesia. Law No. 27 of 2022 on Personal Data Protection.

Indonesia. Government Regulation No. 28 of 1999 on Mergers, Consolidations, and Acquisitions of Banks.

Indonesia. Government Regulation No. 57 of 2010 on the Merger or Consolidation of Business Entities and the Acquisition of Company Shares.

Indonesia. Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment.

Indonesia. Regulation of the Minister of Manpower and Transmigration No. 5 of 2010 on the Protection of Workers in the Merger and Demerger of Businesses.

Indonesia. Financial Services Authority Regulation No. 30/POJK.04/2017 on Material Transactions and Changes in Principal Business Activities.

Indonesia. Financial Services Authority Regulation No. 14/POJK.04/2019 on Mergers and Demergers of Public Companies.

Indonesia. Regulation of the Business Competition Supervisory Commission (KPPU) No. 3 of 2019 on the Assessment of Mergers, Consolidations, or Acquisitions.

Other Source:

Utomo P., Bagus Satrio. "Perlindungan Hak Pemegang Saham Minoritas Saat Merger." *Hukumonline*, 2024. https://www.hukumonline.com/klinik/a/perlindungan-hak-pemegang-saham-minoritas-saat-merger-cl7066/.