

Protection of Minority Shareholders on Decisions of the General Meeting of Shareholders of Public Company in the form of a Bank (Study of Transparency in Appointment of Management of PT Bank Mandiri (Persero) Tbk)

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Abstract

This research is based on share ownership which gives the holder special rights in a Public Company and the practice of appointing management of PT Bank Mandiri (Persero) Tbk which has not maximized the role of the Nomination and Remuneration Committee to review and propose candidates for management who meet the requirements. Therefore, this research aims to: (i) to find out how the appointment of management was carried out at the GMS of PT Bank Mandiri (Persero) Tbk on March 7 2024; and (ii) to find out how the appointment of management at the GMS of PT Bank Mandiri (Persero) Tbk is carried out which provides legal protection for minority shareholders. The type of research is normative juridical with a statute approach and a case study approach. The results of this research indicate that: (i) Bank Mandiri has not paid attention to the interests of all shareholders based on the principles of transparency, equality and fairness; and (ii) The implementation of the appointment of management that provides legal protection for minority shareholders at the GMS of PT Bank Mandiri (Persero) Tbk is by implementing good corporate governance. Bank Mandiri must also implement preventive legal protection efforts for shareholders, by implementing the provisions regulated by the regulator.

Keywords: Good Corporate Governance (GCG), GMS, Limited Public Company

1. Introduction

The nomination and Remuneration Committee plays a role in the implementation of Good Corporate Governance in public companies, which plays a role in providing a more objective, independent, transparent and professional view, especially in the decision-making process of the General Meeting of shareholders (GMS) regarding the prospective board of Directors of the company, thereby encouraging the creation of a more objective climate and realizing fairness among various interests including the interests of the company, the interests of shareholders and the interests of stakeholders. The Nomination

Committee plays a role in identifying, evaluating, and nominating new board members at the GMs, and also facilitates the election of new board members by shareholders. This is what underlies the obligation to review candidates for the company's management by the nomination and Remuneration Committee in Article 9 of the Financial Services Authority Regulations (POJK) Number 34 / POJK.04/2014.

However, in practice, the role of the nomination and Remuneration Committee in reviewing and proposing qualified candidates to be submitted to the GMS has not been optimally implemented in public companies in the form of State-Owned Enterprises or SOEs. Provisions regarding state-owned enterprises in Indonesia are regulated in Law No. 19 of 2003 concerning State-Owned Enterprises, in which Article 1 Paragraph 1 describes that the capital of SOEs is wholly or largely owned by the state through direct participation, which is sourced from state property that is separated. In Indonesia, SOEs are divided into 2 (Two) including public companies (Perum) and corporate companies (Persero).¹ Furthermore, referring to Article 1 Number 2 of Law Number 19 of 2003 concerning State-Owned Enterprises the company is a state-owned enterprise in the form of a limited liability company (PT) whose capital is separated in shares in which all or at least 51% (fifty-one percent) of the shares are controlled by the Republic of Indonesia with the aim of pursuing profit. A Persero company can be "open", that is, a state-owned company whose capital and number of shareholders have met the requirements to conduct a public offering in the capital market. An example of a Persero company is PT Bank Mandiri (Persero) Tbk.

PT Bank Mandiri (Persero) Tbk or Bank Mandiri or BMRI is a company that provides conventional or commercial banking services. Bank Mandiri has been operating since October 2, 1998, as a result of the restructuring program of several government of Indonesia banks. Four state-owned banks in July 1999 consisting of Bank Bumi Daya, Bank Export Import, Bank Dagang Negara, and Bank Pembangunan Indonesia or Bapindo merged into one under the Name Bank Mandiri.²

As a highly regulated sector, many provisions governing the banking sector aim to protect the interests of stakeholders and shareholders. A Bank is an intermediary institution that carries out its business activities depending on public trust and funds. The implementation of good corporate governance is then indispensable to build the trust of stakeholders and the community as a condition for the banking world to develop properly and healthily. So that the nomination of members of the Board of Commissioners and directors needs to be done through a transparent and formal process.

Referring to its website, PT Bank Mandiri (Persero) Tbk already has a nomination and Remuneration Committee that helps the Board of Commissioners to obtain and analyze data on qualified candidates for management and officials. However, in fact, the prospective members of the Board of Directors and Board of Commissioners of PT Bank Mandiri (Persero) Tbk who are appointed through the GMs are confidential and only known by the GMS participants when the GMS is held. On Thursday, March 7, 2024, BMRI GMS with the most votes of 61,059,848,795 (sixty-one billion fifty-nine million eight hundred forty-eight thousand seven hundred ninety-five) shares or 72.1844259% (seventy-two point one Eight Four Four Two Five Nine percent) of the total votes cast in the meeting decided to change the composition of the company's Board of directors and commissioners. The GMS approved the dismissal of Susana Indah Kris Indriati as director and Andrinof A. Chaniago as independent vice president commissioner and Nawal Nely as commissioner of the company.

¹ Redhina Elfahra, Iwan Erar Joesoef. (2021). Responsibility of the state (government) for failure to pay PT. Life Insurance (Persero): Customer Protection Study. *Journal of Legal Sciences and Humanities*. 8(2). 1-9.

² <https://www.idnfinancials.com/id/bmri/pt-bank-mandiri-persero-tbk>

The GMS then approved the transfer of the assignment of Deputy President Commissioner from Adrianof A. Chaniago to Zainudin Amali. Furthermore, the GMS appointed Tedi Bharata as the company's Commissioner. The GMS also appointed Mr. Riduan as director of Corporate Banking, Totok Priyambodo as director of Commercial Banking and Danis Subyantoro as director of risk management of Bank Mandiri replacing Ahmad Siddik Badruddin.

Referring to deed of minutes of General Meeting of shareholders BMRI No. 3 dated March 7, 2024 issued by Notary Utiek R. Abdulrahman, SH., MLI., M.Kn, BMRI board changes based on the contents of a letter from the Minister of state-owned enterprises (SOEs) as a Dwiwarna Series A shareholder with letter number SR-138/MBU/03/2024 dated March 7, 2024 regarding the proposed changes in the newly opened Board of Directors of PT Bank Mandiri (Persero) Tbk by the chairman of the meeting when the agenda for changes in the board is implemented in the GMS. Bank Mandiri issued 1 (one) Dwiwarna Type A shares owned by the Government of the Republic of Indonesia. Series A Dwiwarna shares are shares that give privileges to the holder to be able to approve the appointment and dismissal of the company's Board of directors (commissioners and directors), capital release, amendment of articles of association, merger, merger, dissolution, liquidation and takeover.

The existence of Dwiwarna share ownership that gives its holders privileges in public companies and the practice of appointing PT Bank Mandiri (Persero) Tbk administrators who have not paid attention to the provisions of Article 9 POJK number 34/POJK.04/2014 then it is interesting to study further, especially from the point of view of protection of PT Bank Mandiri (Persero) Tbk to minority shareholders. The provisions related to legal protection to minority shareholders of an open limited company are fully affirmed in law No.40 of 2007, namely Article 61, Article 62, and Article 79. Based on the explanation of the phenomenon above, the author wants to conduct a research entitled: Protection of minority shareholders on the decision of the GMS of a public company in the form of a Bank: Study of Transparency in Appointment of Management of the Management of PT Bank Mandiri (Persero) Tbk.

2. Related Works

Research that has existed before and related to the problems to be examined by the author, is a thesis entitled juridical analysis of legal protection of the Board of Directors on the decision of the General Meeting of shareholders conducted by Teleconference.045 DG 2022. The study was written by Dhiyaa Nada Shafa Dn, Bagus Rahmanda BR, and Islamiyati I from Diponegoro University in 2022. This study intends to determine the validity of the GMS conducted by teleconference in accordance with POJK No. 16 of 2020 regarding the implementation of the Electronic General Meeting of shareholders of public companies and to understand how the legal protection to the Board of Directors for the decisions of the GMS held by teleconference. This research method is juridical normative. The results of this study explained that the implementation of GMS conducted by teleconference is in accordance with POJK No. 16 of 2020 and has accommodated the needs of the GMS. Next, legal protection to the Board of Directors for the decision of the GMS held by teleconference is in accordance with the Public Company Law, so that POJK No. 16 of 2020 can legally protect directors.³

Furthermore, there is a research by Rahmat Setiawan, Risno Mina from the Faculty of Law, University of Muhammadiyah Luwuk entitled legal protection of minority shareholders is associated with the

³ Dhiyaa Nada Shafa, D. N. S., Bagus Rahmanda, B. R., & Islamiyati, I. (2022). Juridical Analysis Of Legal Protection To The Board Of Directors On The Decision Of The General Meeting Of Shareholders Conducted By Teleconference. 045 DG 2022 (Doctoral dissertation, Diponegoro University).

implementation of Good Corporate Governance (GCG) in 2019. This study focused on the study of the rights of minority shareholders and forms of legal protection to minority shareholders. This study uses qualitative methods through research methods approach is juridical normative, with the method of analysis is descriptive qualitative. The results of this study explained that legal protection to minority shareholders has been contained in the Public Company Law. Furthermore, the Public Company Law allows minority shareholders to ask the court to determine the holding of GMs and allows shareholders to request an examination of the company if shareholders are harmed.⁴

The next research is a study by Putri Dwi Yulisa from the Faculty of Law of the Islamic University of Riau entitled The application of the principles of Good Corporate Governance in Lending at PT Bank BTPN Pekanbaru branch in 2018. This study emphasizes its analysis on the application of GCG principles in lending at PT Bank BTPN Pekanbaru Branch and the study of supporting and inhibiting factors in the application of GCG principles in lending at PT Bank BTPN Pekanbaru Branch. The research method in the study is sociological Law Research. The results of this study indicate that: in general, the implementation of GCG aspects at Bank BTPN Pekanbaru Branch has been well implemented. The supporting factors for the implementation of GCG at Bank BTPN are the cooperation between each marketing employee, the availability of a supervisory committee, and the expectation of prospective customers to obtain perfect service. The factors inhibiting the implementation of GCG are the limited knowledge of some employees regarding the implementation of GCG and the absence of provisions issued by the bank regarding GCG.⁵

The difference between the research that will be conducted by the author with the research above is the difference in the purpose and object of research, which in this study the author will focus research issues on the protection of minority shareholders on the decision of the GMs of public companies in the form of banks: Study of Transparency in Appointment of Management of PT Bank Mandiri (Persero) Tbk.

3. Research Methodology

This study is normative juridical in which the approach is based on the main sources of law and considers the theories, concepts, principles of law, and legal regulations relevant to this study. Other notions of normative legal research are doctrinal legal research, library research or document study. This approach is also known as the bibliographic approach and is carried out through the study of books, legislation, and other documents relevant to this study. It is called doctrinal legal research or library research because this research is conducted only on written legal regulations or other related legal materials.⁶

This study also uses a legislative approach is an approach that examines all regulations and laws related to the legal issues being studied. Statue approach is an approach that uses legalization and regulation. A normative research certainly uses a legislative approach considering that the focus and central theme of the research are various legal regulations. Normative research mainly uses the statue approach because the focus as well as the central theme of a study will be examined are the various rules of law. In this study, the legal provisions that will be used by the authors are the Public Company Law, Capital Market Law, OJK regulations, banking law, SOEs regulations, and other laws and regulations related to this study.

⁴ Setiawan, R., & Mina, R. (2019). Legal protection of minority shareholders is associated with the implementation of Good Corporate Governance (GCG). *Journal Of Justisiabel*, 3 (2), 135-155.

⁵ Yulisa, P. D. (2019). Application of the principles of Good Corporate Governance in Lending at PT. Bank Btpn Pekanbaru Branch (Doctoral dissertation, Riau Islamic University).

⁶ Soerjono Soekanto and Sri Mamudji. *Normative Legal Research*. PT Raja Grafindo Persada, Jakarta, 2004, p. 14

This study then uses a case approach that is the chronological decomposition of the case that aims to produce science.⁷ The case approach in normative research aims to study how the application of legal rules or legal norms is carried out in legal practice. In normative research, cases are studied, to obtain an overview of the impact of the normative dimension in a rule of law in legal practice and use the results of the analysis as input in legal explanation. The case study approach refers intensively to a particular object and studies it as a case. Case study Data can be obtained from all relevant parties, in other words in this study obtained from various sources. In this study, case study data were collected from the deed of minutes of GMs of PT Bank Mandiri (Persero) Tbk, Annual Report of Bank Mandiri and information disclosure issued by PT Bank Mandiri (Persero) Tbk as a public company.

4. Research Results and Discussion

PT Bank Mandiri (Persero) Tbk (Bank Mandiri or the company) was established on October 2, 1998 by notarial deed Sutjipto, S.H., No. 10, based on Government Regulation No. 75 of 1998 dated October 1, 1998 approved by the Minister of Justice of the Republic of Indonesia based on Decree No.C2-16561.HT.01.01.Th.98 dated October 2, 1998, and published in the State Gazette of the Republic of Indonesia No. 97 dated December 4, 1998 and supplement to State Gazette No. 6859.

Based on Article 3 of the Articles of Association of Bank Mandiri, the scope of Bank Mandiri's activities is to conduct business in the banking sector in accordance with applicable laws and regulations. Bank Mandiri officially began operations on August 1, 1999. The parent entity of the Bank is the Government of the Republic of Indonesia through the Ministry of State-Owned Enterprises which is a ministry within the Government of Indonesia in charge of the development of state-owned enterprises. Bank Mandiri then changed the status of the company from a closed Company to a public company so that the company name became PT Bank Mandiri (Persero) Tbk. This amendment is effective on April 19, 2004 in accordance with the decree of the Senior Deputy Governor of Bank Indonesia No. 6/11/KEP. DGS/2004 dated 19 April 2004.

Bank Mandiri as a public company conducting business activities in the banking sector is then subject to the provisions on the implementation of corporate governance referring to POJK 17 of 2023 on the implementation of governance for commercial banks (POJK 17), regulation of the Minister of SOEs No. PER-2/MBU/03 / 2023 on governance guidelines and significant corporate activities of State-Owned Enterprises, principles of Corporate Governance developed by the Organization for Economic Cooperation and Development (OECD), Indonesia GCG guidelines developed by the National Committee on Governance Policy (KNKG), and Principles for Enhancing Corporate Governance published by the Basel Committee on Banking Supervision, as well as the ASEAN Corporate Governance Scorecard.

In order to manage a healthy company, the implementation of GCG is an important role in overcoming various problems due to conflicts of interest between related parties. Every company is obliged to ensure that the principles of good corporate governance are implemented in every aspect of the business and in all levels of the company. Aspects of good corporate governance, namely transparency, accountability, responsibility, independence and equality and fairness are needed to realize sustainable corporate performance while still paying attention to stakeholders.

⁷ Ramadhan, Farhan, and Atik Winanti. "Legal protection for investors related to trading Robot investment (verdict Case Study number: 431 / Pdt. G/2022 / PN. Jkt. Brt)." National Conference on Law Studies (NCOLS). Vol. 5. No. 1. 2023.

In connection with the implementation of the Annual GMS of PT Bank Mandiri (Persero) Tbk dated March 7, 2024 with the eighth agenda of the meeting, namely “changes in the composition of the company's Management” shows that:

- A. Bank Mandiri has not paid attention to the interests of all shareholders based on the principles of transparency, equality and fairness. Bank Mandiri has not sought to fulfill the rights of minority shareholders, namely the right to obtain information about the company in a timely, regular and correct manner. This is evidenced by the absence of disclosure of the curriculum vitae of prospective members of the Board of Directors and/or members of the Board of Commissioners who will be appointed on the company's website in accordance with the mandate of Article 18 paragraph 4 of POJK 15 of 2020 and Article 38 of SOE Ministerial Regulation No. PER-3 / MBU/03 / 2023.
- B. The practice of nominating candidates for Management of Bank Mandiri has not been transparent, formal, and shows the low level of investor protection. The practice of replacing and appointing the Board of Directors and Board of Commissioners of PT Bank Mandiri (Persero) Tbk at the Annual GMS on March 7, 2024 has not included considerations and recommendations from the nomination and Remuneration Committee so that it has not fulfilled the provisions of Article 7 and Article 21 of POJK number 33/POJK.04/2014 on the Board of Directors and Board of Commissioners of issuers or public companies and Article 9 and Article 41 of POJK number 17 of 2023 on the implementation of governance for commercial banks which is the legal basis and guidance for the appointment and dismissal of Directors and boards of Commissioners in public companies.
- C. The dismissal of Mr. Andrinof Achir Chaniago as Deputy President Commissioner or Independent Commissioner who has a duty period of 2020-2025, has not paid attention to the implementation of Good Governance and prudential aspects. Refer to Article 43 POJK No. 17 on the governance of commercial banks, Bank Mandiri in the explanation of the eighth agenda item has not disclosed the approval of the Financial Services Authority regarding the dismissal of Mr. Andrinof Achir Chaniago as Deputy President Commissioner or Independent Commissioner before the end of his term of office in 2025.

The practice of Bank Mandiri's Annual GMS on March 7, 2024 as described above, according to the author, has not provided fulfillment and legal protection to the interests of all shareholders, especially minority shareholders. The basic principle is that minority shareholders have the same rights as majority shareholders, and this is confirmed in the Limited Liability Company Law which gives rights to each shareholder. But in practice it cannot be denied, by taking into account the provisions in the voting at the Bank Mandiri GMS, the voting of shareholders applies a voting system in which the nature of voting rights is one share one vote and applies to all shares owned. Thus, even if there is a difference of opinion with the choice of the majority shareholder, the choice of the shareholder will certainly lose. However, the voting rights of minority shareholders must still be considered, especially when it comes to decisions that result in non-fulfillment of sound governance practices.

PT Bank Mandiri (Persero) Tbk as a Limited Liability Company, must support the rights and obligations of the board and all shareholders. Shareholders both majority and minority shareholders in a Limited Liability Company have rights and obligations that are born as a result of ownership of shares of a Limited Liability Company where the value of each shareholder's share ownership has an influence in making decisions at the GMS, resulting in majority and minority ownership. However, in principle, good corporate governance should be the interests of each shareholder are the same, namely to get the benefits and benefits of ownership of shares in the company.

The company is obliged to provide equal treatment and provide certainty and legal protection to all shareholders. Legal protection as a description of the function of law, namely the concept where the law can provide a Justice, order, certainty, expediency and peace.⁸ This is as mandated by Article 28D of the Constitution of the Republic of Indonesia of 1945 which guarantees that everyone has the right to recognition, guarantee, protection and fair legal certainty and equal conduct before the law. The interests of a larger majority (controlling shareholder) cannot negate the rights of a smaller shareholder (minority). This is reiterated in Article 5 of SOE Ministerial Regulation No. PER-2/MBU/03 / 2023 on guidelines for governance and significant corporate activities of State-Owned Enterprises, which states that SOEs ensure fair treatment of shareholders, including minority shareholders.

Based on the general guidelines for Indonesian Corporate Governance (PUG-KI) 2021 published by the National Committee for Governance Policy (KNKG), there are basic rights of shareholders that must be protected and facilitated by corporations. The basic rights of the shareholders include the right to: (a) obtain regularly and timely relevant material information about the Corporation; (b) participate and vote in the GMS; (c) appoint and dismiss members of the Board of Commissioners and members of the Board of Directors; and (d) obtain a share of the corporation's profits. Minority shareholders and the interests of the corporation shall be protected from adverse acts committed by, or for the benefit of, the controlling shareholders and / or the board of directors. The controlling shareholder and the board of the corporation shall avoid abuse of the power of its majority or its control.⁹

According to the Indonesian banking Good Corporate Governance Guidelines issued by KNKG, there are five main principles that must be fulfilled by the company to protect minority shareholders, namely:

- **Transparency.**

The Bank is obliged to convey information in an adequate, timely, accurate and comparable manner and easily accessible to shareholders in accordance with their rights. Information that must be submitted includes but is not limited to matters relating to the vision, mission, business objectives and strategies of the company, the composition and remuneration of the board, Financial Performance, executive officers, controlling shareholders, cross shareholding, risk management, internal supervision and control systems, GCG systems and implementation, compliance and important events that may affect the condition of the bank. Bank policies must be submitted in writing and communicated to shareholders and stakeholders. On the principle of transparency, it is appropriate for Bank Mandiri to provide information related to the disclosure of the curriculum vitae of prospective members of the Board of Directors and/or members of the Board of Commissioners who will be appointed at the GMS on March 7, 2024 on the company's website so that all shareholders can obtain information about the company in a timely, regular and correct manner so that they can make responsible decisions through the GMS.

- **Accountability.**

The Bank is obliged to establish clear responsibilities of each organizational organ that are aligned with the vision, mission, business goals and strategies of the bank. The Bank is obliged to believe that all organizational organs of the bank have competence in accordance with their responsibilities and understand their respective roles in the implementation of good corporate governance. In the practice of appointing Bank Mandiri administrators at the GMS on March 7, 2024, it is necessary to be equipped with considerations and recommendations from the nomination and Remuneration Committee where the

⁸ Dwi Aryanti Ramadhani and Iwan Erar Joesoef (2020). Legal protection of government employees with a work Agreement (PPPK) in the concept of a certain time work Agreement at a University Institution. *Juridical Journal*, 7(1), 1-26.

⁹ General guidelines for Indonesian Corporate Governance (PUG-KI) 2021

existence of an independent commissioner as a member of the nomination and Remuneration Committee can ensure the existence of a check and balance system in the nomination and remuneration process of the bank.

- **Responsibility**

In order to maintain business continuity, the Bank shall: (1) adhere to the Precautionary Principle and ensure the implementation of applicable provisions and (2) The Bank shall act as a good company. Bank Mandiri must carry out its business activities and corporate actions responsibly to all shareholders and stakeholders, and not take actions that could harm these shareholders.

- **Independence**

The Bank shall avoid the practice of unnatural domination by any shareholder and not be affected by the interests of certain parties and free from conflicts of interest. The involvement of independent commissioners through the nomination and Remuneration Committee is an effective form of supervision so that it is hoped that the nomination and remuneration practices at Bank Mandiri can run transparently and prevent the dominance of majority shareholders which can harm shareholders.

- **Fairness and Justice.**

The Bank always pays attention to the interests of all shareholders based on the principle of equality and fairness. Bank Mandiri should provide opportunities for all shareholders to have access to information in accordance with the principle of openness and ensure minority shareholders get their rights.

Recognition, guarantee, and legal certainty to shareholders according to the theory of legal certainty is one of the objectives of the law. The legal certainty that minority shareholders have allows them to predict what will happen if they file a particular case. Legal certainty is useful to realize the principle of equality or equality before the law without discrimination. According to Utrecht, The Theory of legal certainty contains two notions, first, the existence of general rules, making individuals know what actions may or may not be done, and the second, contains legal security for individuals from arbitrariness because with general rules that individuals can know what can be charged or done by the state against individuals.¹⁰ The existence of legal certainty and legal protection for minority shareholders is a consequence arising from legal relations due to share ownership and an obligation that must be carried out and awareness that is understood by the controlling shareholders and management of the company.

Furthermore, the form of state protection through the Financial Services Authority for minority shareholders and as an effort to enforce the implementation of good corporate governance in general is regulated in the Financial Services Authority Regulation (POJK) number 17 of 2023 concerning the implementation of governance for commercial banks. POJK 17 of 2023 is issued with the intention of strengthening the implementation of governance principles in banks to encourage the improvement of the quality of sound bank management, based on the principles of prudence and ethics, while still paying attention to the interests of shareholders and stakeholders.

POJK 17 of 2023 generally regulates the obligation of banks to implement good governance in the implementation of business activities which is realized in several aspects, including: implementation of duties, responsibilities, and authority of the Board of Directors and Board of commissioners, handling of conflicts of interest, completeness and implementation of committee tasks, and implementation of compliance functions.

¹⁰ Tewu, P. T. (2023). Legal review of legal certainty in the appointment of Directors based on Law No. 40 of 2007 on Limited Liability Companies. JIM: student Scientific Journal of historical education, 8(3), 2779-2789.

The forms of legal protection measures for minority shareholders in POJK 17 of 2023 are as follows:

- The state through OJK requires banks to implement good governance in the implementation of business activities. In Article 2 of the governance POJK, the Bank is obliged to apply the principles of good governance to the Bank in conducting business activities, which include at least 5 (Five) Principles of good governance to the Bank, namely transparency, accountability, responsibility, independence, and fairness. Good governance will certainly guarantee shareholders including minority shareholders that they will obtain transparent and accurate information especially related to ownership, performance, and decision-making processes.
- POJK 17 of 2023 encourages strengthening bank management and provides clearer regulatory corridors related to the behavior and authority of shareholders, especially controlling shareholders against banks. Article 11 paragraph (1) and Article 43 of the governance POJK, which stipulates that the dismissal or replacement of the president director and/or the director in charge of compliance functions as well as The Independent Commissioner before the end of the term of office period must obtain prior approval from the Financial Services Authority before it is decided at the General Meeting of shareholders. Through this provision, the regulator wants the controlling shareholder as the owner or controller of the bank, not to take various inappropriate actions. Inappropriate actions include policy issuance, decision making or other actions against banks that are not appropriate, contrary/violate the provisions of the OJK and the provisions of laws and regulations in the financial services sector. Or conduct unhealthy bank management that has the potential to harm the bank, stakeholders and or cause problems to the bank. ¹¹ This is reaffirmed in the provisions of Article 107 paragraph (1) of the governance POJK, which stipulates that the controlling shareholder (PSP) of the Bank and the last controlling shareholder (PSPT) of the Bank must comply with the regulations of the Financial Services Authority and the provisions of laws and regulations in the financial services sector, as well as supporting the implementation of business activities and management of banks that are healthy, competitive and in accordance with the principles of prudence and risk management.
- POJK 17 of 2023 authorizes OJK to be able to correct the decision of the General Meeting of Shareholders held by banking institutions. The authority of OJK to take corrective and evaluation actions on the appointment, dismissal, replacement and/or resignation of members of the Board of Directors and Board of Commissioners is contained in Article 13 and Article 45. With this provision, OJK strives to ensure that parties who run the management of the Bank, understand correctly their position, role, and responsibilities so that the bank's business activities can run optimally and protect the interests of stakeholders. In addition, this regulation emphasizes that the OJK as a regulator can set sanctions against violations of governance effectively, proportionally, and dissuasively.
- POJK 17 of 2023 seeks to ensure the creation of the principle of justice (equality or fairness) for the parties concerned, including for minority shareholders. In Article 109 paragraph (1) it is stated that the Bank has policies and/or procedures to: (a) ensure fair treatment of all shareholders and protect shareholders ' rights; and (b) facilitate the participation of shareholders and stakeholders and manage communication in its implementation. Article 109 paragraph (2) then states that the bank's corporate actions in the form of mergers, mergers, acquisitions, integration, and other material transactions are carried out in accordance with applicable provisions and procedures, and ensure transactions occur

¹¹ Andrian Kristianto, 2023, OJK publishes Commercial Bank Governance Rules, www.cnbcindonesia.com, 20 Januari 2024, <https://www.cnbcindonesia.com/market/20230919174421-17-473831/ojk-terbitkan-aturan-tata-kelola-bank-umum>

transparently and fairly and protect the rights of shareholders and interests of the Bank. These provisions aim to ensure fair treatment of shareholders, protect shareholders' rights, and facilitate shareholder participation.

- POJK 17 of 2023 seeks to protect public shareholders and the quality of information disclosure in conflicts of interest or potential conflicts of interest in the implementation of Bank management and supervision tasks. Article 80 of POJK 17 of 2023 emphasizes that internal parties of the Bank must avoid any form of conflict of interest and must disclose conflicts of interest in every decision that meets the conditions of conflict of interest and are prohibited from taking actions that have the potential to harm the Bank or reduce the bank's profits.

In addition to through POJK 17 of 2023, The Limited Liability Company Law also regulates the form of protection and rights of minority shareholders. In the Limited Liability Company Law, it is stipulated that the forms of legal protection and rights granted to minority shareholders are as follows:

- Article 61 paragraph (1), states that each shareholder has the right to file a lawsuit against the company to the District Court if the shareholder is harmed due to the company's actions that are considered unfair and without reasonable grounds as a result of the decision of the GMS, Board of Commissioners and/or Board of Directors.
- The provisions of Article 62 of the PT Law affirm that every shareholder has the right to ask the company for its shares to be purchased at a fair price if the shareholders concerned do not approve the actions taken by the company that harm the company or shareholders. These actions are in the form of amendments to the Articles of Association, merger, merger, acquisition, or separation and guarantee or transfer of the company's assets valued at more than 50% (fifty percent) of the company's net worth.
- Article 79 paragraph (2) states that shareholders who jointly represent 1/10 (one tenth) or more of the total number of shares with voting rights can request the implementation of the GMS, while minority shareholders can only propose GMS without having the authority to decide on the holding of the GMS.
- Article 97 paragraph (6) states that a shareholder representing at least 1/10 (one tenth) of the total number of shares with voting rights may file a lawsuit through the District Court against a member of the Board of directors who by mistake or negligence caused losses to the company.
- Article 114 paragraph (6), states that a shareholder representing at least 1/10 (one tenth) of the total number of shares with voting rights may represent the company to file a lawsuit against a member of the board of commissioners who by mistake or negligence caused losses to the company.
- Article 126 paragraph (1) and Paragraph (2), states that the merger, merger, acquisition, or separation of the company must take into account the interests of minority shareholders. Furthermore, shareholders who disagree with the GMS decision regarding the merger, merger, takeover, or separation may request the company to purchase its shares at a reasonable price.
- Article 138 paragraph (3), states that 1 (one) or more shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights may request for an examination of the company, in the event that there is an allegation that the company, members of the Board of directors or commissioners of the company have committed an illegal act that harms the company or shareholders or third parties.
- Article 144 paragraph (1) states that 1 (one) or more shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights may confirm the dissolution of the company to the General Meeting of shareholders.¹²

According to Philippos M. Hadjon, legal protection is divided into 2 (two) kinds of Preventive legal protection and repressive legal protection. Preventive legal protection is a legal protection that is intended to protect the rights of an individual from possible violations caused by another party or another person unlawfully. Preventive legal protection of the government based on freedom of action, because of preventive legal protection, the government can encourage related parties to be careful in making decisions based on discretion. Preventive legal protection efforts have been established by the government, namely with the Limited Liability Company Law Number 40 of 2007, the Indonesian banking Good Corporate Governance Guidelines issued by KNKG, and POJK number 17 of 2023 on the implementation of governance for commercial banks. With the issuance of these provisions, it is expected that Bank Mandiri in carrying out its business can apply the applicable provisions properly and apply the principle of fairness so as to encourage the implementation of good governance practices and maximize protection for minority shareholders.

The next form of repressive legal protection in the opinion of Saljipto Rahardjo in his book entitled legal Science, legal protection is to provide protection for Human Rights (HAM) that are violated by others and protection is given to the community so that each individual can obtain all the rights granted by law. The purpose of this repressive legal protection is to be able to resolve disputes by authorized judicial bodies both in absolute and relative terms through litigation and non-litigation.¹²

5. Conclusion

From the exposure of the research results presented, the following conclusions from this study, namely:

- A.** In connection with the implementation of the annual gms of PT Bank Mandiri (Persero) Tbk dated March 7, 2024 with the eighth agenda of the meeting, namely “changes in the composition of the company's Management” shows that:
- Bank Mandiri has not paid attention to the interests of all shareholders based on the principles of openness, equality and fairness. Bank Mandiri has not sought to fulfill the rights of minority shareholders, namely the right to obtain information about the company in a timely, regular and correct manner. This is evidenced by the absence of disclosure of the curriculum vitae of prospective members of the Board of Directors and/or members of the Board of Commissioners who will be appointed on the company's website in accordance with the mandate of Article 18 paragraph 4 of POJK 15 of 2020 and Article 38 of SOE Ministerial Regulation No. PER-3 / MBU/03 / 2023.
 - The practice of replacing and appointing the Board of Directors and Board of Commissioners of PT Bank Mandiri (Persero) Tbk at the annual GMS on March 7, 2024 has not included the considerations and recommendations of the nomination and Remuneration Committee so that it has not fulfilled the provisions of Article 7 and Article 21 of POJK number 33/POJK.04/2014 on the Board of Directors and Board of Commissioners of issuers or public companies and Article 9 and Article 41 of POJK number 17 of 2023 on the implementation of governance for commercial banks which is the legal basis and guidance for the appointment and dismissal of Directors and boards of Commissioners in public companies in Indonesia.
 - The dismissal of Mr. Andrinof Achir Chaniago as Deputy President Commissioner or Independent Commissioner who has a duty period of 2020-2025, has not paid attention to the implementation of Good Governance and prudential aspects. Refer to Article 43 POJK No. 17 on the governance of

¹² Legal Protection of Minority Shareholders In HENDY MARTIN BUTAR-BUTAR PUBLIC COMPANY, BUDIMAN N.D.P SINAGA, TULUS SIAMBATON

commercial banks, Bank Mandiri in the explanation of the eighth agenda item has not disclosed the approval of the Financial Services Authority regarding the dismissal of Mr. Andrinof Achir Chaniago as Deputy President Commissioner or independent commissioner before the end of his term of office in 2025.

- B.** PT Bank Mandiri (Persero) Tbk as a Limited Liability Company is obliged to provide the same treatment and provide certainty and legal protection to all shareholders. The implementation of the appointment of a board that provides legal protection for minority shareholders at the GMS of PT Bank Mandiri (Persero) Tbk is to implement good governance. In Article 2 of the governance POJK, the Bank is obliged to apply the principles of good governance to the Bank in conducting business activities, which include at least 5 (Five) Principles of good governance to the Bank, namely transparency, accountability, responsibility, independence, and fairness. Bank Mandiri must also apply preventive legal protection to shareholders by implementing the provisions of the Limited Liability Company Law Number 40 of 2007, the Indonesian banking Good Corporate Governance Guidelines issued by KNKG, and POJK number 17 of 2023 on the implementation of governance for commercial banks and other related provisions. With the issuance of these provisions, it is expected that Bank Mandiri in carrying out its business can apply the applicable provisions properly and apply the principle of fairness so as to encourage the implementation of good governance practices and maximize protection for minority shareholders.

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